

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2144 OF 2023

Niraj Mansukhlal Ved

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Sudeep Pasbola a/w. Mr. Vaibhav Jagtap, Mr. Sankalp Vichare
and Mr. Ayush Pasbola, for the Applicant.

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

Mr. Kishor Medhe, API, Bhandup police station present.

CORAM : N. J. JAMADAR, J.

DATE : AUGUST 28, 2023

P.C.:

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

2. Apprehending arrest in C.R. No. 344 of 2022 registered at
Bhandup police station for the offences punishable under sections
406, 420, 465, 467, 468, 471 and 506 of Indian penal Code, 1860
the applicant has preferred this application for pre-arrest bail.

3. The applicant is a developer. The applicant had developed a
building named 'Shrinath Darshan' situated at Lake Road,
Bhandup. In the year 2013 the applicant offered Shop No. 6 to the
first informant and issued allotment letter. The applicant offered to
sale the said Shop admeasuring 201 sq.ft. for a consideration of Rs.

51,96,000/-. The first informant availed a loan of Rs. 32,73,336/- from HDFC Bank and the said amount came to be transferred to the applicant. A sum of Rs. 5,08,000/- was also paid to the applicant towards service tax, VAT and stamp duty vide cheque dated 1st August, 2015. Prior thereto, in the year 2013, the applicant had received Rs. 16,70,000/-. The applicant thus received an aggregate consideration of Rs. 54,51,336/- by making a representation that he would allot Shop No. 6 to the first informant.

4. Later on the applicant allegedly threatened the first informant to take Shop No. 5 instead of Shop No. 6. Allegedly even the said Shop No. 5 was again converted into Shop Nos. 4 and 4A in the revised plan and the applicant sold those Shop Nos. 4 and 4A to another person. Hence, the first informant lodged report leading to registration of the crime for the offences punishable under sections 406, 420, 465, 467, 468, 471 and 506 of the Indian Penal Code, 1860.

5. As the learned Additional Sessions Judge declined to exercise the discretion in his favour, the applicant has preferred this application.

6. I have heard Mr. Sudeep Pasbola, learned counsel for the applicant, and Mr. R.M. Pethe, learned APP, for the State.

7. Mr. Pasbola, learned counsel for the applicant, submitted that in respect of the very same project, first information report bearing No. 37 of 2019 for the offences punishable under sections 409 and 420 read with 34 of Indian Penal Code, 1860 and sections 3, 4, 5, 7, 8, 13 and 14 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, was investigated by the Economic Offences Wing, Mumbai. The statements of all the purchasers, who were allegedly duped, were recorded during the course of investigation of the said offence. The first informant had designedly stayed away from the said case and lodged instant first information report belatedly, with an oblique motive. The applicant thus deserves the relief of pre-arrest bail.

8. Mr. Pethe, learned APP, resisted the prayer of pre-arrest bail. It was submitted that a clear case of cheating, with dishonest intention since inception of the transaction is made out. Mr. Pethe further urged that the applicant is a habitual defaulter and has duped many unsuspecting purchasers and number of cases have

been registered against the applicant.

9. At the outset, the material on record, prima facie, indicates that the first informant had invested the amount on the representation of the applicant manifested in the allotment letter. A major part of consideration passed through the banking channels. The applicant allegedly did not deliver the possession of the premises, despite having accepted the entire consideration. What exacerbates the situation is the alleged conduct of the applicant in altering the plan and converting the shop which was offered to the first informant into two shops and selling the same to a third party. Prima facie, it does not appear to be a mere failure to perform the promise.

10. The fact that the first information report No. 37 of 2019 was registered against the applicant and Sapna Ved in connection with the same project and in that connection the statements of number of persons who were allegedly duped came to be recorded, in my considered view, cannot be pressed into service to dilute the gravity of the alleged offences. The said fact, in a sense, lends prima facie credence to the allegations that the applicant deceived a number of unsuspecting and innocent purchasers. The custodial interrogation

of the applicant would facilitate unearthing of the facets of the fraud as the first informant categorically asserts that initially she was offered Shop No. 6, later on she was forced to accept Shop No. 5 and thereafter even the said Shop No. 5 was converted into two shops and sold to a third party.

11. The aspect of delay is required to be appreciated in the backdrop of the aforesaid nature of the accusation.

12. For a bonafide purchaser, hope floats. A person who has parted with a huge amount in consideration of a promised premises from the builder, does not rush to the authorities to lodge the report, in the hope that the promise would be honored sooner or later and the dream fructified.

13. For the foregoing reasons, I am not persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)