

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

ANTICIPATORY BAIL APPLICATION NO. 1234 OF 2023

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Rahul Siddharth Kamble and Anr. Applicants

Versus

The State of Maharashtra Respondent

Mr. Rahul Arote (through V.C.) for the applicants.
Mr. C.D. Mali, APP for the State/Respondent.
Ms. Vilasini Balasubramanian for Respondent No. 2.

CORAM :SARANG V. KOTWAL, J.
DATE : 26th MARCH, 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R. No. 36 of 2023 registered at Nhava Sheva Police Station, Navi Mumbai, on 11/02/2023 under sections 420 r/w 34 of the Indian Penal Code.

2. At the outset, learned counsel for the Applicant states that he is not pressing this application for Applicant No. 1 Rahul Kamble and thus the Court may consider this application only for the Applicant No. 2. In this view of the matter, the application on

behalf of the Applicant No. 1 Rahul Kamble is dismissed as withdrawn. I have considered this application only in connection with Applicant No. 2 Siddharath Kamble.

3. Heard Mr. Rahul Arote, learned counsel for the Applicant, Mr. C.D. Mali, learned APP for the Respondent-State and Ms.Vilasini Balasubramanian, learned counsel for Respondent No. 2.

4. The FIR is lodged by Respondent No. 2 Taruwar Banerjee. He has stated that he wanted to purchase a flat at Ulwe in September 2021. He knew one broker Piyush Singh. He showed the flat No. 1203, D Wing, Delta Tower, Sector No. 8, Ulwe, on 20/10/2021. It was a 2 BHK flat. It was owned jointly by both the Applicants. The Applicant No. 2 is the father of the Applicant No. 1. The informant went to see that flat. At that time both the Applicants were present. They showed the flat. They quoted the price at Rs. 95 lakhs and told the informant that he would be required to pay Rs. 20 lakhs in cash. The informant was willing. The FIR thereafter goes on to mention that he paid Rs.

9.30 lakhs out of which Rs. 4.30 lakhs were transferred through bank transactions. The rest of the amount was given in cash. It is mentioned that receipt was signed by the Applicant No. 1. Subsequently, the informant was constantly requesting them to execute and register the documents. He also requested for getting no dues certificate of Diwan Housing Finance. All this was asked from the Applicant No. 1 but he always avoided taking any steps. Subsequently, the informant came to know the same flat was sold to some other person. The informant realised that he was cheated. Therefore, this FIR is lodged.

5. Learned counsel for the Applicant submitted that apart from the role of showing flat on the first occasion, Applicant No. 2 has not played any role. Even as per the FIR the amount was taken by the Applicant No. 1. The receipt was executed by Applicant No. 1. Therefore, at the highest, the offence can only be against Applicant No. 1 and not against Applicant No. 2. Learned counsel has already submitted that he was not pressing application on behalf of the Applicant No. 1 Rahul Kamble.

6. Learned APP as well as learned counsel for Respondent No. 2 tried to oppose these submissions. They submitted that since both the Applicants were the co-owners, the Applicant No. 2 cannot take advantage of the fact that the money was paid only to the Applicant No. 1. Knowing this background, the flat was sold to third person. Therefore, Applicant No. 2 was also involved.

7. I have considered these submissions. I find force in the submissions of learned counsel for the Applicant that the main allegations are against Applicant No. 1 Rahul Kamble and not against Applicant No. 2 Siddharath. The main allegations are about misappropriation of Rs. 9.30 lakhs. The receipt was executed only by the Applicant No. 1. The Applicant No. 2 had not signed the MOU. Considering this background, the Applicant No. 1's role is much serious. Applicant No. 2 has hardly played any role. In this view of the matter, custodial interrogation of Applicant No. 2 is not necessary. Hence the following order.

ORDER

(I) The Application on behalf of Applicant No. 1

Rahul Kamble is dismissed as not pressed.

- (ii) In the event of his arrest in connection with C.R. No. 36 of 2023 registered at Nhava Sheva Police Station, Navi Mumbai, the Applicant No.2 Siddharath Kamble is directed to be released on bail on his executing PR. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (iii) The Applicant shall attend the concerned Police Station from 4th April 2024 to 6th April 2024 between 01.00p.m. to 05.00 p.m. and thereafter as and when called. He shall co-operate with the investigation.
- (iv) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)