

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

ANTICIPATORY BAIL APPLICATION NO. 1164 OF 2024

Suchet Shantilal Oswal

..Applicant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Aabad Ponda, Sr. Advocate a/w. Abhay Dhadiwal a/w. Vidhi Karia i/b. Jayakar and Partners for Applicant.

Mr. Avinash A. Naik, APP for State/Respondent.

Mr. Chinmay Patil for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 30 APRIL 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.302 of 2024 registered at Kondhwa Police Station, Pune city, on 23.03.2024, under sections 420 and 406 of the Indian Penal Code.

2. Heard Mr. Aabad Ponda, learned senior counsel for the applicant, Mr. Avinash Naik, learned APP for the State and Mr. Chinmay Patil, learned counsel for the Respondent No.2.

3. The F.I.R. is lodged by one Sushil Agarwal. He has

stated that he was introduced to the present applicant by one Raju Oswal. Raju Oswal told him that the applicant had 90R land at Pisoli and that he wanted to develop that land. Accordingly, an MoU was entered into on 02.04.2014 in respect of 45R land of survey Nos.11/2, 11/5a and 11/11 in respect of the applicant's 1/3rd share, as well as, in respect of 45R land of survey No.11/13. Thus, total area was 90R, which was the subject matter of the MoU. It was agreed that 60% amount was to be taken by the informant and 40% amount was to be taken by the applicant after it was developed and the developed property was sold. According to the first informant, pursuant to the said MoU he had paid Rs.25 lakhs to the applicant. It was further agreed that the remaining amount was to be paid after the land was transferred in the name of the present applicant and at the time of registering the joint venture agreement. But, in the meantime, the applicant could not clear the 7/12 extract in his favour. Therefore, the informant sent a notice to the applicant through his advocate for cancelling the said transaction. The notice was dated 02.04.2019. The applicant did not receive the notice. Therefore, the informant tried to continue

with the transaction. The informant also issued paper publication in respect of the said transaction. Subsequently, the informant came to know that the applicant was in the process of selling that land to somebody else. The applicant sent a Demand Draft of Rs.25 lakhs on 22.02.2024 through his advocate, but the informant did not accept it and he returned it. It is alleged that the applicant had sold that land to one Machhindra Dagde and Atul Kate. On these allegations the F.I.R. was lodged.

4. Learned senior counsel for the applicant submitted that, it is purely a civil dispute. The applicant had returned the amount which he had taken through D.D., but the informant did not accept it. At the first instance, the informant himself had sent a Notice for cancellation of their transaction. Therefore, it was not open for the informant to contend that, subsequently, the applicant was bound by their transaction. He submitted that the ingredients of cheating or misappropriation are not made out. The transaction is from the year 2014. The applicant's custodial interrogation is not necessary.

5. Learned APP opposed these submissions on the basis of averments made in the F.I.R.

6. Learned counsel for the informant submitted that the applicant himself did not clear the title for that particular piece of land and yet concealing this fact the applicant entered into an MoU with the informant; that itself is cheating. The informant was made to part with Rs.25 lakhs by misrepresentation and inducement. Therefore, the offence is complete. The applicant's custodial interrogation is necessary.

7. I have considered these submissions. The fact that the revenue record did not show the applicant's name is mentioned in the F.I.R. itself. That was known to the informant. After the initial payment of Rs.25 lakhs, the balance payment was to be made after the 7/12 extract was cleared by the applicant. However, that was not done. After that, the first informant sent a notice for cancellation of that transaction. Even then, there were no allegations of cheating. The applicant on his part had sent the D.D. of Rs.25 lakhs through his lawyer, but it was not

accepted by the informant and it was returned.

8. Considering all these aspects, it appears that it is a civil dispute and the informant could have taken recourse to exercise his civil remedy. However, it was not done. In the background of this discussion and the facts, the applicant's custodial interrogation is not necessary. The said transaction is from the year 2014. About 10 years have already passed. In this view of the matter, the applicant deserves protection U/s.438 of the Cr.p.c.

9. Hence, the following order :

ORDER

- i) In the event of his arrest in connection with C.R.No.302 of 2024 registered at Kondhwa Police Station, Pune city, the applicant is directed to be released on bail on his executing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)