



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

ANTICIPATORY BAIL APPLICATION NO. 638 OF 2023

VIKRANT MADANLAL AGGARWAL .. APPLICANT
VS.
THE STATE OF MAHARASHTRA AND ORS. ..RESPONDENTS

Adv.Bimal Bhabhda, for the applicant.
Mr.Manmeet Sing Chhabra a/w Mr.Dnyanesh Patil, Mr.Aditya Raktade, Mr.Metanshu Purandare, for respondent no.3.
Ms. Megha S. Bajoria, APP for the State.
API- Mr.Pravin Bhosale, Mira Road police station present.

CORAM : M. S. KARNIK, J.

DATE : MARCH 20, 2024

P.C. :

1. Heard learned counsel for the applicant, learned counsel for respondent no.3 and learned APP for the State.
2. This is an application for pre-arrest bail in respect of the offence punishable under sections 420, 406, 504 read with 34 of the Indian Penal Code, 1860 ('IPC' for short) registered on 01/01/2023 vide C.R. No.1 of 2023 with Mira Road police station.
3. The dispute pertains to the purchase of a flat by the complainant of which the applicant is the owner. The

applicant by Memorandum of Understanding (MOU) dated 14/02/2020 agreed to sell the flat to the complainant on certain terms and conditions. Accordingly, from time to time, an amount of Rs.47,00,000/- was paid by the complainant to the applicant. The total consideration decided was Rs. 2,19,00,000/- The grievance of the complainant in the FIR is that instead of executing the sale deed in her favour and handing over the possession, the applicant sold the said flat to some other person. Therefore the offence was registered.

4. Learned counsel for the applicant submitted that the applicant was always willing to complete the transaction. It is submitted that the payment by the complainant was not made as per the schedule prescribed by the MOU, hence, the applicant had to bear substantial losses as a result of not getting the sale consideration as per timeline prescribed. The applicant alleged breach of MOU on the part of the complainant.

5. On the other hand, it is the contention of learned counsel for the respondent no.3 that the complainant was always ready and willing to honour her commitment. It is

submitted that even the loan was sanctioned. It is submitted that the applicant demanded a sum of Rs.20,00,000/- over and above what was agreed and this was beyond the terms in the MOU dated 14/02/2020 which resulted in the dispute between the parties. The applicant was not honouring the MOU as a result of this unjustified demand. It is submitted that the applicant had no intention of honouring the MOU, but right from inception, the intention of the applicant was to cheat the complainant. It is submitted that the complainant is without shelter despite having parted with a substantial sum of Rs.47,00,000/- in favour of the applicant. It is contended that the complainant came to know that on 27/01/2022, the said flat was sold to some third party.

6. After filing of the FIR on 01/01/2023 under sections 420, 406, 504 read with 34 of the IPC, the applicant had approached the trial Court for pre-arrest bail. The application came to be rejected by a detailed order. This Court while granting interim protection to the applicant on 02/03/2023 recorded the statement of the learned counsel for the applicant that the applicant, to show his bonafides, is

willing to deposit a sum of Rs.47,00,000/- in this Court. The applicant ultimately did deposit a sum of Rs.35,77,838/- in the Registry of this Court pursuant to the grant of extension of time to make such deposit. So far as the balance amount of Rs. 11,22,162/- is concerned, the same was lying in the bank account of the applicant and the same is freezed. The applicant has no objection if to the extent of Rs.11,22,162/- amount lying in the bank account is secured by the trial Court. A grievance is made by learned counsel that the entire amount of Rs.47,00,000/- be deposited. It needs to be borne in mind that this is not a recovery proceedings. There is substantial compliance.

7. Prima face, in my opinion, the transaction is more of a civil nature pertaining to breach of the MOU dated 14/02/2020. The applicant is admittedly the owner of the flat. The applicant in order to show his bonafides has secured the amount of Rs.47,00,000/-. The documents are in the custody of the investigating officer. The custodial interrogation of the applicant in my opinion in such situation is not required as the intention to cheat from inception is not prima facie evident. These are prima facie observations

for the purpose of considering the present application for pre-arrest bail. The trial Court shall proceed with the trial on its own merits and in accordance with law without being influenced by any observations. I am therefore inclined to allow the application. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) In the event of arrest of the applicant- Vikrant Madanlal Aggarwal in connection with C.R. No. 1 of 2023 registered with Mira Road police station he shall be released on bail on furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the investigating officer of Mira Road police station as and when called and co-operate with the investigation till filing of the charge-sheet.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the

investigating officer and shall keep him updated, in case there is any change.

(f) So far as the amount of Rs.35,77,838/- deposited in this Court along with accrued interest is concerned, the same may be transferred to the jurisdictional Court.

(g) The applicant has no objection if the amount to the extent of Rs.11,22,162/- which is lying the bank account is secured by the trial Court. It is open for the trial Court to pass appropriate orders.

(h) The amount shall abide by the final orders that may be passed by the trial Court.

(i) The investigating officer may proceed with the filing of the charge-sheet.

7. The application is disposed of.

(M. S. KARNIK, J.)