

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.211 OF 2023

(Sunil Deoraoji Tote Vs. State of Maharashtra)

AND

CRIMINAL APPLICATION (ABA) NO.230 OF 2023

(Dyaneshwar Rambhauji Kadam Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms S.S. Jadhav, Advocate for the applicants.
Shri S.M. Ghodeswar, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JUNE 15, 2023.

Heard.

2. Present applications are filed by the applicant for grant of anticipatory bail in the event of their arrest in respect of Crime No.365/2022 registered at police station Karanja, District Washim for the offence punishable under Sections 406, 420, 467 and 468 of the Indian Penal Code.

3. The applicants are apprehending arrest at the hands of police as Rahul Subhash Barbole has lodged report at police station Karanja, District Washim on an allegation that present applicants along with Rajesh Vasantrao Shinde and Kishor Madhusudan Lahoti are running a partnership firm namely M/s. Blue Star Buildcon and they promised the informant that they will provide the shops as their firm is constructing a building at Survey No.179, Plot No.1, Sheet No.12D under the name of T.T. Super Bazar. Accordingly, the informant

entered into the agreement with the present applicants and other partners and paid Rs.23,00,000/- to the present applicants as well as other partners. The present applicants with other partners agreed to execute the sale-deed. However, the said sale-deed is not executed and no shop is also allotted to them. Thus, present applicants have cheated the informant and other persons and thereby committed an offence.

4. Is is the contention of the present applicant that originally the Survey No.179, Plot No.1, Sheet Nos.3 and 4 is owned by Chandrakant Subhashrao Thakare and Priya Chandrakant Thakare who entered into the agreement with the present applicant and two partners for developing the said plot. Said original owner subsequently cancelled the said development agreement by pressuring the present applicants and other partners. As per contention of the present applicants that the statement made in the said cancellation agreement that there was no construction and the applicants with other partners have not entered into an agreement with any other persons is totally false. It is further submitted by the present applicants that the photographs which are filed on record shows that they have started construction and completed the construction upto the third slab. Present applicants have also issued the notice to the said Chandrakant Thakare and Priya Thakare alleging that they forcefully obtained their signatures on the cancellation of agreement and said cancellation agreement is illegal and asked them

to remove the said agreement. Thus, as per the contention of the applicants that as the development agreement was cancelled by the original owners, they could not fulfil their promise. They were always ready and willing to perform their part of contract and they have also taken the effective steps to revoke the said cancellation agreement. They have already invested the amount which is obtained by them by way of payment. Considering the nature of the allegation and nature of transaction which is of civil nature and hence custodial interrogation of the present applicants is not required and they be protected by granting anticipatory bail.

5. Said application is strongly opposed by the State on the ground that during investigation it revealed that the project undertaken by the applicants and their partnership firm was on stake due to the dispute between the land owners and project developers. Therefore, the construction came to be stopped. The investigation further reveals that the applicants and his firm has received an amount of Rs.2,55,79,800/- from the various customers however, despite payment of the said amount the applicants and his company failed to perform their promise and the crime is committed. There is *prima facie* material against the present applicants and their custodial interrogation is required to recover the said amount.

6. Heard learned Counsel for the applicants. She reiterated the contention and invited my attention towards the development agreement as well as

cancellation of the development agreement and the photographs and submitted that the applicants could not fulfil their promise due to the development that the development agreement is cancelled and the applicants have already taken steps to revoke the said agreement by issuing the notice to the original owners. The applicants were always ready and willing to perform their part of contract but due to the said developments they could not perform the contract. They have already invested the amount in the said project which is collected by them. Thus, prima facie no offence is committed by them. At the most it can be said that there is a breach of agreement.

7. She submitted that considering the nature of allegation their custodial interrogation is not required and hence they be released on anticipatory bail in the event of their arrest.

8. Learned Additional Public Prosecutor submitted that considering that the present applicants have collected the huge amount of Rs.2,55,79,800/- from the various customers and not fulfilled the promise hence their custodial interrogation is required for recovery of the said amount and hence application deserves to be rejected.

9. Having heard both the sides and on perusal of the record, as per the recitals of the FIR the informant and other customers entered into the agreement with the present applicants and their company for purchasing the shops and they have paid some consideration amount. It

is further apparent from the documents filed on record they entered into an agreement with the original owner for development. After execution of the said agreement, they have initiated the construction and completed the construction upto third slab. The photographs to that effect are filed on record. It further reveals that subsequently the original owners have cancelled said development agreement and the present applicants have already issued the notice to the original owners to revoke the said agreement. Learned Counsel for the applicant further submitted that in the cancellation of agreement it is completely misrepresented that the present applicants have not initiated the construction. In fact, said agreement was got executed by pressuring the present applicants. The photographs filed on record shows that already they have initiated the construction and entered into the agreement with various persons. It is further submitted by the learned Counsel that the present applicants never denied their liability however, under the above circumstances they could not fulfil the promise which is given under the agreement. The circumstances shows that the development agreement is cancelled which is beyond their control and they have already taken the effective steps to revoke the said agreement. Thus, custodial interrogation of the present applicants is not required even after going through the recitals of the FIR and various documents, it is apparent that the agreement was executed in favour of the informant and they breach of an

agreement. A nature of the transaction comes under the breach of agreement for which the custodial interrogation of the present applicants is not required however, considering the huge amount is involved, both the applications deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

- (i) Both the applications are allowed.
- (ii) The applicants – (i) Sunil Deoraaji Tote and (ii) Dyaneshwar Rambhauji Kadam in the event of their arrest in Crime No.365/2022 registered at police station Karanja, District Washim for the offence punishable under Sections 406, 420, 467 and 468 of the Indian Penal Code, be released on anticipatory bail on executing PR. Bond in the sum of 30,000/- (Rs. Thirty thousand) each with one solvent surety each in the like amount.
- (iii) The applicants shall attend the concerned Police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.
- (iv) The applicant shall furnish their cell phone number and detail address along with address proof and the names of two closed relatives and address with their address proof.

(v) The applicants shall surrender their passports if they are having such passport, before the Investigating Officer.

(vi) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(URMILA JOSHI-PHALKE, J.)

**Divya*