

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3027 OF 2023

Abdul Aziz Abdul Rafique Shaikh ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Kiran Varma, for the Applicant

Mr. S.H. Yadav, APP, for the Respondent/State.

Mr. Dilip Masram, PI, Tardeo police station.

CORAM : N. J. JAMADAR, J.

DATE : OCTOBER 30, 2023

P.C.:

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

2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 435 of 2023 registered at Tardeo police station for the offences punishable under sections 406 and 420 read with 34 of Indian penal Code, 1860.

3. The applicant was working as an estate broker. In the month of December, 2020, the applicant had represented to the first informant that a room of Abdul Shaikh was available for sale. The applicant introduced the said vendors to the first informant. Believing the representations of the applicant and the vendors, the first informant paid a sum of Rs. 21 lakhs to the vendors and an amount of Rs. 1,65,000/- to the applicant. It subsequently

transpired that the said persons were not the owners of the said room. Upon being confronted, the applicant offered to return the amount and had drawn a cheque of Rs. 10 lakhs, which was dishonoured on presentment. Hence, report.

4. The learned counsel for the applicant submitted that the first informant had paid the entire amount to the vendor. As the vendor failed to perform his part of the contract, the first informant had implicated the applicant. Out of the amount of Rs. 1,65,000/- paid by the first informant, he has already paid a sum of Rs. 1,50,000/-. Yet, to show his bonafide, the applicant is willing to deposit the said amount of Rs. 1,65,000/- without prejudice to the rights and contention and admitting liability.

5. The learned APP, on the other hand, submitted that vendors were staying at Uttar Pradesh. It was through the applicant only, the first informant entered into the transaction and was thereby deceived. The custodial interrogation is, therefore, warranted.

6. I have perused the allegations in the first information report. Distinct roles of being estate broker and the owners of the premises are attributed to the applicant and Ramdhari Pasi and his son Anurag Pasi. Even the consideration was paid to those purported vendors. A sum of Rs. 1,65,000/- was allegedly paid to the applicant. Since the applicant is stated to have been working as an

estate agent, the question as to whether the applicant also shared dishonest intention since the inception of transaction is a matter for trial. Moreover, as the applicant has shown willingness to bring back the amount which was paid to him, I am inclined to exercise the discretion in favour of the applicant.

7. The applicant, undertaken shall deposit a sum of Rs. 1,65,000/- before the Court of learned Metropolitan Magistrate exercising jurisdiction over the Tardeo police station within a period of five weeks from today.

8. Subject to the aforesaid deposit, in the event of arrest in C.R. No.435 of 2023 registered with Tardeo police station, the applicant be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

9. The applicant shall cooperate with the investigation and attend Tardeo police station, on 7th, 8th and 9th November, 2023 in between 10 am to 1 pm and, thereafter, as and when directed.

10. The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

11. The applicant shall regularly attend the proceedings before the jurisdictional Court.

12. The amount to be deposited by the applicant be invested in an interest bearing account and shall abide the final outcome of the trial arising out of C.R. No. 435 of 2023.

13. It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

(N. J. JAMADAR, J.)