

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

ANTICIPATORY BAIL APPLICATION NO.234 OF 2024

Dnyandev Keshav Gambhir Applicant
Versus
The State of Maharashtra & Anr. Respondents

Mr. Akshay A. Deshmukh, Advocate a/w. Sanket Kadam for
the Applicant.

Smt. M.H. Mhatre, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 25th JANUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.324/2023 registered at Kalachowki Police Station, Mumbai on 30.11.2023 under sections 406, 420 of IPC.

2. Heard Mr. Akshay Deshmukh, learned counsel for the Applicant and Smt. M.H. Mhatre, learned APP for the Respondent-State.

3. The FIR is lodged by one Subhash Patil. He has stated that he wanted to purchase a room for his daughter.

Through some acquaintance he got in touch with the present Applicant. The Applicant told the informant that he knew that one room of MHADA was available at Mirchi Galli, Lalbaug and for that purpose the informant had to spend Rs.37 Lakhs, out of which Rs.25 Lakhs had to be given immediately and that he would give that room within two months. The informant and the Applicant executed a notarized document. Between 18.5.2017 to 30.10.2017, the informant paid Rs.25 Lakhs to the Applicant. The Applicant promised to give possession of the room immediately but the Applicant never kept his promise. He started avoiding the informant. He was making some excuses and in the process two years passed. The informant realized that he was cheated and he demanded refund of his money. On 18.1.2019, the Applicant refunded Rs.4,50,000/-, but rest of the money was not refunded. The informant lost Rs.20,50,000/-. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that the Applicant had forwarded that money to one Prachi Gawde

for purchase of the room for the informant, however, that transaction could not go through and, therefore, the Applicant had lost the amount of Rs.9 Lakhs. Said Prachi was not returning said amount. He further submitted that the Applicant is desirous of returning the money taken from the informant, however, he needs some reasonable time. He further submitted that the Applicant is suffering from paralysis and, therefore, some sympathy be shown to him.

5. Learned APP opposed these submissions. She produced the statement of Prachi Gawde. She submitted that said Prachi is also one of the victims and, therefore, the informant is not the only victim who has suffered at the hands of the Applicant. She submitted that the Applicant was not in his house when the police went to his house. His wife was present and has accepted the notice. The Applicant is absconding.

6. I have considered these submissions and I have perused the statement of Prachi. She has stated that she wanted to purchase a room. For that the Applicant had taken

Rs.18 Lakhs from her, but, the room was not give to her and after persistently following up with the Applicant he refunded the entire amount of Rs.18 Lakhs which was given to him. This statement shows that the transaction between Prachi and the Applicant had nothing to do with the transaction between the informant and the Applicant. The Applicant had tried to cheat Prachi as well. At this stage, it is more than clear that the Applicant had knowingly cheated the informant and has misappropriated the informant's amount of Rs.20,50,000/-. There is absolutely no ground made out for grant of protection under Section 438 of Cr.P.C. The Applicant's custodial interrogation is necessary.

7. As far as his health issues are concerned, the investigating agency can take care of his health issues. It would be their responsibility.

8. In this view of the matter, no protection can be granted to the Applicant. The Application is rejected.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

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Deshmane (PS)

(SARANG V. KOTWAL, J.)