

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

ANTICIPATORY BAIL APPLICATION NO.690 OF 2024

Imtiyaz Riyaz Chaudhary	Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Mosin Naik, Advocate i/b. Satish Muley for the Applicant.

Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th MARCH, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R. No.452/2023 dated 28.4.2023 registered at Sakinaka police station, Mumbai under Sections 420, 406, 504, 506 read with 34 of IPC.

2. Heard Mr. Mosin Naik, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the Respondent-State.

3. The FIR is lodged by Dr. Mohd. Irfan Mohd. Kasim Pasha. He has stated that he was having a clinic in a rented place. He wanted to purchase his own place. Therefore, in the year 2018 he was looking for a place. One estate agent Zahir Khan told him that one Riyaz Ahmed Wali Mohd Choudhary had a room No.10, Dahidhule Chawl, Khairani Road, Sakinaka, Mumbai. The informant and his friend Zafar Abdul Gafar Shaikh decided to purchase that place. In March, 2018, the estate agent Zahir Khan, the informant and his friend Zafar went to see that place. At that time the accused Riyaz, his elder son i.e. another accused Isaq and his wife were present. Riyaz quoted the price for the premises of 10 ft x 25 ft as Rs.25 Lakhs. It was negotiated to Rs.24,50,000/-. On 5.4.2018, Riyaz entered into a sale-deed for the area of 5 ft x 25 ft. for Rs.12,50,000/- with the informant in the office of Advocate Ashwini Yadav. The informant transferred Rs.2,50,000/- in Riyaz's bank account and rest of the amount of Rs.10 Lakhs was paid in cash. On 5.4.2018 the remaining 5 ft x 25 ft gala

was sold to Zafar by the accused Riyaz. For the same, an amount of Rs.12,50,000/- was paid. A separate sale deed was executed for the same in the office of the same Advocate Ashwini Yadav for Rs.12,50,000/-. After execution of those documents the informant and his friend Zafar went to the shop to take possession. At that time, the present Applicant who was the younger son of the accused Riyaz came there. He threatened and abused the informant and his friend Zafar and did not permit them to take possession. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that the transaction was from the year 2018 and the FIR was lodged much belatedly in April, 2023. He submitted that the other accused are granted regular bail. The Applicant's custody is not required. He has not obtained any amount.

5. Learned APP opposed these submissions. She produced the investigation papers before the Court. She submitted that it was the *modus operandi* of the entire family. The Applicant's father and elder brother obtained

money from the informant and his friend and at the time to hand over possession, the Applicant prevented the informant and his friend from taking possession. Thus, the Applicant has played a definite and major role in cheating the informant and his friend.

6. I have considered these submissions. I have perused the investigation papers. There are statements of the informant's friend Zafar and the Advocate Ashwini Yadav. Both of them have supported the informant's case. Zafar was similarly cheated. Advocate Ashwini Yadav has stated that the Applicant's father had accepted that he had received the entire amount. Both these statements are incriminating against the present Applicant, his father and brother.

7. As submitted by learned APP, the informant and his friend waited for some time to see that they got the possession, however, ultimately when they were sure that the possession was not given then they filed the FIR. Therefore, in this case the delay in lodging the FIR is acceptable. I find substance in this submission.

8. From the investigation papers and from the aforementioned statements, including the FIR, it is clear that the Applicant's family with a definite design had cheated the informant and his friend. An amount of Rs.25 Lakhs was taken from both of them and the possession of the room was not handed over to the informant and his friend. The offence of cheating and misappropriation is clearly made out. The custodial interrogation of the Applicant is necessary. No case for protection under Section 438 of Cr.P.C. is made out. The Application is rejected.

(SARANG V. KOTWAL, J.)

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