

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.939 OF 2023  
WITH  
INTERIM APPLICATION NO.3714 OF 2023**

VISHAL  
SUBHASH  
PAREKAR

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Mukand Manubhai Panchal

...Applicant

VS.

The State of Maharashtra

...Respondent

Mr. Arnold Thomas, for the Applicant.

Mr. S.R. Agarkar, APP for the State.

Mr. Siddharth Sharma i/b. Mr. Sandesh Kamble, for the Intervener.

**CORAM : N. J. JAMADAR, J.**

**DATE : JANUARY 23 2024**

**P.C.:**

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No.1009 of 2022 registered with Dindoshi police station for the offences punishable under sections 420 and 406 of Indian Penal Code, 1860 seeks to be enlarged on bail.
3. The indictment against the applicant is that the applicant had induced the first informant Dharmendra Sharma to part with an amount of Rs. 41,33,500/- by making false representation that the applicant would sale Flat No. 302, Parth Residency, Near Siddhivinayak Temple, Malad (E) for a consideration of Rs. 40,50,000/- though the applicant had already mortgaged the said flat with DHFL Finance. Additionally the applicant had also induced Sangita Chaudhary and Vishal Survade to part with amounts of Rs.

6,50,000/- and Rs. 4,50,000/- respectively by making representations to them that the said flat would be sold to them, despite having accepted the entire consideration from the first informant.

4. The learned counsel for the applicant submitted that the real transaction between the parties was not of the sale of the subject flat. Inviting attention of the Court to the extracts of bank accounts evidencing transfer of small tranches of amounts by the first informant to different accounts, it was submitted that those transfers were in connection with an altogether different transaction.

5. The learned APP resisted the prayer for bail. It was submitted that the applicant had deceived three persons offering to sale the very same flat. Attention of the Court was invited to the MOU executed between the applicant and Sangita Choudhary.

6. The learned counsel for the Intervener/ first informant submitted that there was a verbal agreement between the first informant and the applicant. The first informant was induced to part with huge amount despite having known that the subject flat stood mortgaged.

7. Prima facie, it appears that there was no formal agreement in writing between the applicant and the first informant. Undoubtedly, a

contract for sale can be verbal. However, when the nature of real transaction between the applicant and the first informant is prima facie put in contest, it would be a matter for adjudication for trial.

8. The applicant is in custody since 11<sup>th</sup> December, 2022. To show his bonafide, the applicant has filed an affidavit. The relevant part of which, reads as under:-

3] I have never entered into any agreement with anybody for selling the flat. I have not taken any advance for selling the said flat. It is alleged that I have committed offences punishable under section 406 and 420 read with 34 of IPC. In fact, I have not committed any offence. Still however in order to show my bonafide, I undertake that I will not part with the possession or ownership of the said flat till the disposal of the criminal case against me. I also undertake to handover peaceful possession of the flat in case the offences are proved against me. I undertake that I shall not tamper with prosecution evidence and witnesses and I shall not make any attempt from fleeing from the course of justice. I will attend all dates fixed by the Court and I will abide myself with all conditions that may be imposed by this Court while directing my release on bail. I had bank accounts in two banks i.e. ICICI and Axis bank. My account in ICICI was standing in the name of Smit Enterprises and my account with Axis bank was standing in my name. The account with Axis bank was frozen by the bank.

9. The statement made in the affidavit that the applicant will not part with possession or ownership of the subject flat till the disposal of the case and that the applicant would hand over peaceful possession of the flat if offences are proved against him, is accepted as an undertaking to the Court.

10. For the foregoing reasons, the applicant deserves to be released on bail.

Hence, the following order.

### **ORDER**

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No. 1009 of 2022 registered with Dindoshi police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Dindoshi police station on the first Monday of every alternate month in between 11 am to 1 pm till conclusion of the trial.
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 5] 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.
- 6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

8] Application disposed.

9] In view of above, Interim Application also stands disposed.

**(N. J. JAMADAR, J.)**