

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

**ANTICIPATORY BAIL APPLICATION NO.1681 OF 2023
WITH
INTERIM APPLICATION NO.2455 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.1681 OF 2023**

Kashif Iqbalalli Sayed ...Applicant

Versus

The State of Maharashtra ...Respondent

...

Mr. Milan Desai for the Applicant.

Mr. Viral Bhanushali with Mr. Wasim Farooq for the Intervenor.

Mr. S.V. Gavand, APP for the Respondent -State.

Mr. Javed Shaikh, API, Varsova Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 11th JULY, 2023.

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P. C. :-

1. This is an application under Section 438 of the Cr.P.C. filed by the aforesaid Applicant apprehending his arrest in C.R. No.265 of 2023 registered with Varsova Police Station, Mumbai, for the offences punishable under Sections 406, 420 and 506 of the IPC.

2. Heard Mr. Milan Desai, learned counsel for the Applicant, Mr. Viral Bhanushali, learned counsel for the Intervenor 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 Hanifa Nanjiyani. The facts narrated in the FIR and the other material on record prima facie reveal that the Applicant and the First Informant entered into an agreement in respect of a flat on Ground Floor, 69 Chapel Road, Bandra (West), Mumai for total sale consideration of Rs.1,10,000/-. It is not in dispute that the First Informant has received sale consideration of Rs.80,00,000/-. It is stated that the Applicant herein had agreed to sell to the First Informant two premises at Varsova for sale consideration of Rs.13,00,000/- and Rs.14,00,000/-, respectively, in lieu of the balance sale consideration of Rs.30,00,000/-, which was payable by the Applicant. The First Informant claims that the said premises are not owned by the Applicant and hence, the FIR.

4. The records prima facie reveal that the premises, which the First Informant had agreed to sell were under litigation. The Applicant has placed on record Search Report, which reveals that Receiver was also appointed. The Applicant had not paid the balance amount of

Rs.30,00,000/- since the said transaction could not be completed. In short, the Applicant was not liable to pay the balance amount of Rs.30,00,000/- unless the said transaction was completed and title of the said premises was transferred in his favour. It is not in dispute that the First Informant has not transferred the title of the Flat. Consequently, prima facie, the Applicant was not liable to pay the balance amount of Rs.30,00,000/- or to provide flats in lieu of balance sale consideration. Hence, no case is made out for custodial interrogation.

5. Under the circumstances, the application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the Applicant in C.R. No.265 of 2023 registered with Varsova Police Station, Mumbai, the Applicant is ordered to be released on bail on furnishing bail bonds in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) The Applicant shall report to the concerned Investigating Officer for a period of two days i.e. on 14/07/2023 and 15/07/2023 between 11.00

a.m. to 2.00 p.m. and shall co-operate with the investigation;

(iii) The Applicant shall not tamper with the prosecution evidence and or influence the witnesses in any manner;

(iv) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and /or change of residence or mobile details, if any, from time to time.

6. The application stands disposed of.

7. Interim application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)