



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

ANTICIPATORY BAIL APPLICATION NO. 2929 OF 2023

Khimsingh Venji Rajpurohit

... Applicant

Versus

State of Maharashtra

...Respondent

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Mr.Amit Singh, Advocate for Applicant.

Mr.S.H. Yadav, APP for Respondent-State.

Mr.Arjun Jeswani, Advocate for complainant/intervenor.

Mr.Sushant Shyam Varak, PSI, Badlapur (East) Police Station
present.

CORAM : N.J. JAMADAR, J.

DATE : 2ND NOVEMBER, 2023.

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1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the first informant.
2. This is an application for pre-arrest bail in connection with the C.R. No.154 of 2023 registered with Badlapur Police Station for the offences punishable under section 420 read with section 34 of the Indian Penal Code, 1860 ('Penal Code').

3. The applicant had entered into a transaction to sell a property situated at Survey No.79, Hissa Nos.2 and 4 and Survey No.79, Hissa Nos.3 and 5 admeasuring 38.5 Guntha with the first informant. The applicant had then represented that the co-accused Pandit Bhoir was his partner. The said land was in a residential zone. It later transpired that the said land was in 'no development zone'. However, before the said discovery, the first informant had parted with consideration of Rs.1,15,00,000/-. A Deed of Cancellation came to be executed between the parties on 23rd August 2011. The accused agreed to repay a sum of Rs.1,15,00,000/-. However, only an amount of Rs.45,00,000/- was repaid and cheques drawn by the applicant towards payment of sum of Rs.75,00,000/- were dishonoured. The applicant came to be prosecuted for the offence punishable under section 138 of the Negotiable Instruments Act, 1881. One of the clauses in the Deed of Cancellation was that till the entire amount was repaid, the first informant would have a lien on the property. It is alleged that in the year 2018, the applicant had sold the subject property without payment of the outstanding amount. Hence the report.

4. It appears that the original transaction between the parties was cancelled by executing a Deed of Cancellation. The cheques drawn by the applicant were dishonoured.

5. Learned counsel for the first informant submits that the applicant came to be convicted in the said complaint. It was submitted on behalf of the first informant that the applicant had sold the land in breach of the covenant in the Deed of Cancellation.

6. *Prima-facie*, it appears that, at best, a charge was created on the subject land. The first informant has the remedy to enforce the charge in the manner known to law. *Ex-facie*, the dispute appears to be of a purely civil nature. Even otherwise, the custodial interrogation of the applicant does not seem to be warranted especially when the alleged deception came to the knowledge of the first informant in the year 2011 itself, when the Deed of Cancellation came to be executed. Therefore, the applicant deserves the exercise of discretion.

7. Hence, the following order :

ORDER

(i) In the event of arrest of the applicant in connection with C.R. No.154 of 2023 registered with Badalapur Police Station for the offences punishable under section 420 read with section 34 of the Penal Code, the applicant be released on bail on executing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

(ii) The applicant shall co-operate with the investigation and attend Badalapur Police Station on 8th, 9th and 10th November 2023 in between 10:00 a.m. to 1:00 pm and, thereafter, as and when directed by the Investigating Officer.

(iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant, any of the prosecution witnesses or any person acquainted with

the facts of the case.

(iv) It is clarified that these *prima-facie* observations are confined to determine the entitlement to pre-arrest bail only.

(v) The application stands disposed of.

[N.J. JAMADAR, J.]