

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

CRIMINAL BAIL APPLICATION NO.424 OF 2024

Jagdish Hiralal Unecha

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Priyal Sarda a/w Santoshi P. Nair a/w Shubham Sane, Advocate for Applicant.
- Ms. Poonam P. Bhosale, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 07th MAY, 2024

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.640/2018, dated 29/05/2028, registered with Lonikand Police Station, Pune, under sections 420, 468 of the Indian Penal Code.

2. The Applicant was arrested on 09/10/2022 and since then he is in custody. The investigation is over and the charge-sheet is already filed. As of today, the charges are not framed. The Applicant is 64 year old senior citizen.

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3. Heard Mr. Priyal Sarda, learned counsel for the Applicant and Ms. Poonam P. Bhosale, learned APP for the State.

4. The FIR is lodged by one Purushottam Kabra. It was lodged on behalf of his brother Ramratan Kabra. According to the first informant, Ramratan came in contact with the present Applicant, who represented to him that he was developing a property near Pune. The Applicant contacted Ramratan and suggested to him to purchase flats in that project. The first informant's brother Ramratan transferred Rs.2.50 crores through RTGS in the account of the present Applicant on 10/01/2013. Ramratan and the Applicant entered into an MOU dated 10/01/2013 in respect of 16 flats as follows:

- (1) In Sai Galaxy - A wing – Flat Nos.201, 401, 216, 416, 501, 516 and 301.
- (2) In D wing – Flat Nos.308 and 509.
- (3) In C wing – Flat Nos.306 and 506
- (4) In Sai Srushti – B wing – Flat Nos.301, 302, 303, 304 and 401.

5. According to the first informant, he and his brother were residing at a distance of 3 kms from Malegaon. Therefore, they could not take steps for following up the transaction. But for five years nothing further was done. The first informant and his brother did not get possession of the flats. On further enquiry, they came to know that the Applicant had already sold flat No.308 in 'D' wing, flat No.301 in 'B' wing, flat No.306 in 'C' wing and flat No.401 in 'A' wing in Sai Galaxy in the year 2012 itself i.e. before the date of the MOU. After that, they had sold flat No.216, 201, 416 in 'A' wing and flat No.301, 304 in 'B' wing in Sai Galaxy after the MOU was entered into, without obtaining permission from Ramratan. It is alleged that flat Nos.501, 506, 509 and 516 were in respect of the flat on the 5th floor and there was no permission to build 5th floor. Thus, according to the first informant, his brother Ramratan was cheated for that amount.

6. Learned counsel for the Applicant submitted that basically it was a money lending transaction. Therefore, it was a civil dispute. The informant always had an option to approach the Civil Court. But till today, the informant or his brother has

not filed any civil suit. The Applicant is in custody since 09/10/2022. Hence more than 1 year and six months have passed. Even charges are not framed. Therefore, trial is not likely to start and conclude soon. He submitted that though maximum punishment for the offence u/s 420 is 7 years, the trial is pending before the JMFC at Pune and therefore he can award maximum sentence of three years. He submitted that substantial period is already over and therefore considering the Applicant's age, his Bail Application be considered favourably. He submitted that the investigation is over and the charge-sheet is filed. The Sessions Court rejected the Applicant's Bail Application on the ground that the investigation is still going on and the Applicant may tamper with the witnesses. However, the charge-sheet is already filed. Evidence is in the form of documentary evidence. He further submitted that the supplementary statement of the informant shows that the Applicant has returned Rs.70 lakhs in this transaction. He further submitted that the cheques mentioned in the MOU given by the Applicant were dishonoured and for that purpose, prosecution u/s 138 of N.I. Act is also pending against the Applicant.

7. Learned APP opposed these submissions on the ground that the case of cheating is clearly made out. The informant had suffered heavy loss to the tune of Rs.4 Crores.

8. I have considered these submissions. The Applicant is in custody since 09/10/2022. More than 1 year and 6 months have passed. The Applicant is 64 year old senior citizen. The investigation is over and the charge-sheet is filed. The trial is not likely to commence and conclude soon. These are the main factors which I am taking into account for considering the Applicant's Bail Application favourably. Apart from that, on merits the allegations are that the Applicant had promised to give aforementioned flats which are specifically mentioned in the MOU dated 10/01/2013. Some of the flats were already sold before the MOU and it was suppressed from the informant. Some of the flats were sold subsequent to the MOU without any knowledge to the informant. Therefore, at this stage, there is sufficient material against the Applicant. As far as merits of the matter is concerned, the defence of the Applicant is that it was

purely a investment and therefore at the highest it could be a civil dispute. The informant's case is for cheating and misappropriation. The Applicant is in custody for sufficiently longer period. Even the charges are not framed yet. The charge-sheet contains the statement of flat purchasers and the documents relating to those agreements. Therefore, learned counsel is right in submitting that there is hardly any possibility of tampering with the witness or the documents. Apart from that, the Applicant is facing another prosecution u/s 138 of the N.I. Act for dishonour of the cheque mentioned in the same MOU. This is also another factor. Considering all these aspects, further custody of the Applicant in connection with this offence, during pendency of the trial, is not necessary. He can be granted bail.

9. Hence, the following order :

ORDER

- (i) In connection with C.R.No.640/2018, dated 29/05/2028, registered with Lonikand Police Station, Pune, the Applicant is directed to be

released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.

- (ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)