

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

ANTICIPATORY BAIL APPLICATION NO.1007 OF 2024

Bhagwan Bherumal Wadhwani	 Applicant
versus	
The State of Maharashtra	 Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.1010 OF 2024**

Amit Bhagwan Wadhwani & Anr.	 Applicants
versus	
The State of Maharashtra	 Respondent

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- Mr. Aabad Ponda, Senior Advocate aw Kapil Dave i/b. Prajit S. Manjrekar, Advocate for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for the State/Respondent in ABA/1007/2024.
- Smt. Madhavi H. Mhatre, APP for the State/Respondent in ABA/1010/2024.

CORAM : SARANG V. KOTWAL, J.
DATE : 30th APRIL, 2024

P.C. :

1. Both these applications are decided by this common order today because they arise out of the same registered offence.

2. The Applicants are seeking anticipatory bail in

connection with C.R.No.59/2024, dated 15/02/2024, registered with Chembur Police Station, Mumbai, under sections 420, 506 r/w 34 of the Indian Penal Code.

3. Heard Mr. Aabad Ponda, learned Senior Counsel for the Applicants and Ms. Mahalakshmi Ganapathy and Smt. Madhavi H. Mhatre, learned APP for the State.
4. The Applicants are concerned with the Sai Estate Consultants Chembur Pvt. Ltd. (hereinafter referred to as the Applicants' company). The FIR is lodged by one Pradip Vhora. He has stated that he along with his sons Tarun and Dhiraj is concerned with the Sarvapriya Leasing Company Pvt. Ltd. (hereinafter referred to as the informant's company). The informant's sons Tarun and Dhiraj are Directors of that company. The informant's company along with Sadguna Reality, which was a developer, had constructed the building by name Raj Ekjyot Sukruti, at Chembur. The Applicants had acted as agents for selling some flats and therefore the informant was knowing them. The FIR mentions that the Applicants had purchased three

flats and one shop in the name of their company in the said building. The FIR mentions the details of those premises and the purchase price. 50% of the price was to be paid to Sadguna Reality and 50% was to be paid to the informant's company. The FIR is restricted to the payment which was to be made to the informant's company. There is no dispute raised about the payments which was made to Sadguna Reality. The FIR mentions that in respect of those five premises, the total purchase price to be paid to the informant's company was Rs.4,10,00,000/-. Out of which, the Applicants had paid only Rs.66,27,500/-. The balance amount of Rs.3,43,72,500/- was due and payable by the Applicants to the informant. The Applicants gave 8 cheques amounting Rs.9,87,500/- each, for the total amount of Rs.79 lakhs. The FIR mentions that the Applicants were connected with one Lalit Tekchandani, who was a politically strong person. Because of his fear, the informant did not deposit those cheques in their bank. It is specifically mentioned that the informant had not given possession of any of those premises to the Applicants. However, in September 2019 on the pretext of necessity for the Applicant Vicky's marriage,

the Applicants took possession of the three flats from the owner of Sadguna Reality. It is further alleged that there were further negotiations and the Applicants Amit and Vicky agreed to give them the Applicant's two 2bhk premises in Arham Brindavan Society, Chembur, Mumbai, in March 2021. But even that promise was not fulfilled. Subsequently, the informant came to know that the Applicants had mortgaged the property in Raj Ekjyot Sukruti building behind the back of the informant and had obtained loan from Mumbai Zilha Sahakari Bank. Again meetings were held with the Applicants. The Applicants had allegedly given cheques of Rs.83 lakhs. But those were dishonoured. Thus, according to the informant, he was cheated and instead of Rs.4,10,00,000/- only Rs.66,27,500/- were paid by the Applicants.

5. Learned Senior Counsel for the Applicants submitted that it is a purely civil dispute. In fact, the allegations in the FIR are not true. He relied on the compilation of copies of the sale deeds in respect of these three flats and one shop. He invited my attention to the averments and the receipt clauses in those sale

deeds. A copy of this compilation is already supplied to the learned APP. A copy is produced in the Court. It is taken on record.

6. Learned Senior Counsel invited my attention to the receipt clauses in each of those sale deeds. It was specifically mentioned that Sadguna reality had received half the amount and the informant's company had received half the amount. There was a clear acknowledgment mentioned at the end of those sale deeds about having received that particular amount pertaining to those premises concerning each and every sale deed. Learned Senior Counsel therefore submitted that a false FIR is lodged against the Applicants. He also relied on the FIR lodged by the Applicant Vicky vide C.R.No.785/2022 at Chembur Police Station on 02/09/2022 u/s 406, 420, 447, 504 r/w 34 of IPC. In that FIR, he had mentioned that the informant's son Tarun and Dhiraj had tried to trespass on his property in the said Raj Ekjyot Sukruti society and they had not paid the dues of Rs.1,68,40,497/- which was due and payable. He submitted that this FIR was lodged much earlier in

September 2022 and this subsequent FIR is lodged by the informant to raise some false dispute against the Applicants. He submitted that therefore no criminal offence is made out. At the highest it can be a commercial dispute.

7. Learned APP submitted that the averments in the FIR show as to how the first informant and his company were cheated for a big amount. She particularly laid emphasis on the fact that the cheques given by the Applicants to the informant were dishonoured. She submitted that if there were no dues payable by the Applicants, then there was no occasion to give the cheques to the informant.

8. I have considered these submissions. The most important aspect in my opinion is about the receipt clause in all these sale deeds. There is a clear mention in those particular clauses at the end of those sale deed that the amount which was the subject matter of each of this sale deed, was actually paid by the Applicants to the informant's company. Therefore, at this stage, there is sufficient force in the submissions of the learned Senior counsel that the entire payment was made. Learned APP

has accepted on instructions that the possession of these premises is with the Applicants. Therefore, this is another strong point in support of the submissions made by the learned Senior Counsel for the Applicants. As submitted by him Vicky had already lodged his own FIR against the informant's son in September 2022. There a reference was made to the premises in Raj Ekjyot Sukruti. There the Applicants had already raised dispute about the actual dues which were payable by the informant's to the Applicants.

9. Considering all these submissions and the documents the Applicants have a reasonable case in their defence. In this view of the matter, their custodial interrogation is not justified. They can be protected u/s 438 of Cr.P.C. It is sufficient if they cooperate with the investigation.

10. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.59/2024, dated 15/02/2024, registered

with Chembur Police Station, Mumbai, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each, with one or two sureties each, in the like amount.

- (ii) The Applicants shall attend the concerned Police Station as and when called and shall cooperate with the investigation.
- (iii) The applications stand disposed of accordingly.

(SARANG V. KOTWAL, J.)