IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.2804 of 2024

Raees Husain Sayed
Age:- 46 years, Occ:-
Business, R/at: A-12,
Kherani Mansion, Mukund
Patil Lane, Andheri (West),
Mumbai – 400 058. … Applicant

v/s.

State of Maharashtra
Through Amboli
Police Station, Mumbai.
(CR No.27 of 2022) … Respondent

Mr Khwaja Shaikh, for the applicant.
Mr Arfan Sait, APP, for the respondent/ State.
WAPI Poonam Pawar, Amboli Police Station, Thane, present.

Coram : R.N. Laddha, J.
Date: 14 October 2024.

P.C.:

By this application, the applicant seeks pre-arrest bail in connection with CR No.27 of 2022 (formerly numbered as CCTNS No.50 of 2022), registered at Amboli Police Station, Thane, for offences punishable under Sections 406 and 420 of the Indian Penal Code.

2. According to the prosecution, the applicant offered the informant to purchase flat No.131 in the A Wing of Oshiwara Sadipani Teachers Cooperative Housing Society, located in Jogeshwari West, Mumbai, for a total price of Rs.50 lakhs. The deal was finalised on 12 March 2019, with the informant paying Rs.25 lakhs by cheque and Rs.15 lakhs in cash. The applicant acknowledged receiving Rs.40 lakhs on a stamp paper in the presence of two witnesses. Both parties agreed that the remaining Rs.10 lakhs would be paid upon delivery of the flat's possession. However, in December 2019, when the informant tried to contact the applicant to request possession of the flat, the applicant gave evasive responses and subsequently left town. Further inquiry revealed that the applicant had mortgaged the flat to L&T Finance Company. The applicant's failure to deliver possession of the flat or return the accepted sum to the informant led to the filing of the present FIR.

3. Mr Khwaja Shaikh, the learned Counsel appearing on behalf of the applicant, argues that there was no sale transaction between the parties, and the informant has

mischaracterised a civil dispute as a criminal matter. The learned Counsel points out a delay in registering the crime, noting that the alleged transaction occurred in 2019, the complaint was filed in 2021, and the FIR was subsequently registered in 2022. The learned Counsel asserts that the applicant has been falsely implicated in the present case and is willing to cooperate with the investigation.

4. Mr Arfan Sait, the learned Additional Public Prosecutor representing the respondent/ State, contends that the offence is of a serious nature. The applicant defrauded the informant by accepting a substantial payment of Rs.40 lakhs but failed to either hand over possession of the flat or return the money. Specifically, the applicant received Rs.15 lakhs in cash and Rs.25 lakhs through the banking channel. Notably, the applicant did not disclose that the flat was already mortgaged to a finance company; this indicates that since inception, the applicant intended to cheat the informant. The learned APP points out that other victims in similar situations have now come forward. He also highlights that the applicant, who has been absconding, only approached the Sessions Court in 2024 despite the offence being registered in 2022. Furthermore, the learned APP expresses concern that granting pre-arrest bail to

the applicant could lead to tampering with evidence or influencing witnesses.

5. Upon perusing the records, the allegations against the applicant centre on the misappropriation of sale proceeds and failure to deliver possession of the flat in question. It appears that the applicant received a sum of Rs.40 lakhs from the informant, which was transferred through both banking channels and cash as a substantial part of the flat's sale. The applicant acknowledged receipt of these funds in the presence of witnesses and formalised the transaction by documenting it on the stamp paper. However, at the time of accepting the payment, the applicant did not disclose to the informant that the flat was mortgaged to a finance company, indicating a potential intent to deceive from the outset. Further, it appears from the witness statements that after receiving the funds, the applicant left town without delivering possession of the flat. Since 2022, the applicant has been unavailable for investigation. The offence was registered in 2022, but the applicant only approached the Sessions Court belatedly in 2024, raising questions about his intentions. The material on record *prima facie* points to the applicant's involvement in the crime, and there are similarly circumstanced victims. The

nature of the offence is serious, and the applicant has deliberately avoided cooperating with the investigation.

6. In light of the overall circumstances, this Court finds no merit in the applicant's claim of non-involvement or in the assertion that the dispute is purely civil in nature. Given the foregoing, this Court is not inclined to exercise the discretion in favour of the applicant. Accordingly, the application stands rejected.

7. It is clarified that the observations made herein are *prima facie* only to determine the applicant's entitlement to pre-arrest bail.

(R.N. Laddha, J.)