IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No. 2496 of 2024

Pramod Devram Bhanji
An adult Indian Inhabitant,
Aged about: 49 years, Occ. Business,
Having address at Bhanji House,
Shiv Gally, Near Vetal Mandir,
Versova, Andheri (West),
Mumbai – 400 061. ... Applicant

Vs.

The State of Maharashtra
Through Police Inspector
Malwani Police Station,
Mumbai, C.R. No.882/2024. ... Respondent

Mr Pandit Kasar i/by Rohit Mangsule, for the applicant.
Mr Yogesh Y Dabke, APP, for the respondent/ State.
Ms Neha Patil, for the Intervenor.
PSI SB Nighot, Malvani Police Station, Mumbai, is present.

Coram: R. N. Laddha, J.
Date: 9 October 2024

P.C.:

This is an application for pre-arrest bail filed by the applicant, apprehending arrest in CR No.882 of 2024, registered at Malvani Police Station, Mumbai, for offences punishable under Sections 406, 420, 465, 468 and 471 read with 34 of the Indian Penal Code, and Sections 3 and 4 of the

Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

2. It is the case of the prosecution that in 2015, a Women's Organisation, Mata Ramabai Mahila Mandal, with 60 members, sought to purchase houses in Mumbai. They contacted Avinash, who offered rooms in the Madh area for Rs.4,00,000/-. Accordingly, the Organisation paid him Rs.2,04,00,000/- in total. On 20 August 2016, a meeting took place where an agreement was signed by the applicant and Avinash, specifying the room size of 9.5 x 13 sq. ft. for each woman. They made an initial payment of Rs.50,000/- and agreed to pay the balance in monthly and yearly instalments. By August 2018, the accused collected Rs.2,01,00,000/- from them. However, upon visiting the site, the women discovered no construction and realised the applicant and the co-accused, Avinash, had deceived them.

3. Mr Pandit Kasar, the learned Counsel appearing on behalf of the applicant, submits that even if all the allegations are accepted as they are, without any modifications, there is no *prima facie* case against the applicant. The elements of the offences mentioned in the FIR are not attracted. The learned Counsel contends that the matter is of a civil nature and the present criminal prosecution is an afterthought. There has been

a significant delay in filing the FIR. The allegations against the applicant are vague and omnibus, with no specific role attributed to the applicant. The co-accused, who is the applicant's brother and the recipient of the amount, has already been arrested. Therefore, there is no need for the applicant's custodial interrogation.

4. Mr Yogesh Dabke, the learned Additional Public Prosecutor representing the respondent/ State and Ms Neha Patil, the learned Counsel appearing for the Intervenor, jointly submit that the applicant and his brother, co-accused Avinash, accepted funds from various women under the pretence of providing rooms. Despite receiving the amount and executing agreements back in 2015, the applicant and co-accused have deliberately delayed the delivery of the rooms by making false promises. To date, no construction has commenced. Frustrated, the victims lodged the present FIR as a last resort. The learned APP further submits that although the funds were accepted in 2015, the applicant and the co-accused repeatedly provided false assurances to the victims, promising to deliver the agreed-upon rooms. Despite these assurances, no construction work was ever commenced at the site. This itself suggests that the applicant and the co-accused had an intention to deceive the victims since the beginning. Furthermore, the investigation is at

a nascent stage, and the applicant's custody is required to ascertain the money trail.

5. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the records.

6. It appears that the applicant, along with the co-accused Avinash, accepted funds from several women under the pretence of providing them with the rooms on an ownership basis, and they executed documents to that effect. The applicant specifically executed Agreements for Sale in favour of various women members of the organisation and also got executed a Power of Attorney in his favour. This Power of Attorney granted him certain rights concerning the purchase of open land on behalf of these women. Additionally, the applicant executed an affidavit asserting that he is the absolute owner of certain land and pledged to execute a conveyance deed in favour of the members of the women's organisation. Even though the funds were accepted in 2015, the applicant and the co-accused continuously made false promises to the victims, assuring them that the agreed-upon rooms would be delivered. However, no construction work ever began at the site. *Prima facie,* this ongoing pattern of alleged deception strongly indicates that the accused had the intention to defraud the victims at the very outset, i.e., from the time of accepting

the down payments and executing agreements. The failure to commence construction coupled with the continued false promises suggest that the crime was pre-meditated and planned well before the payments were made. Furthermore, the investigation is at a nascent stage. The custodial interrogation of the applicant is necessary to unearth the trail of money that the applicant and co-accused received from the victims.

7. It is a settled position in law that granting pre-arrest bail is an extraordinary power. While regular bail is generally considered the norm, the same principle does not apply to anticipatory bail. The Court must exercise careful and prudent discretion when deciding whether to grant anticipatory bail, considering each case's specific circumstances. There is no one-size-fits-all approach. Caution is necessary, as granting protection in serious cases could potentially hinder investigation or lead to miscarriage of justice by allowing tampering with evidence. In this context, a profitable reference may be made to the decision of the Hon'ble Supreme Court in ***Srikant Upadhyay v. State of Bihar***[1].

8. In the totality of the circumstances, this Court is not inclined to accede to the submission on behalf of the applicant that no offence as alleged is *prima facie* made out. In cases like

1. 2024 SCC OnLine SC 282.

this, custodial interrogation is crucial to unearth the fraud in all facets, including the money trail. The possibility of there being similarly circumstanced victims is also eminent. The release of the applicant on pre-arrest bail would impede the course of effective investigation. Therefore, this Court is not inclined to exercise its discretion in favour of the applicant. As a result, the application stands rejected.

(R.N. Laddha, J.)