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

## ANTICIPATORY BAIL APPLICATION NO.2331 OF 2021

Hasmukh Amarlal Thakur ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

Ms. Kavisha Khanna a/w. Megha Gupta for Applicant.
Ms. Pallavi N. Dabholkar, APP for State/Respondent.
Mr. Vinod Chate a/w. Kalpana V. Chate a/w. Sumitkumar S. Nimbalkar for Respondent No.2.

**CORAM :- SARANG V. KOTWAL, J.**
**DATE :- 24 JANUARY 2024**

**P.C.** :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.22 of 2021, registered at Kharghar Police Station, Navi Mumbai, on 20.01.2021, under Sections 420 and 406 r/w. 34 of the Indian Penal Code.

2. Heard Ms. Kavisha Khanna, learned counsel for the applicant, Ms. Pallavi Dabholkar, learned APP for the State and Mr. Vinod Chate, learned counsel for the Respondent No.2.

3. The F.I.R. is lodged by one Pramod Bhowte who is the Respondent No.2 before this Court. He has stated that, he was

working with the Mumbai Police. He wanted to purchase a house in Kharghar. He made enquiries with many agents. He was introduced to one agent Somnath Landge. He told the informant that, he was knowing the applicant as a partner of Monarch Builders. He told the informant that, he was in a position to get a flat at concessional rate for Rs.25 lakhs from the applicant, though the actual price was around Rs.50 lakhs. The informant believed him. They met the applicant at the applicant's residence at Kharghar. On 01.08.2013 he gave Rs.20 lakhs in cash and Rs.5 lakhs by cheque. The applicant told the informant that, he himself, one Gopal Thakur and one Roshan Seth were the partners of Monarch Realty Management Services and they had an office at Sector No.11, Belapur. Thereafter, the informant and Somnath Landge went to the office of the applicant. At that time, the applicant introduced the informant to his other two partners Gopal Thakur and Roshan Seth. Gopal Thakur was looking after the financial transactions. He gave two receipts; one for Rs.20 lakhs and the other for Rs.5 lakhs. The informant was told that, they had reserved flat No.306, 3$^{rd}$ floor in the building Greenscapes at

Aakurli, Panvel. Gopal gave a letter to that effect and gave an undated cheque for Rs.25 lakhs as a security. The informant was taken to that site. The construction was going on. Therefore, the informant started trusting them.

4. The informant decided to buy one more flat. Accordingly, on 06.04.2014 he gave three cheques of the total amount of Rs.25 lakhs for booking another flat. Sompanth brought a receipt on 24.05.2014 regarding booking of flat No.2802 on 28$^{th}$ floor in the same building. After 5 to 6 months, the informant went to the site, but he saw that the construction was stopped. He made enquiries with Somnath. He told the informant that the said land was falling within the area of a project and, therefore, there was some dispute. The informant and Somnath regularly visited the Monarch builders and made enquiries, however, they were given some excuses. The informant was told that, another construction was going on at Kalamboli, Roadpali by the name Monarch Brookfield. It was a 14 storeyed building. The ten floors were constructed. The rest of the floors were yet to be constructed as there was a delay in getting permission from CIDCO as the land

fell within CRZ. However, the informant was told that the permission was available and the construction was to start soon. The informant was given booking for Flat No.1403, Texas wing, Plot No.3, Sector-20, Roadpali, Kalamboli. It was a 2 BHK flat and it was booked for the informant in lieu of the booking of earlier two flats. Accordingly, an MOU was executed on 28.03.2016. The MOU was signed by Gopal Thakur on behalf of the Monarch Brookfield. At that time, the applicant, the other partner and Somnath were present. Subsequently, even those four floors were not constructed. The informant demanded refund of his money. At that time, the applicant and the other partner Roshan Seth told him that, Somnath was taking commission per month for his booking. After a few months also, the floors were not constructed and the money was not refunded. The informant realized that, he had lost his money and, therefore, he lodged this F.I.R.

5. At the first instance, this anticipatory bail application was heard on 30.09.2021. At that time, the learned Senior Counsel appearing for the applicant had submitted that an attempt would be made to settle the matter. That statement was accepted and to

give a fair opportunity to the parties to settle the matter, interim protection was granted to the applicant vide the order dated 30.09.2021. Thereafter, no steps were taken towards the settlement and this Court (Coram: Prithviraj K. Chavan, J.) vide the order dated 04.08.2022 vacated the interim relief. It was observed that, till that date, no settlement had taken place. Thus, from that date onwards there was no protection for the applicant. But he was not arrested.

6. Learned APP, as well as, both learned counsel appearing for the contesting parties submit that, in the year 2023 proclamation was issued against the applicant and it was subsequently withdrawn. That is how the matter stands today.

7. Learned counsel for the applicant submitted that, this is purely a civil transaction and no criminal offence is made out. The Monarch Brookfield LLP is facing proceedings under I & B code and the Interim Resolution Professional was appointed by the NCLT. Vide the order dated 04.03.2020 the said resolution professional had rejected the informant's claim on the ground that

ownership of the flat in question was not transferred in his name. The transaction appeared to be a money lending transaction and not a property ownership transaction because the flat No.1403, 14$^{th}$ floor, Texas wing, was non existent. It was also mentioned that the money was paid in the bank account of Monarch Realty Management Services and not in the bank account of Monarch Brookfield LLP. With these observations, the informant's claim was rejected. Learned counsel submitted that, after this claim was rejected on 04.03.2020, the present F.I.R. is lodged on 20.01.2021 to pressurize the applicant. She further submitted that the other two partners of the applicant are on bail as of today. No purpose will be served by arresting the applicant in the present case. The offence is old. There is delay in lodging the F.I.R. Learned counsel for the applicant submitted that the construction of the remaining four floors was stopped due to lack of the requisite permission which was to be granted by CIDCO and this fact was known to the informant as is reflected in the MOU.

8. Learned counsel for the first informant, as well as, the learned APP submitted that the informant has lost his huge amount

of Rs.50 lakhs. The F.I.R. itself mentions as to how false representations were made from time to time and how the money was misappropriated. Both of them submitted that the F.I.R. mentions in detail as to how different representations were made at different points by the applicant and others to take an amount of Rs.50 lakhs. The fact that the said amount was taken is undisputed. The money is lost. Therefore, it is a clear case of cheating, misappropriation and criminal breach of trust.

9. Learned APP submitted that, there are six more similar offences registered against the applicant between 2015 to 2017 at various police stations; which are as follows:

1. C.R.No.149 of 2015 dated 20.03.2015 registered at Santacruz police station.

2. C.R.No.162 of 2017 dated 28.04.2017 registered at Kharghar police station.

3. C.R.No.302 of 2016 dated 27.10.2016 registered at Naupada police station.

4. C.R.No.170 of 2017 dated 14.09.2017 registered at Khandeshwar police station.

5. C.R.No.97 of 2017 dated 08.06.2017 registered at Kalamboli police station.

6. C.R.No.177 of 2017 dated 27.09.2017 registered at

Kalamboli police station.

Learned counsel for the applicant submitted that, in all these offences, the applicant is on regular bail.

10. I have considered these submissions. The F.I.R. mentions that the applicant had taken the money on 01.08.2013. He had represented to the informant that, he and two others were the partners in Monarch Realty Management Services. The Resolution Professional's letter shows that the money which was given by the informant had gone in the bank account of Monarch Realty Management Services. The informant was promissed the aforesaid flat No.306 and another flat No.2802 on two occasions. On both these occasions, neither of the flats was given to him and that amount was also not refunded. In lieu of those two flats, the informant was promissed a flat at 14th floor. Left with no option, the informant entered into an MOU. The MOU clearly mentions that, failing to get approval of CRZ on or before December 2017, they were to return the invested amount along with the interest at the rate of 18%p.a. accruing from August 2014 to the informant. Neither permission was taken from the CRZ nor the amount was

refunded to the informant. Therefore, all along at different stages intentionally false statements were made. Therefore, it does not amount to only a civil or commercial dispute. The intention to cheat and to misappropriate the money was present right from the inception as is clear from the F.I.R. itself.

11. It is also important to note that this application was kept pending for a long time before this Court on the pretext of entering into settlement, but no steps were taken in that behalf. Till today, the settlement has not taken place and simply adjournments were sought in the past. In between, even the proclamation was issued against the applicant. He was not even available. There are similar criminal antecedents against the present applicant. In this view of the matter, applicants custodial interrogation is necessary. He does not deserve any protection U/s.438 of the Cr.p.c.

12. The application is rejected.

**(SARANG V. KOTWAL, J.)**