

Santosh

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

ANTICIPATORY BAIL APPLICATION NO. 2990 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2023.10.27
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Bipinsen Mul Chandranath Sen

...Applicant

Versus

The Senior Inspector of Police, Malad Police
Station and State of Maharashtra

...Respondents

Mr. Swapnil Wagh, a/w Mamta Tiwari and Vinita Dandekar,
for the Applicant.

Mr. P. H. Gaikwad, APP for the State/Respondent.
API Devidas Gajare, Malad Police Station.

CORAM: N. J. JAMADAR, J.

DATED: 25th OCTOBER, 2023

ORDER:-

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

2. This is an application for pre-arrest bail in connection
with CR No.455 of 2023, registered with Malad Police Station,
Mumbai, for the offences punishable under Sections 406 and
420 of Indian Penal Code, 1860 ("the Penal Code").

3. The first informant is a builder. The applicant
represented to the first informant that he had a premises
situated at Survey No.644 admeasuring 1,315.30 sq. mtrs. at
Shimpoli Road, Borivali. He had obtained the building

permission, IOD and CC from the Municipal Corporation. The applicant offered to give the said land for development for a consideration of Rs.2,50,00,000/-. An instrument was executed on 6th June, 2019 under which the applicant accepted a sum of Rs.61,00,000/- and agreed to deliver possession of the said premises within one month.

4. When the first informant insisted the applicant to execute a registered instrument and hand over the premises, the applicant gave evasive reply. It later on transpired that the said land did not belong to the applicant. Thereupon the applicant contacted one Shrikant Kulkarni, the office bearer of the Kaveri Co-operative Housing Society Ltd., who was the owner of the said premises. Shrikant Kulkarni said that the applicant was an agent and he was appointed to identify a developer. Hence, the first informant lodged the report.

5. The learned Counsel for the applicant without disputing the fact that a document titled "receipt" was executed on 26th July, 2019 acknowledging the receipt of a sum of Rs.61,00,000/- and agreeing to hand over the premises of Kaveri Co-operative Housing Society Ltd., submitted that the applicant had entered into an arrangement with Mr. Shrikant Kulkarni, who was the then Chairman of the Society. As a

dispute arose, the applicant directly entered into the Development Agreement with the said Society and belatedly lodged false FIR against the applicant.

6. The learned APP, on the other hand, submitted that a clear case of cheating is made out as the applicant had offered to deliver possession of the premises over which he had no dominion and accepted a sum of Rs.61,00,000/- through banking channels. A similar offence has been registered against the applicant at CR No.555 of 2019 with Mulund Police Station. Custodial interrogation of the applicant is warranted to unearth the fraud and also recover the amount, of which the first informant has been defrauded.

7. I am conscious that the offence under Section 420 of the Penal Code entails punishment which may extend upto seven years. Ordinarily the Court could have exercised the discretion. However, there seems a larger conspiracy in usurping the property of the society. It also appears that the alleged office bearers of the Society are also privy to transactions detrimental to the interest of the Society. Indisputably, the applicant had no title nor any other interest in the Society premises. The learned Counsel for the applicant invited attention of the Court to an agreement

purported to have been executed between Shrikant Kulkarni and the applicant, under which certain payments were agreed to be made to Shrikant Kulkarni. Secondly, reliance was placed on WhatsApp messages purportedly sent by Shrikant Kulkarni wherein he had made an offer to hand over the project to the applicant for which the applicant could receive 2.50 Crores and pay Shrikant Kulkarni Rs.50,00,000/-. Evidently, there were 14 flats in the society building. Shrikant Kulkarni does not claim to be the owner of the premises. It does not appear that the process to redevelop the Society was carried out in conformity with the provisions of law. The reliance on the transactions between the applicant and Shrikant Kulkarni thus does not advance the cause of the applicant.

8. Eventually, it seem the Society has entered into a Deed of Conveyance in favour of the first informant thereby conveying the land for a consideration of Rs.2,09,00,000/-. *Prima facie*, it appears that investigation is warranted not only in respect of the alleged offences committed by the applicant but also the transactions entered into by purported office bearers of the Society which appear to be to the detriment of the interest of the members of the Society. The

role of Shrikant Kulkarni also deserves to be investigated as the purported agreement executed by and between the applicant and Shrikant Kulkarni (Annexure E page 45 of the application) refers to financial transaction and payment of amount to Shrikant Kulkarni.

9. For the foregoing reasons, I am impelled to hold that custodial interrogation of the applicant is indispensable for an effective investigation to unearth the fraud and also the role of the persons, who have entered into the transactions with respect to the Society premises which *prima facie* appear to be detrimental to the interest of the Society.

10. Hence the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]