



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1314 OF 2023

Deepak Ramkrushna Metkar

... Applicant

Versus

1. State of Maharashtra
& anr.

...Respondents

Mr.Tushar Sonawane a/w. Ms. Pooja Satpute, Advocate for Applicant.

Mr.M.G. Patil, APP for Respondent No.1-State.

Mr.Anoop H. Wagh, Advocate for respondent No.2.

PC S.S. Ahire, Indira Nagar Police Station, Nashik.

CORAM : N.J. JAMADAR, J.

DATE : 2ND NOVEMBER, 2023.

P C :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for pre-arrest bail in connection with C.R. No.61 of 2023 registered with Indiranagar Police Station, Nashik for the offences punishable under sections 420, 467, 468 and 471 of the Indian Penal Code, 1860 ('the Penal Code').

3. When the application was listed before the Court on 3rd May 2023, a statement was made on the instructions of the applicant, that without prejudice to his rights and defence, he was willing to deposit an amount of Rs.10,00,000/-. On the basis of the said statement, this Court had granted interim relief to the effect that the applicant shall not be arrested till the next date.

4. Mr.Sonawane, learned counsel for the applicant submits that the applicant could not comply with the undertaking given to the Court. Mr. Sonawane seeks leave to argue the application on merits.

5. Since the application for pre-arrest bail cannot be rejected on the sole ground that the applicant has not complied with the undertaking, I have heard Mr.Sonawane on merits of the application. However, the fact remains that believing the representation of the applicant, the Court was persuaded to grant interim relief. Resultantly, by the passage of time, the investigation suffered. Nonetheless, I have considered the allegations in the first information report.

6. The gravamen of indictment against the applicant is that the applicant had entered into an agreement to sell a flat to the first informant for a consideration of Rs.45,00,000/-. The first informant was made to part with a sum of Rs.25,00,000/- over a period of time. It later transpired that the applicant had already mortgaged the said flat in favour of Vighnaharta Patsanstha, Sinnar. Mr.Sonawane submitted that the first informant had already instituted a suit for specific performance and, in the alternative, for refund of the amount, and compensation. An endeavour was made to urge that the dispute was essentially of a civil nature.

7. I am unable to persuade myself to agree with the submission of Mr.Sonawane. It is one of these cases where the intention of the party, prima facie, appeared to be dishonest since the inception of the transaction. The Agreement for Sale executed on 13th September 2019 contains a clear recital that the vendor-applicant had not created any encumbrance on the flat which was agreed to be sold thereunder. Evidently, having already mortgaged the flat, the applicant dishonestly induced the first informant to part with a sum of Rs.25,00,000/-. A clear case of deception

coupled with forgery is made out. The fact that the applicant has not complied with the undertaking given the the Court further fortifies the inference that the intention appeared to be dishonest since inception. I am, therefore, not inclined to exercise the discretion in favour of the applicant.

8. Hence, the following order :

O R D E R

- (i) The application stands rejected.
- (ii) Interim order stands vacated.
- (iii) It is clarified that these *prima-facie* observations are confined to determine the entitlement to pre-arrest bail only.

[N.J. JAMADAR, J.]