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

ANTICIPATORY BAIL APPLICATION NO.3579 OF 2022

SUNNY NANDLAL BATHIJA ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO.4671 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.3579 OF 2022**

PARSHOTTAM KHEMCHAND KHOREJA ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Arjun Jeswani a/w Mr. Monish Bhatia a/w Mr. Bhojraj
Jeswani for applicant.
Ms. Minal Chandnani a/w Mr. Ammar Nizami i/b. Mr. Mohit
Ahuja for applicant in IA/4671/2022.
Ms. A. A. Takalkar, APP for State.
Mr. N. R. Kenche, PI, Khadakpada Police Station is present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 3, 2023.

P.C. :

1. Heard learned counsel for the parties.
2. This is an application for pre-arrest bail in respect of the offence punishable under Sections 420, 406 and 34 of the Indian Penal Code, 1860 (hereafter "the IPC", for short)

in connection with C.R. No.288 of 2022 dated 17/07/2022 registered with Khadakpada Police Station.

3. It is the case of the complainant that for the purpose of arranging funds for his son's wedding, he sold his old flat and was in search of a new 3-BHK flat to buy. The applicant was desirous of selling of his flat. There was a transaction entered into between the parties. According to the complainant, the applicant agreed to sell the flat to the complainant. According to the complainant, an amount of Rs.50 lakhs was paid to the applicant. It is alleged that the amount of Rs.39 lakhs was paid by cheque and the balance amount of Rs.11 lakhs was paid by cash.

4. Learned counsel for the applicant submits that a sum of Rs.39 lakhs was paid by the complainant to the applicant. Though there are documents on record which reflects that there was in fact an agreement of sale in respect of the said flat, learned counsel for the applicant submitted that he had only signed on blank papers and contents thereon were incorporated by the complainant by misusing the applicant's signatures made on blank papers. The complainant alleged

that having accepted an amount of Rs.50 lakhs, the applicant with a dishonest intention sold out the flat to a third person.

5. Learned counsel for the applicant submitted that the transaction in question is civil in nature and the suit for recovery has already been filed before the competent Civil Court. Reliance is placed on the decision of the Kerala High Court in the case of **K. Nazeer Vs. K. P. Muhammed Ashraf**¹ to contend that the ingredients of the offence under Section 420 of the IPC are not made out as there was no intention on the part of the applicant to cheat since inception.

6. In my opinion, the present application deserves to be dismissed. On record there are agreements which are duly signed by the applicant which are in the nature of agreements of sale. It is now the contention of learned counsel for the applicant that he had merely signed on blank papers and in fact the amount of Rs.39 lakhs which was paid by the complainant to the applicant was towards a loan. There is nothing on record evidencing the fact that

1 AIR Online 2019 Ker 1292

this amount was towards a loan. Not a single penny has been paid by the applicant to the complainant since the receipt of the said amount of Rs.39 lakhs. On the contrary, there are agreements on record and further that the applicant has sold out the flat to the third party.

7. It is also submitted that some cases are pending against the applicant regarding dishonour of cheque on complaints made by some other aggrieved parties. Learned APP also pointed out that C.R. No.417 of 2020 under Sections 420, 406 and 34 of the IPC for similar offence has been registered against the applicant wherein it is alleged that the applicant has taken a sum of Rs.1,10,00,000/- from the complainant in such C.R. and has not returned the amount.

8. Taking an overall view of the matter, I do not find this to be a fit case to grant pre-arrest bail to the applicant.

9. Anticipatory Bail Application is rejected.

10. Interim Application is also disposed of.

(M. S. KARNIK, J.)