IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3689 OF 2023

Kapil Narendrabhai Makwana .... Applicant

versus

State of Maharashtra .... Respondent

…....

- Mr. G. N. Salunke, Advocate for Applicant.
- Smt. M. H. Mhatre, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 03rd JANUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.280/2023 dated 27/10/2023, registered with Kamothe Police Station, Navi Mumbai, under sections 420, 406 r/w 34 of the Indian Penal Code.

2. Heard Mr. G. N. Salunke, learned counsel for the Applicant and Smt. M. H. Mhatre, learned APP for the State.

3. The FIR is lodged by one Rajiv Durve. He was an Architect by profession. He was knowing one Arun Kusalkar who

was a builder. Both of them were looking for a plot for development. Arun Kusalkar contacted one Reshma Khan who was a property agent. She introduced the informant and Arun to the present Applicant. Both of them met the Applicant in his office. The Applicant represented to them that he had a plot at Kamothe bearing Sector 17, Survey No.3, admeasuring 210.52 sq. meters. He told him that he was the owner of the plot. He showed documents regarding that plot. The first informant and Arun believed him. After that, Arun Kusalkar and one Juned Deshmukh entered into an agreement with the Applicant for development of that plot at 50% benefit each. Accordingly it was agreed that the Applicant was to be paid Rs.52,50,000/-. Accordingly, the informant and others paid Rs.52,10,000/- between October 2018 to February 2019. Rs.2,00,000/- were paid to Reshma Khan by way of commission. At the behest of the Applicant further Rs.50,000/- was paid to one Sudhir Mhatre for entering into a triparte agreement. After that, the informant and others tried to complete the transaction, but the Applicant did not cooperate. He started to avoid them. He stopped receiving their phone calls. Therefore, the first informant and others got suspicious. They made enquiries with CIDCO Office. They came to know that there was no such plot in the name of the present Applicant. That particular plot was belonging to one Mahadev Govari and his family. Thus, the informant was convinced that they were cheated and their money was misappropriated. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that in the past this particular plot was sold by the original plot owners Govari to one Hidayat Khan, who in turn had entered into an agreement with the present Applicant. Some amount was paid to the original owners. Subsequently, Hidayat had given authority to the Applicant regarding that plot and therefore the representation made by the Applicant that the plot was belonging to him, was not wrong. He submitted that the FIR itself mentions that the first informant and others had perused the documents before entering into the transaction. Therefore, there was no concealing of facts and hence there was no false

inducement on the part of the Applicant. Learned counsel also invited my attention to the plaint in Summary Suit No.60 of 2023 filed by the informant and others against the Applicant in the Court of Civil Judge, Senior Division, Panvel, for recovery of that amount of Rs.52,50,000/-. He therefore submitted that, it is a civil dispute and it cannot be termed as a criminal offence.

5. Learned APP opposed these submissions. She produced the investigation papers before the Court and in particular she relied on the statement of the owner of the plot i.e. Eknath Govari.

6. I have considered these submissions and I have perused the statement of Eknath Goveri. He has stated that the said plot was owned by himself and his family members. In 2010 they had given his plot to Hidayat Khan for development. One building was completed on that plot. It was an unauthorized structure and therefore in 2013 it was demolished. Thereafter they had not given that plot for development to any other

builder. They had cancelled the agreement with Hidayat. The plot was belonging to Govari family and was in their possession. Subsequently, they came to know that the present Applicant had taken the money from others by representing that the plot was owned by him. The owner Govari had emphatically stated in his statement that he and his family members had not given that plot for development to the Applicant or to any other person. They had not entered into an agreement with the Applicant. Thus, the owner's statement is completely against the present Applicant.

7. The submissions that there was no false inducement, is also not correct, because from the allegations and record it is quite clear that the Applicant was aware that he was not in a position to transfer or to give that plot for development to the informant and others. He had no legal documents to support his claim and yet he accepted huge amount of Rs.52,50,000/-. He has not returned that amount. This not only amounts to cheating, but the ingredients of section 406 are also made out as

defined u/s 405 of the IPC. Looking from all aspects of the matter, it is clear that the it is a serious offence for which custodial interrogation of the Applicant is necessary. Therefore, no relief can be granted to the Applicant.

8. The application is accordingly dismissed.

(SARANG V. KOTWAL, J.)