

Shabnoor

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

ANTICIPATORY BAIL APPLICATION NO.2670 OF 2023

Bhupindar Ladulal Jain	... Applicant
V/s.	
The State of Maharashtra	... Respondent

**WITH
INTERIM APPLICATION NO.858 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.2670 OF 2023**

Harishchandra Raghunath Thakur	... Applicant
In the matter between	
Bhupindar Ladulal Jain	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Nitin H. Sejpal a/w Pooja N. Sejpal, Siddharth Gharat, for the Applicant.

Mr. Sagar R. Agarkar, APP for the State-Respondent.

Mr. Devesh B. Suralkar i/b M. V. Thorat for the Intervener.

Mr. Shrikant Naidu, API, Nhava Sheva police Station is present.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 8, 2025

P.C.:

1. The applicant has approached this Court under Section 438 of the Cr.P.C. / Section 482 of the BNSS, 2023, seeking protection from arrest in connection with Crime Register No. 162 of 2023,

registered at Nhava Sheva Police Station for the offence punishable under Section 420 of the IPC.

2. The case of the prosecution, in brief, is that the land belonging to the legal heirs of Late Raghunath Chawji Thakur was acquired by JNPT. In lieu of acquisition, CIDCO allotted a plot under the 12.5% scheme. The legal heirs, including the informant, executed a Development Agreement with the partnership firm of the present applicant. Under the agreement, the total consideration was fixed at Rs. 88,80,000/-, in addition to a 50% share in the constructed premises reserved for the legal heirs. The applicant was to retain the other 50%. The applicant initially paid Rs. 9,00,000/- through cheque. The balance was to be paid in installments linked to the progress of construction. The grievance of the informant is that after obtaining a copy of the legal heirship certificate, the applicant failed to pay the balance consideration and, contrary to the terms of the agreement, created third-party rights in favour of one Subhash Vitthal Kanekar, without consent of the heirs. It is alleged that such act amounts to cheating and breach of trust.

3. Learned counsel appearing for the applicant has submitted that the dispute arises purely from a Development Agreement and is essentially civil in nature. The remedy of the informant, if aggrieved, lies before the civil court for enforcement of contractual obligations or damages, but not by invoking criminal law. It is urged that the essential ingredients of the offence of cheating under Section 420 IPC are absent in the present case. The allegations, even if taken at face value, do not show dishonest

intention at the inception of the transaction. The applicant has already paid Rs. 9,00,000/- and the dispute relates to subsequent performance of contractual terms.

4. Learned counsel further submits that the alleged alienation of property in favour of Subhash Vitthal Kanekar, even if assumed to be true, would not make out an offence of cheating against the applicant. On the contrary, the person who could claim to be aggrieved would be the said purchaser, who has not lodged any complaint. In support of this contention, reliance is placed on the judgment of the Supreme Court in *Md. Ibrahim & Others v. State of Bihar & Another*, (2009) 8 SCC 751, wherein it has been held that civil disputes relating to title and possession cannot be given the colour of criminal offence in the absence of necessary mens rea.

5. It is also urged that this Court had granted ad-interim protection to the applicant on 21 September 2023, which has been in operation till date. The applicant has abided by all conditions imposed and there is no allegation of misuse of liberty. Considering this, it is prayed that the interim protection be made absolute till the conclusion of trial.

6. On the other hand, the learned APP has opposed the application. It is contended that the investigation has not progressed fully because of the protection granted. It is urged that custodial interrogation of the applicant may be necessary and hence, the applicant must be directed to cooperate unconditionally with the Investigating Officer.

7. Learned counsel for the complainant has also opposed the grant of anticipatory bail. According to him, the allegations made in the FIR prima facie disclose the ingredients of Section 420 IPC. He contends that the dishonest intention of the applicant from the very beginning is evident from the material annexed to the FIR. He submits that the applicant misused the heirship certificate for his own gain and transferred the property behind the back of the complainant and other heirs. Such conduct, according to him, clearly establishes mens rea.

8. I have considered the rival submissions and perused the material placed on record. The admitted position is that the transaction between the applicant and the complainant originated from a Development Agreement executed by the legal heirs of Late Raghunath Chawji Thakur. The agreement records the total consideration and the sharing arrangement in the developed property. Part payment has admittedly been made by the applicant. The dispute essentially relates to the non-payment of balance consideration and the alleged transfer of rights to a third party.

9. For constituting the offence under Section 420 IPC, it is necessary to establish that there was dishonest intention on the part of the accused at the inception of the transaction. The mere failure to honour terms of an agreement, or subsequent non-performance of contractual obligations, by itself does not amount to cheating. Unless the prosecution demonstrates that the applicant had fraudulent or dishonest intention right from the beginning, the dispute remains in the realm of civil law.

10. The record shows that the complainant and other legal heirs voluntarily executed the Development Agreement. The applicant paid Rs. 9,00,000/- in furtherance of the agreement. The grievance is about failure to pay the balance and the alleged creation of third-party rights. These issues can be effectively adjudicated before a civil forum by way of suit for specific performance, injunction, or damages. Prima facie, they do not justify invocation of the penal provisions under Section 420 IPC.

11. The Supreme Court in *Md. Ibrahim & Others v. State of Bihar & Another*, (2009) 8 SCC 751 has held that where the dispute is essentially of civil nature, criminal proceedings cannot be used to settle contractual differences. Applying this principle to the present case, the allegations made in the FIR do not prima facie disclose the necessary ingredients of cheating.

12. The applicant has already been enjoying interim protection since 21 September 2023. There is no material placed before this Court to show that he has misused the liberty granted or attempted to obstruct the investigation. On the contrary, the learned APP fairly submits that the investigation has not been concluded and that the applicant must cooperate. The apprehension of the prosecution can be taken care of by imposing appropriate conditions while granting relief.

13. Considering the overall circumstances, in my view, custodial interrogation of the applicant is not warranted. The allegations, at best, disclose a civil dispute. The applicant deserves protection under Section 438 of the Cr.P.C. / Section 482 of the BNSS, 2023.

14. Accordingly, the application is allowed. The interim protection granted earlier is confirmed. In the event of arrest in connection with Crime Register No. 162 of 2023, registered with Nhava Sheva Police Station, the applicant shall be released on bail on executing a personal bond of Rs. 50,000/- with one or two sureties in the like amount, subject to the following conditions:

- (i) The applicant shall cooperate with the investigation and shall attend the Investigating Officer as and when called.
- (ii) The applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case.
- (iii) The applicant shall not tamper with the prosecution evidence.
- (iv) The applicant shall furnish his residential address and contact number to the Investigating Officer and shall intimate any change thereof.

15. It is made clear that the applicant fails to cooperate with the investigation, the prosecution is at liberty to apply for cancellation of this order.

16. With these terms, the anticipatory bail application stands disposed of.

17. In view of disposal of the anticipatory bail application, the interim application also stands disposed of.

(AMIT BORKAR, J.)