

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

ANTICIPATORY BAIL APPLICATION NO. 3461 OF 2023

Zulfiqar Haider Sayed

..Applicant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. R. R. Mishra for Applicant.

Ms. Mahalakshmi Ganapathy, APP for State/Respondent.

Mr. Mohamed Rehan Chhapra for Respondent No.2.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 12 FEBRUARY 2024

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.1114 of 2023 registered at Bandra Police Station, Mumbai, on 28.07.2023, under Sections 406, 420 and 120-B r/w. 34 of the Indian Penal Code and under Sections 11, 3, 5 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963.

2. Heard Mr. Mishra, learned counsel for the applicant, Ms. Mahalakshmi Ganapathy, learned APP for the State and Mr. Mohamed Chhapra, learned counsel for the Respondent No.2.

3. The F.I.R. is lodged by one Ajaj Chhapra. He has stated that, in 2018 the applicant told him that, he was constructing a building at city survey No.A-529, 530 and 331, Bazar road, Bandra (W). He told the informant that he had obtained all the necessary permissions and valid documents. He offered to sell the flat No.402 in that building for Rs.55 lakhs. The informant showed his willingness. The applicant told him that, he had given General Power of Attorney to one Adil Alana. Therefore, the informant entered into an agreement with Adil Alana as a Power of Attorney holder. The agreement was entered into on 14.07.2018. Thereafter the informant paid the purchase amount from time to time. In all, he paid Rs.49,75,000/- in the account of Durga Mata Developers. The applicant was the Proprietor of the said firm. The money was paid through the bank transactions. After that the informant was not given possession of the flat. He came to know that, Adil was arrested in some other case. He met the applicant, but he gave evasive answers. He refused to give the flat. He refused to execute the sale deed. On this basis the F.I.R. was lodged.

4. Learned counsel for the applicant submitted that the

matter pertains to the documentary evidence. Therefore, the applicant's custodial interrogation is not necessary. The dispute is civil in nature.

5. Learned counsel for the first informant invited my attention to page Nos.107 and 108 of this application; wherein, there is a copy of the document where the applicant has ratified the sale of that flat No.402 through his power of attorney. He invited my attention to the reply filed by the informant which includes bank entries showing that the money has gone in the account of Durga Mata Developers which was a proprietary firm of the applicant.

6. Learned APP produced the copy of the agreement executed between Adil Alana as the power of attorney holder of the applicant and the present first informant. It was dated 14.07.2018. She also produced the entire agreement for sale dated 25.04.2023 wherein the applicant again through his power of attorney, sold the same flat No.402 on the fourth floor to one Pawan Kumar.

7. I have considered these submissions and I have perused the copies of the documents. Thus, it is quite clear that the applicant sold the same flat to the informant and subsequently to another flat purchaser. The amount has gone in his firm's bank account. The amount of Rs.49,75,000/- is misappropriated by the applicant. He never had intention to honour his commitment right from the inception. Thus, the offence of cheating and misappropriation is clearly made out. The applicant's custodial interrogation is absolutely necessary. No case for grant of protection U/s.438 of the Cr.p.c. is made out.

8. The application is rejected.

(SARANG V. KOTWAL, J.)