

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

ANTICIPATORY BAIL APPLICATION NO.1189 OF 2019

Harshad Ratilal Soni ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

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Mr. Uday Warunjikar for the Applicant.

Mr. S.V. Gavand, APP for Respondent No.1-State.

Mr. Mujahid Ansari, appointed Advocate for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 5th APRIL, 2023.

P. C. :-

1. This is an application under Section 438 of the Cr.PC. filed by the aforesaid Applicant apprehending his arrest in C.R. No.787 of 2018 registered with Ghatkopar Police Station for the offences punishable under Sections 406 and 420 r/w 34 of the IPC.

2. Heard Mr. Uday Warunjikar, learned counsel for the Applicant, Mr. Mujahid Ansari, learned counsel for Respondent No.2 and Mr. S.V. Gavand, learned APP for the Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by one Shantabai. She has stated that some time in September, 2015 one Manohar Vichare informed her son that he had booked one room at Santacruz (East) and that some rooms were for sale in the said project. Said Vichare showed him the site and introduced him to Ambrish Soni and the Applicant herein. The First Informant has stated that the Applicant and Ambrish Soni agreed to sell the premises @30,000/- per sq.ft. About eight days later, the Applicant, his wife and Ambrish came to her house and agreed to sell to her Flat No.502 admeasuring 500 sq.ft. for a sum of Rs.1.5 crores. She has stated that she had paid total amount of Rs.80,45,000/- towards price of the said Flat. She has further stated that the Applicant herein had given to her allotment letter of Flat No.502. She has stated that the Applicant and his brother -Ambrish Soni did not hand over to her possession of the said room. She has stated that when she visited the site she saw another lady by name -Kokila Panjwani and she learnt that said flat No.502 was also allotted to Kokila Panjwani.

4. The statement of Kokila Panjwani recorded under section 161 Cr.P.C. prima facie reveals that she was allotted Room No.502. Learned counsel for the Applicant has placed on record copy of the

affidavit filed by Kokila Panjwani, wherein she has stated that initially she was allotted Room No.502 and that at her request it was cancelled and flat No.302 was allotted in lieu of 502. The allotment letter in respect of flat No.302, which is placed on record was allegedly received by said Kokila on 20/12/2019. In the statement made before police on 19/12/2018 this witness had stated that the Applicant and others had allotted to her Room No.502 and that the said flat was also sold to the First Informant. She had not disclosed that she was allotted flat No.302 in lieu of Flat No.502. Prima facie it appears that the Applicant and the co-accused have created back dated document of allotment in favour of Kokila Panjwani after filing of the FIR. This conduct itself would not justify grant of discretionary relief in favour of the Applicant.

5. The records reveal that the First Informant, who is over 77 years of age had invested her hard earned money in the project, which was proposed to be constructed by the Applicant and other partners. The fact that the said flat was sold to two persons, itself indicates that the Applicant had intention of cheating right from the inception.

6. Considering the nature of offence, in my considered view this would not be a fit case to grant discretionary relief in favour of the

Applicant. Hence, the application is dismissed.

7. At the request of the Applicant, interim relief to continue for a period of three weeks.

(SMT. ANUJA PRABHUDESSAI, J.)

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