

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1134 OF 2023

Ramesh Madhav Kanawade

...Applicant

vs.

The State of Maharashtra

...Respondent

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Mr. Sugandh B. Deshmukh, a/w. Mr. Vaibhav Thorve, i/b. Irvin Daniel D'Souza, for the Applicants.

Mr. R.M. Pethe, APP, for the Respondent State.

P.S.I., R. Chavan, Byculla Police Station, Mumbai.

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CORAM : ANUJA PRABHUDESSAI, J.

DATE : 19 APRIL 2023

P.C. :

This is application under Section 438 of the Cr.P.C. filed by the aforesaid Applicant for pre-arrest bail in Crime No.792 of 2022 registered with Byculla Police Station, Mumbai, for offences punishable under Sections 406, 420 r/w. 34 of the IPC.

2. Heard Mr. Mr. Sugandh B. Deshmukh, learned Counsel for the Applicant and Mr. R.M. Pethe, learned APP for the Respondent State. I have perused the records and considered the submissions

advanced by learned Counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by one Sanjay Vitthal Vakale. The facts narrated in the FIR prima facie reveal that the First Informant was in need of residential premises. The Applicant, who is related to the First Informant, informed him that he is working for MHADA and that he can arrange for MHADA flat at a reasonable rate. The Applicant showed him Room No.1805 in 18th Floor of Building No.5B of New Hind Mill MHADA Society at Ghodapdev MHADA, Mumbai and told him that the said flat is in the name of Akkubai Ganapati Kadam. The Applicant also told the First Informant that Anand Kadam, the owner of the said flat, was known to him and that he will have to enter into an agreement with said Kadam.

4. Accordingly, on 2 December 2017, the Applicant entered into an agreement with the First Informant for purchase of the flat at sale consideration of Rs.30,50,000/-. As per the terms and conditions of the agreement, the First Informant was required to pay Rs.12,50,000/- to the Applicant and Rs.8,50,000/- to MHADA and balance amount of Rs.9,50,000/- was to be paid to the Applicant after taking possession of the flat. Accordingly, the First Informant paid to the Applicant an amount of Rs.13,00,000/- and Rs.1,00,000/- by cash. On 12 September 2018, the First Informant also issued a cheque for Rs.7,50,000/- and handed over the same to Akkubai Kadam and Anand Kadam to be paid

to MHADA. The First Informant claims that, despite the payment of the money, the Applicant did not handover possession of the flat. Hence, the FIR.

5. The records reveal that, vide letter dated 10 October 2017, MHADA had already informed Akkubai Ganapati Kadam that she was not eligible for the flat. The records, thus, indicate that, as on the date the Applicant had entered into an agreement with the First Informant for sale of the flat, no such flat was allotted to Akkubai Kadam.

6. The records reveal that by MOU dated 16 August 2018, the Applicant had agreed to purchase Flat No.1805 from Akkubai Kadam for Rs.28,00,000/-. It is stated that an amount of Rs.10,00,000/- was paid to Akkubai Kadam and Manish Kadam by way of cheque. On the same date, the Applicant entered into an agreement with the First Informant for sale of the said flat for sale consideration of Rs.30,50,000/-. The Applicant had not entered into the agreement on behalf of Akkubai but on his own behalf. The Applicant has acknowledged having received Rs.12,50,000/- towards part-payment of the sale consideration. The records reveal that the Applicant has entered into an agreement and received part consideration from the Applicant in respect of a non-existent flat. This fact itself prima facie indicates that the Applicant had intention to cheat right from the inception. It needs to be ascertained whether the Applicant has also cheated other innocent purchasers under the same pretext. Considering the nature of the

accusation and the material in support thereof, this is not a case to exercise discretion in favour of the Applicant.

7. Hence, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)