

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.945 OF 2025

Gautam Deepak Dhawale ...Applicant
Versus
State of Maharashtra & Anr ...Respondents

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Mr. S. M. Gorwadkar, Senior Advocate i/b. Ritvik Joshi a/w. Swaraj
Sawant & Harshal Mule, Advocate for the applicant.

Ms. Supriya Kak, APP for the State.

Adv. Madhavi Tavanandi a/w. Amit Avhad, Adv. Suraj Chakor, Advocate
for respondent no.2.

CORAM : RAJESH S. PATIL, J.

DATED : 7 MAY 2025

ORDER .:

1. The applicant is apprehending his arrest in connection with the C.R. No.157/2025 registered by the Police Station, Khadak, Pune for the offences punishable under Sections 316(2), 318(4), 316(5), 336(3) and 336 (2) of the B.N.S. Hence he has moved this application for anticipatory bail.

2. The FIR has been lodged based on an Complaint, which mentions about the role of the present applicant.

3. In my view, this is a classic example of what is commonly referred to as “Greed.” There is no dispute that the complainant, a 97-year-old person, was the owner of a plot of land admeasuring 3,000 sq. ft. at Shukrawar Peth, District Pune. The plot is located in the heart of Pune city. The complainant wished to develop the said plot but, due to financial constraints, decided to engage a developer.

4. The present applicant-accused is a developer by profession who agreed to develop the plot. Pursuant to this, a development agreement dated 1st April 2018 was entered into between the applicant-accused and the complainant, along with his 73-year-old son and daughter-in-law.

5. As per Clause 3 of the said development agreement, the complainant was to receive three flats and two parking spaces in the newly constructed building. The total area of the flats to be received by the complainant was agreed to be 2,475 sq. ft., and the construction was to be completed within a period of 24 months.

6. Since the construction was not completed within the stipulated 24 months, the parties once again entered into negotiations. I have been shown certain WhatsApp chats between the complainant's son and grandson with the present applicant-accused.

7. It is the complainant's case that, since he was not keeping well, he

gave a power of attorney to his 73-year-old son to negotiate with the applicant-accused. After negotiations, according to the applicant-accused, a supplementary agreement dated 14th June 2023 was entered into. As per the applicant, under this supplementary agreement, the complainant was to receive only one flat without a parking space. The area of the said flat was to be 693 sq. ft., along with an attached balcony of 240 sq. ft.

8. Upon reviewing the supplementary agreement, which forms part of the anticipatory bail application, it appears that the said agreement was signed by the complainant's son as his power of attorney holder. The supplementary agreement is signed by both parties on the first and last pages; however, it is noted that each and every page of the agreement has not been signed during execution.

9. Furthermore, the complainant contends that the draft supplementary agreement exchanged between the parties and subsequently finalized is not the same document as the one shown to have been executed. The finalized draft, according to the complainant, mentioned the allocation of three flats along with parking spaces. The only modifications from the original 2018 agreement were regarding the date of possession and the Floor Space Index (FSI). These changes, according to the complainant, were made solely because the applicant-developer had failed to complete the construction for almost five years.

10. It has been submitted before me today that the building in question has been constructed and that an Occupation Certificate has also been issued by the planning authority. In total, six flats have been constructed in the new building, and according to the applicant-developer, only one flat without a parking space has been handed over to the original owner of the plot.

11. Therefore, in summary, the original owner of the plot, who was entitled to receive three flats and two parking spaces as per the original development agreement, has, according to the supplementary agreement, received only one flat without any parking space.

12. What has been emphasized on behalf of the applicant by the learned Senior Advocate is that there was a change in the Development Control Regulations for Pune city on 1st December 2020. As per the Unified Development Control and Promotion Regulations (UDCPR) 2020, the available FSI for a plot in Pune city has increased to 1.5. Consequently, there is now more construction potential available on the said plot of land.

13. In any case, it is not disputed that six flats have been constructed on the complainant's land. As per the original 2018 agreement, the complainant was entitled to approximately 75% of the constructed area, but that entitlement has now reduced to approximately 17%. The

rationale provided for this significant reduction is that the parties allegedly voluntarily agreed to the revised terms and executed a registered supplementary agreement accordingly.

14. It is further submitted that this dispute is of a civil nature, for which a suit has already been filed by the complainant on 18 October 2024 before the Civil Judge, Senior Division, Pune, seeking a mandatory injunction and a declaration that the supplementary agreement is illegal and should be cancelled. It has also been argued that an application for interim relief has been filed in the said suit. In that application, the Civil Judge, Senior Division, issued notice to the defendant-developer on 23 October 2024. The application is still pending and is yet to be decided.

15. The learned APP has argued that on 14 September 2024, the complainant approached the police station to file a complaint against the present applicant-developer. Based on this complaint, the police issued notices to the applicant-developer on 13 February 2025 and subsequently on 21st February 2025.

16. It is the case of the police that the applicant has not cooperated with the investigation. During the course of the inquiry, the police were able to retrieve WhatsApp chats between the complainant's grandson and the applicant-developer. These chats allegedly contained references to certain monetary transactions. The police claim that the applicant has consistently denied the existence of any cash component in the

transaction.

17. Additionally, the police sought to obtain the applicant-developer's mobile phone, office desktop, and details of his permanent residential address. However, it is the case of the police that the applicant-developer refused to cooperate, failed to submit his phone and office desktop, and did not provide a correct or verifiable residential address.

18. Today, before me, the learned Senior Advocate appearing on behalf of the applicant-developer, on instructions, categorically denied the existence of any cash transaction. With regard to the residential address, Mr. Gorwadkar, learned Senior Advocate, submitted that the applicant resides at Flat No. 501, Visawa, Bharat Kunj Society, Erandawane, Pune – 411038, a premises belonging to Mrs. Jyotsna Deepak Kirpekar. It is stated that the applicant and his family are residing there on a leave and license basis in the city of Pune.

19. In my view, it is difficult to accept that a developer operating in the city of Pune is residing in a leave and license premises. I am of the considered opinion that, at this stage, once the complainant realized that the intention of the applicant-developer was dishonest from the inception by initially agreeing to hand over three flats and two parking spaces and once he gained possession of the said plot of land, he deliberately delayed the construction process.

20. Consequently, a supplementary agreement was executed. However, what was exchanged and discussed between the parties prior to execution appears to be vastly different from what was ultimately signed. It is a general practice that, prior to executing any document, the parties review the contents at least a day in advance and ensure that they are fully satisfied. It is, therefore, hard to believe that on the date of execution, they would re-read and verify each and every clause again, without noticing such drastic changes.

21. While minor modifications in a supplementary agreement could be understood or justified, what transpired in this case is that a prudent man who handed over his valuable plot of land located in the heart of Pune city was reduced from receiving three flats with two parking spaces to receiving merely one flat without any parking space. In contrast, the developer, who was originally entitled to only 25% of the constructed area as per the 2018 agreement, ended up receiving five flats along with five parking spaces under the supplementary agreement which would be 83% of constructed area.

22. This is further aggravated by the fact that the applicant is completely unwilling to cooperate with the police investigation. On behalf of the applicant, a compilation of judgments has been submitted. Two of these judgments pertain to the Civil Procedure Code, and the Indian Evidence Act. The crux of these decisions is that mere breach of

contract does not amount to an offence punishable under Sections 420 and 406 of the Indian Penal Code unless fraudulent or dishonest intention is shown from the very inception of the transaction.

23. In my opinion, this is exactly what has occurred in the present case. From the very beginning of the transaction, the applicant-developer had the intention to cheat the complainant an elderly person and took advantage of the complainant and his family members, who belong to a middle-class background. Being an experienced developer, the applicant tactically entered into the 2018 agreement and subsequently executed a supplementary agreement in a manner that clearly amounts to cheating the complainant.

24. The Supreme Court in case of *Sumitha Pradeep vs. Arun Kumar C.K. and another*¹ in paragraph 12 has held as under :-

“..... In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity

1 (2022) 17 SCC 391

of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."

(Emphasis supplied)

25. A similar view has been taken by the Supreme Court in the case of *the C.B.I. vs. Anil Sharma*², in paragraph 4 which reads as under:-

"4. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring would not conduct themselves as offenders."

(Emphasis supplied)

26. Taking into consideration allegations made in the FIR, the documents on record and considering the view taken by the Supreme Court in above judgments and considering the allegations as made in the FIR and considering the documents on record which includes the supplementary agreement. I am of the view that custodial interrogation of the applicant is essential to ensure a fair and thorough investigation. Hence, no case is made out for granting anticipatory bail at this stage.

Accordingly, **the anticipatory bail application stands rejected and is**

² AIR OnLine 1997 SC 797

disposed of.

27. It is clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application, and that the trial court shall proceed further, without being influenced by the observations made in this order.

(RAJESH S. PATIL, J.)