

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 373/2023

Mohan s/o Prabhakar Deshpande V/s 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

Mr. R.R. Vyas, counsel for applicant.

Mr. A.M.Kadukar, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/08/2023.

1. The present application is for seeking anticipatory bail in connection with Crime No. 269/2023 registered with Police Station Ambazari, Nagpur for the offences punishable under Sections 420 and 406 of the Indian Penal Code.

2. The applicant is apprehending arrest at the hands of the Police as the accusation is made on the basis of a report lodged by the informant Vijay Mani Meman alleging that the present applicant is the Director of Sukhyog Construction Private Limited. On 10/04/2020, the present applicant along with one Ashish Panse came to the office of the present applicant with stamp paper and executed one memorandum of understanding. As per the said memorandum of understanding, the applicant agreed

to allot a flat bearing No. 102 in the name of the informant. The said memorandum of understanding was notarized before the Notary and signed by the present applicant. On 14/09/2022, he has issued a letter to Sukhyog Constructions Private Limited that he has paid the entire consideration amount, and now they shall execute the agreement and allot the flat in his name. However, the said flat was not allotted to him and cheques were issued in his name of Rs. 1 Crore 50 Lakhs against the consideration amount. The said cheques were deposited by the informant but the same are not honoured and returned with the endorsement of insufficient funds. Thus, he was duped by the present applicant.

3. As per the contention of the present applicant the informant has already filed a complaint bearing SCC No. 14625/2022 under Section 138 of the Negotiable Instruments Act and 420 of the Indian Penal Code. The Chief Judicial Magistrate has issued the process under Section 138 of the Negotiable Instruments Act and declined to issue the process under Section 420 of the Indian Penal Code, therefore, this false report is lodged with baseless allegations. Considering the allegation, immediate custody of the present applicant is not required, as nothing is to be recovered from the present applicant.

The nature of the transaction between the present applicant and the informant is of civil nature. In view of that, he be protected by granting anticipatory bail.

4. The said application is strongly opposed by the State on the ground that the present applicant and the informant entered into an agreement. As per the said agreement, the present applicant has to allot the flat in the name of the informant. Since inception, there was fraudulent intention and with that intention, the agreement was entered into and subsequently declined to allot the flat, and the cheques issued are also dishonoured. Thus, prima-facie material is against the present applicant is show that with malafied intention the cheques are issued. In view of that, the application is deserves to be rejected.

5. Having heard the learned counsel for the applicant and learned APP for the non-applicant/ State. Perused the investigation papers, the agreement i.e. memorandum of understanding is on record which show that the present applicant and the informant entered into an agreement, by which the present applicant agreed to allot one flat to the informant. Subsequently, the said agreement was not acted upon, the consideration amount was already paid, and the applicant has issued a cheque to return the said

amount. The said cheques are dishonoured and appropriate action is already taken by the informant against the present applicant.

6. The learned trial Court considering that ingredient of Section 420 are not attracted and not issued the process under Section 420. As far as the investigation carry out in the present case is concerned, various statements on record show that it is a case of breach of agreement, the civil dispute is between the parties which is even the colour of a criminal dispute. At this stage, the custodial interrogation of the present applicant is not required, as the entire documents are already seized by the Police during the investigation. As far as the other interrogation part is concerned, some conditions can be imposed on the applicant.

In view of that and considering the dispute pending between the parties, the criminal application deserves to be allowed by imposing certain conditions. Accordingly, I pass the following order:

- a. Criminal application is allowed.
- b. The Applicant – Mohan s/o Prabhakar Deshpande is hereby released on ad-interim anticipatory bail in the event of his arrest in connection with Crime No.

269/2023 registered with Police Station Ambazari, Nagpur for the offence punishable under Sections 420 and 406 of the Indian Penal Code, on executing P.R. Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

- c. The applicant shall attend the concerned Police Station as and when required for investigation purpose.
- d. The applicant shall submit his mobile number along with his address with address proof, before the investigating officer.
- e. The applicant shall not induce, threat or pressurize any witnesses who are connected with the present crime.

Criminal application is **disposed of**.

JUDGE