Nikita

NIKITA KAILAS DARADE Digitally signed by NIKITA KAILAS DARADE Date: 2025.06.03 20:24:03 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1112 OF 2025

Amar Chand Sharma ... Applicant

V/s.

State of Maharashtra and Anr. ... Respondents

Mr. Eliya Ghodke a/w Mr. Nitish Kumar Verma for the Applicant.

Mr. Akash Kavade for the Intervener.

Mr. Anand Shalgaonkar, APP for the State.

API, R. A. Padwal, Mira Road Police Station, present in the Court.

CORAM : ASHWIN D. BHOBE, J.

DATED : 3RD JUNE, 2025

P.C.:

1. Heard Mr. Eliya Ghodke along with Mr. Nitish Kumar Verma for the Applicant. Mr. Anand Shalgaonkar, learned APP for the Respondent-State.

2. Mr. Eliya Ghodke states that though the complainant Mr. Dilip Mohanlal Shah, Project Manager of M/s. Strawberry Constructions Private Limited (for short "the Company") was heard before the learned Sessions Court in the ABA No.516 of 2025, by inadvertence, the said complainant remained to be added as party to the present Bail Application. In view of the same, Mr. Eliya Ghodke craves leave of this Court to add the complainant as a party Respondent No.2. Leave granted to amend the cause title and add complainant as Respondent No.2. Amendment be carried out forthwith.

3. Mr. Akash Kavade has put in appearance on behalf of the Respondent No.2/complainant.

4. This matter is placed today in view of the order passed by this Court on 02.06.2025.

5. Applicant (Accused No.1) in Crime No.104 of 2025 registered by Mira Road Police Station for the offences punishable under Sections 356(2), 352, 351(1), 338, 318(4), 318(2), 303(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short "BNS"), is before this Court seeking Anticipatory Bail under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS").

6. Case of the prosecution is that the Company had constructed building and it had executed an agreement dated 29.03.2017 of flat No.1302 with Mr. Rajendra Kumawat (for short "Accused No.2"). Though, Accused No.2 had paid sum amount as consideration of the said flat, however the balance consideration was not paid by the said Accused No.2 despite several demands to that effect, resulting in cancellation of the said agreement. The Applicant who is a property agent, in connivance with Accused No.2 executed an agreement dated 29.01.2021, by misleading the sub-Registrar. The Applicant in connivance with his helper, the other accused in the above said crime, obtained keys of the said flat from the site supervisor by name Kantilal and forcibly/illegally entered into the said flat. The Applicant stole the costly plumbing articles stored in the said flat by the complainant. Applicant thereafter executed a rent agreement with the third party. Applicant by misleading the electricity department has converted the electricity meter in his name. Hence, the complaint by the Respondent No.2.

7. Criminal Bail Application No.516 of 2025 filed by the Applicant was rejected by the learned Additional Sessions Judge Thane, by order dated 16.04.2025.

8. Mr. Eliya Ghodke, learned Advocate for the Applicant submits that the on 29.03.2017 Accused No.2 executed an agreement for sale of the said flat with the Respondent No.2. He submits that in 29.01.2021, the Applicant executed an agreement for purchase of the said flat with Accused No.2. He further submits that upon execution of the said agreement dated 29.01.2021, the Applicant paid an amount of Rs.31,61,230/- to Respondent No.2. He submits that upon the payment of the said amount, the Applicant handed over possession of the said flat by Accused No.2. He submits that possession of the said flat is with the Applicant, the same being legal as the Applicant has paid the full consideration amount to the Respondent No.2. He submits that no offence is made out against the Applicant. He therefore, prays that the Application be granted.

9. Mr. Anand Shalgaonkar, learned APP for the State submits that a subject matter of a crime is a well planned conspiracy by the Applicant and the Accused No.2. He submits that the agreement dated 29.01.2021, on the basis of which the Applicant claims to have a right, is the agreement, which is executed by the Applicant with the Accused No.2. He submits that Accused No.2 neither had any right nor any interest in the said flat. He submits that the fraud committed by the Applicant and the Accused No.2 is evident from the agreement dated 29.01.2021, to which the Company is neither a party nor a signatory. He submits that the agreement dated 29.03.2017, that was executed by the Company and the Accused No.2 does not contained any clause of the Company having handed over to possession to the Accused No.2, consequently, it is not known as to on what basis the Applicant can claim to be in possession of the said flat from Accused No.2. He submits that the statement of the site supervisor recorded during the course of investigation reveals that the Applicant and the accused have mislead the site supervisor and taken the keys of the said flat and thereafter have forcibly and illegally entered in the said flat. He points out at page 278 i.e. recital in the agreement for sale dated 29.01.2021which makes a reference to the Accused No.2 having paid the entire consideration of the said flat to the Company. He submits that the Applicant and Accused have created false documents for committing the offence. He submits that the Applicant after having committed the above said offence has gone further and entered into a Leave and License Agreement in respect of the said flat. He submits that the Applicant along with the other co-accused named in the crime are absconding. He submits that the investigation is at a preliminary stage. For all the said reasons, he states that the crime is of a serious nature and as such is required to be thoroughly investigated for which custodial interrogation of the Application is required.

10. Mr. Akash Kavade, learned Advocate for the Respondent No.2 does not have any privity of contract with the Applicant in the context of the said flat. He submits that though initially an agreement dated 29.03.2017 was executed with the Accused No.2, the same was cancelled, as such there was no occasion for the Accused No.2 to enter into any agreement with the Applicant. He submits that after the creation of a false documents, i.e. the agreement dated 29.01.2021, an attempt was made by the Applicant to transfer the amount of Rs.31,61,230/- in the account of the Company. He states that as there was no privity between the Applicant and the Respondent No.2, the said amount of Rs.31,61,230/- was immediately reversed/reverted to the account of the Applicant. He states that costly plumbing fixtures and other material belonging to the Company was in the said flat at the time of the Applicant and Accused No.2 trespassed in the said flat.

11. In rejoinder, Mr. Eliya Ghodke, submits that though the Company is not a party to the agreement dated 29.01.2021, the Accused No.2 is a party to the agreement dated 29.03.2017 executed with the Company. He further states that the Accused No.2 has handed over possession of the said flat on the basis of the said agreement dated 29.03.2017, however he was unable to point out any clause or a document to indicate the claim of Accused No.2 of being in possession.

12. I have given due consideration to the arguments advanced by the learned Advocates and gone through the records with the able assistance of the learned Advocates.

13. From the record of the prosecution case *modus operandi* of the Applicant and the Accused No.2 apparently was to create false documents and take possession of a valuable property that is the said flat of the Company. Applicant is involved in creation of a false document i.e. the agreement dated 29.01.2021. The said flat is the property of the Company. The Company is not a party to the Agreement dated 29.01.2021 executed by the Applicant. The Applicant has executed the agreement dated 29.01.2021 with the Accused No.2, who had no right or interest in the said agreement. Surprisingly, the Applicant had transferred an amount of Rs.31,61,230/- to the Company account which was returned back to the Applicant by the Company.

14. Upon Mr. Eliya Ghodke being called upon to show an averment in the Application for bail, to the extent of the amount of Rs.31,61,230/- being returned to the Applicant by the Company, he states that there is no such averment in the application, however on instructions from the Applicant he states that the amount of Rs.31,61,230/- was received by the Applicant from the Company.

15. Records of the investigation produced before me prima facie indicates the role of the Applicant and Accused No.2 in the present crime and they being instrumental in creating false documents and their active involvement in committing the crime as alleged against them. Applicant as well as the other accused are absconding. Investigation is at the preliminary stage.

16. Given the gravity of the allegations and the material indicating the role of the Applicant, his custodial interrogation is necessary. The Investigation Officer is required to be given a free hand to investigate the present crime and to unearth the truth.

17. In view of the above, the Applicant is not entitled to grant of pre-arrest bail.

18. Bail Application No.1112 of 2025 stands dismissed.

(ASHWIN D. BHOBE, J.)