2025:BHC-AUG:13711

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.646 OF 2025
WITH
CRIMINAL APPLN.NO.1568 OF 2025 [for assist to P.P.]

Madhusudan s/o. Dilip Uttarwar,
Age: 49 years, Occ : Business,
R/o : Plot no. C-9, Pride Park,
Near Tiwari Mangal Karyalay,
Vedant nagar, Chh. Sambhaji nagar.
[Aurangabad] .. **APPLICANT**

VERSUS

1] State of Maharashtra

2] Commissioner of Police,
[Though Begampura Police Station]
Chh. Sambhajinagar. .. **RESPONDENTS**

…

Mr.R.P.Mote & Mr.R.R.Bidave, Advocates for the applicant.
Mr.G.O.Wattamwar, APP for the respondent-State.
Mr.Chetan T. Jadhav, Advocate for Assist to P.P.

…

CORAM : ARUN R. PEDNEKER, J.
DATE : 07.05.2025

P.C. :

1] Heard. For the reasons stated in Criminal Application No.1568 of 2025 for assisting to P.P., the same is allowed. Criminal Application is disposed of accordingly.

2] Heard learned counsel for the applicant, the learned APP for the respondent-State and the learned counsel for assist to P.P.

3] The applicant is apprehending arrest in connection with Crime No. 0050/2025, registered with Begampura Police Station, Taluka and District Aurangabad, for the offence punishable under Sections 318 (4), 316 (2), 316 (1) of B.N.S., 2023.

4] The case as noted in FIR is that the informant is the owner of plot no.8, situated at Taleshwar Colony, Begampura, Chhatrapati Sambhajinagar. He had taken permission for construction on the said plot. Thereafter, he entered into development agreement with the applicant in respect of his plot on 07.03.2017 on the condition that the informant will have 55% of share in the developed property, whereas, the applicant will get share of 45% of the constructed portion. It is further stated that as per clause no.25 of the said agreement, the applicant was entitled to get loan on the constructed portion of the said plot to the extent of his share only i.e. 45% and not beyond his share.

However, it is stated that the applicant has taken a loan of Rs. 60 lacs on the entire constructed plot and mortgaged the entire property. It is further stated that the applicant has taken advance money from the one of purchasers to the extent of Rs.15 lacs, and the applicant also sold one shop to the informant and taken amount Rs.15 lacs in advance. The entire money received by the applicant is utilized by the applicant for development of some other property and also failed to repay the loan, as such, the said property was put up for auction by the bank. Thereafter, the informant had to take loan of Rs.1.5 crores to save his property.

5] It is further stated that the developer promised the informant to repay his liability by giving cheques of Rs.85 lacs and further promised to hand over 5 cheques of Rs.4,70,318/- each and also executed demand promissory note. Thereafter, all cheques were dishonoured, as such, the proceedings under Section 138 of Negotiable Instrument Act are also initiated. Thereafter, the present FIR is registered against the applicant.

6] The learned counsel for the applicant submits that the applicant has completed 35% of construction work on the said plot. Due to COVID pandemic, the applicant did not repay the loan amount. As such, this is a purely civil dispute. The learned counsel for the applicant relies upon the judgments in the cases of **Lalit Chaturvedi & Others Vs. State of Uttar Pradesh & another** in **Criminal Appeal No.660/2024** [arising out of SLP [Crl.] No.13485 of 2023] dated, 06.02.2024, **G. Sagar Suri Vs. State of U.P.** in **Cri. Appeal No. 91 of 2000** [arising out of SLP [Crl.] No.1998/1999], decided on 28.01.2000, **A.M.Mohan Vs. The State represented by SHO and another** in Criminal appeal No.1716/2024 [arising out of SLP [Criminal] No.9598 of 2022], decided on 20.03.2024 and in the case of **J.Vedhasingh Vs. R.M.Govindan & ors.** in Criminal Appeal [arising out of SLP [Cri.] No.2864/2019, decided on 11.08.2022 to contend that no criminal proceedings should be initiated in a purely civil dispute and recovery of dues at best can only be a civil dispute.

7] *Per contra*, the learned APP along with learned counsel for assist to P.P. submit that the applicant has taken a loan on the entire plot and mortgaged the entire propety and has not utilized the said loan for the construction of the said plot and diverted the said amount to some other property. The applicant has also taken Rs.30 lacs from prospective purchaser and to that effect one suit is pending before the trial Court, so also, one arbitration proceeding is also pending, which was filed by the informant.

8] Considering the rival submissions, it could be said that the applicant has taken loan by mortgaging the entire vacant plot for construction purpose on the plot and the same is not utilized for the said purpose and the said funds were utilized for developing of some other property. As per clause no.25 of the agreement dated 07.03.2017, the applicant was entitled to get loan to the extent of his share of the constructed portion on the said plot. The applicant has taken loan of Rs.60 lacs and mortgaged the entire property. As such, the applicant has traveled far beyond clause no.25 of the agreement dated 07.03.2017, by mortgage, the entire property put in possession of the applicant and thus *prima facie* the applicant has committed breach of trust. Further, the prosecution alleges that the loan obtained was utilized on some other property and is also *prima facie* in violation of the agreement. The violations are not purely in civil nature. *Prima facie*, the applicant has committed wrongful loss to the complainant by his illegal acts. Considering the said fact, the involvement of the applicant in the crime is seen and then this is not a case to grant anticipatory bail. Hence, the present Anticipatory Bail Application is dismissed.

9] It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial Court shall not be influenced by the observations of this Court while deciding regular bail or at trial.

[ARUN R. PEDNEKER]
JUDGE

DDC