Prasad Rajput
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 21 OF 2025

Nemchand Vasanji Chheda .. Applicant

Versus

The State of Maharashtra .. Respondents

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- Mr. Rahul Arote, for Applicant.
- Mr. Sachin R. Pawar, for original Complainant.
- Mrs. Mahalaxmi Ganpathy, APP for State.
- Mr. Hemant Gandhi, Complainant in-person.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 07, 2025

P.C.:

1. Heard Mr. Arote, learned Advocate for Applicant, Mr. Pawar, learned Advocate for Original Complainant and Ms. Ganpathy, learned APP for State. Perused the record.

2. This is an Application filed by Applicant for grant of Anticipatory Bail in connection with Crime No. 421 of 2023 registered with Koparkhairne, Police Station for the offences punishable under Sections 420, 265, 467, 468, 471, 120-B r/w 34 of the Indian Penal Code, 1860.

3. Crime is registered against the Applicant on the basis of a report filed by the First Informant complainant – Hemant Gandhi. Learned Advocate appearing for him has persuaded the Court to hear him on behalf of the First Informant. He is also heard.

4. The issue involved in the present case as usual concerns surreptitious act of the Applicant who is the developer in the present case. The act committed by the developer is such that despite having taking steps to ensure that the complainant, his wife and his sister-in-law are anointed as members of the Society, CIDCO having issued their membership certificates, he has subsequent thereto in connivance and collusion with the Managing Committee Members of the Society forged resignation letters in the name of the complainant and the two other members, got their membership cancelled and sold their allotted flats to third parties with *malafide* intention and profiteered from the said act.

5. Learned APP Ms. Ganpathy placed before me copies of the forged letters prepared and filed, executed and signed by the Applicant. Applicant claims to be the developer having various development projects. In 1995 the first informant showed his interest to purchase three flats and accordingly made substantial monetory rather entire investment. Investment was made for procurement and purchase of three flats in the name of first informant himself, his wife and sister-in-law at the then time. At the outset, part payment of Rs. 12,00,000/- was made for which the Applicant / Developer issued receipts of payment. That Payment was made by cheque. Thereafter, the Applicant and his company M/s. Chheda Land & Developers intermittently received three substantial sums of Rs. 14,97,437/- on

07.12.1996, Rs. 7,50,000/- on 14.12.1996 and Rs. 7,47,437/- (date not available but admitted) for which the Applicant issued receipts of having received the aforesaid payments from the first informant. Thus, it is seen that by 1996 First Informant had fully paid the consideration of Rs. 41,94,874/- to the Applicant for which receipts have been placed on record. Record of the case clearly shows that after the aforesaid transaction the Applicant called upon the First Informant to seek membership of the Society and the Society moved an Application with CIDCO on 27.09.2002 with respect to accepting them as members of the Society. The First Informant paid all requisite fees of CIDCO as a consequence of which he and the other two members i.e. his wife and sister-in-law were issued share certificates in their names showing them as members and the Society passed a resolution on 03.10.2022 accepting them as additional Members of the Society. The Society also issued letter accordingly to the Estate Officer, CIDCO, CBD, Navi Mumbai and provided a copy of details of membership and endorsed a copy of this letter to the First Informant. There is an order passed by CIDCO dated 10.10.2022 thereafter granting permission about acceptance of the First Informant, his wife and sister-in-law to be the additional members of the Society and they were issued the share certificates also after they deposited the requisite charges. Thus, on and from 19.03.2003 First Informant, his wife and sister-in-law lawfully and legally became members of the Society. It is seen that the share certificates were issued to them on 17.08.2007 and this is when the Applicant before me played truant and fraud by impersonating the first informant, his wife and sister-in-law and making an application on their behalf to the Society seeking withdrawal of their membership and also seeking resignation of their membership from the Society. There are one line Applications forged by the Applicant without assigning any reasons whatsoever. These forged applications are dated 23.03.2006. Because of such letters addressed by the Applicant in 2006 by impersonating the first informant and the other two members, the Managing Committee of the Society passed a resolution on 08.04.2006. The act rather the dubious act of the Applicant and the Managing Committee does not stop over here. What he does next is extremely shocking. After issuing letter to the Estate Officer with respect to cancellation of membership of the First Informant and the two other members, the Applicant thereafter sold the three flats allotted and belonging to the membership of the First Informant, his wife and sister-in-law to third parties and pockets the sale proceeds. The manner in which the Applicant has orchestrated the aforesaid dubious resignation of membership, cancellation of allotment and transfer of the subject flats while duping the First Informant on the one hand and appropriating the sale proceeds by selling their three flats to third parties by registered sale documents is *prima facie* clearly seen. From the record it is seen that a letter was issued to the Estate Officer of CIDCO to cancel the membership of the three members and insofar as the First Informant and his wife is concerned, their names were mutated as members of the Society. However, investigation has revealed that there is an entry in the Register of the Society dated 17.08.2007 showing them to be the members of the Society and their membership has not been transferred.

6. Further investigation has revealed that document came to be prepared in the name of new persons named Arvind Pai, Vaishali Pai as against Hemant Gandhi (new purchaser/allottee in place of first informant), name of Nayan Dedhia is mentioned against Hansa Gandhi (wife), and name of Vasanti K. Chheda and Kantilal Chheda is mentioned against Varsha (sister-in-law). Investigation has clearly proven that 13.04.2006, Sonal Developers Proprietor Vasanji Chheda sold the flat of the First Informant to Arvind and Vaishali Pai by a registered document. However, in the said document, there is no PAN Card details stated. In fact, the cocnerned O.P. Cooperative Hsg. Society is not concerned with Sonal Developers at all despite the subject flat being situated in their Society. But Sonal Developer is shown to have signed the document. Surprisingly, there are no witnesses of the transaction. There is no consent letter from the Society either. There are no photographs appended on the document. Such is the level of fraud committed by Applicant. I say this because, now the developer desires to return all monies received back to the First

Informant and wash away his fraudulent act.

7. Flat in the name of Hansa Gandhi is sold by M/s Sonal Developer's Proprietor Vasanji Chheda to Nayan Dedhia by another registered document by using the same *modus operandi*. Flat of Varsha is sold on 20.03.2006 by M/s Sonal Developer's Proprietor Vasanji Chheda by registered document to Vasanti K. Chheda and Kantilal Chheda. The informant demanded the documents like minutes book of general body meeting, resolution book of the society from 2001 to 2007, but it was not provided. According to informant, between the period of 1995 to 2017, the Committee Members of the Society, then members namely Sanjay Maniyar, Secretary and other office bearers, Vasanji Chheda Proprietor of M/s Sonal Developers, Nemchand Chheda Proprietor of Chheda Land and Developers who were the developers and Managing Committee Members hatched a conspiracy, cheated the First Informant, his wife and sister-in-law by selling their allotted flats by making false and fabricated documents in their names and thus according to the complainant the accused committed illegal acts of cheating and fraud. On this report, crime came to be registered. Investigation has revealed all this.

8. In the background of the aforesaid acts committed by the Applicant, the Applicant has the audacity of coming to the Court and through his Advocate stating that he is innocent. Repeatedly, in the course of submissions, learned Advocate for the Applicant has vehemently urged before the Court as a matter of right that the Applicant is ready and willing to pay the entire amounts which he has received from the First Informant with respect to the three flats in question. He would also submit that a Criminal Writ Petition is filed by the First Informant which is pending before the Division Bench of this Court and it is listed at Serial No. 33 on today's Board. However, the Application before me is an Anticipatory Bail Application. Nothing precludes me from hearing the present Application on its own merits. There is no embargo on me.

9. From the aforesaid, it is seen that this cannot be considered as Applicant's *bonafide* case when he attempts to state that he is ready and willing to refund the invested amount to the First Informant and his illegal acts in collusion with the concerned Society Members / Committee Members undoubtedly need to be investigated in detail and taken to its logical end. Forging of signatures of the First Informant and other members, preparing false letters of their resignation of membership, seeking their cancellation of membership, manipulating the Society Records in collusion with other Managing Committee members, selling of their flats to third parties and probably his own relatives as can be seen are all *prima facie* acts of fraud and now Applicant has the audacity of coming and telling the Court that he is ready and willing to return the entire amount received with respect to the three flats in question cannot be acceptable. The Applicant cannot wash away his illegal acts. Criminal action has been set into motion.

10. Learned Advocate for the Applicant has also attempted to persuade the Court by invoking sympathy by stating that the Applicant is 75 years old. This submission is not appreciated in the wake of the illegal acts committed by the Applicant which are clearly fraudulent acts. Nature of the offence is extremely serious. One of the submissions made by the learned Advocate is that the offence is lodged in 2024 after a long hiatus by the First Informant. If that be the case, nothing prevented the Applicant to take appropriate remedy as available to him in law. Learned Advocate for the Applicant would submit that this Court will have to consider the date of investment made by the First Informant for the first time in 1996 and in that view of the matter custodial interrogation of the present Applicant is not required.

11. *Prima facie* the custodial interrogation of the Applicant will be required to its fullest extent to unearth the entire evidence / material as the Applicant's family members itself controlled the Managing Committee of the Society which played a fraudulent role in helping the Applicant achieve his motive. In the wake of the aforesaid cheating and forgery, Applicant undoubtedly has suppressed the relevant documents. I am not at all impressed by the submissions made by the learned Advocate for the Applicant that the parties were in the interregnum referred for mediation when the first informant agreed to accept the amount. Learned Advocate appearing for the first informant seeking intervention in the matter has clearly informed the Court that he has never agreed to receive any amounts.

12. While rejecting the Application filed by the Applicant, the Learned Additional Sessions Judge, CBD, Belapur, Navi Mumbai has critically analyzed the role of the Applicant. The findings recorded in paragraph No. 8 of the said order are in extensive detail and only for the sake of brevity I am not reproducing the same. I agree with each and every finding stated therein.

13. In the above facts once it is confirmed that the Applicant has sold the three flats to third parties to the detriment of the First Informant, the illegal act of the Applicant stands *prima facie* proven on the basis of cogent documentary evidence.

14. *Prima facie* on the basis of the documentary evidence placed before me by the learned APP, I am fully convinced that the present Application does not deserve any countenance by the Court.

15. Application is dismissed.

P.R. Rajput

[MILIND N. JADHAV, J.]