

Shabnoor

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

ANTICIPATORY BAIL APPLICATION NO.2727 OF 2025

Subhan Mohd. Hussain Patel

... Applicant

V/s.

The State of Maharashtra

... Respondent

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Mr. Mohammad Shine K., for the Applicant.

Ms. Rajashree V. Newton, APP, APP for the State-Respondent.

Ms. Mukta Y. Gadekar i/b Sakshi S. Mane for the complainant.

Ms. Shital Patil, PI, Kharghar Police Station, Navi Mumbai is present.

CORAM : AMIT BORKAR, J.**DATED : OCTOBER 3, 2025****P.C.:**

1. The present application is filed by the applicant seeking relief of pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The applicant apprehends arrest in connection with Crime Register No.140 of 2025 registered at Kharghar Police Station, Navi Mumbai for offences punishable under Sections 406 and 420 of the Indian Penal Code, 1860 (IPC).

2. The case of the prosecution, in brief, is that in August 2010 the original complainant booked two flats, bearing Nos.102 and 202, in a building under construction by the applicant, named Ayesha Apartments, House No.1150(B), Sector 10, Owe Village, Taluka Panvel, District Raigad. The consideration agreed was

Rs.12,50,000 per flat, total Rs.24,00,000. It is alleged that the complainant made part payments as follows: Rs.3,90,000 by cheque dated 26 July 2011, Rs.4,80,000 by cheque dated 15 March 2013, and Rs.5,50,000 in cash. Thus, a total of Rs.14,20,000 was paid. It is further alleged that possession of Flat No.102 was delivered but possession of Flat No.202 was not given, nor were registered agreements executed for either flat.

3. On further follow-up, a notarized Memorandum of Understanding and a promissory note were executed in relation to Flat No.202. It is also alleged that Flat No.202 was rented out by the applicant since 2015. Additional payments were then made by the complainant towards Flat No.102 at the instance of the applicant, namely Rs.5,00,000 by cheque dated 22 August 2014, Rs.3,70,000 in cash on 5 September 2014, and Rs.2,10,000 in cash in August 2015. Thus, the total payment made by the complainant comes to Rs.25,00,000. Despite this, possession of Flat No.202 was not handed over, and registered agreements in respect of both flats were not executed. In these circumstances, the complainant filed Special Civil Suit No.211 of 2023 before the Civil Judge, Panvel on 27 June 2023, and thereafter lodged the present criminal complaint.

4. The learned Advocate for the applicant invited attention to the First Information Report and submitted that the transaction in question relates back to 2010 and concerns delivery of possession and execution of sale deeds. The complaint has been filed belatedly in 2025, subsequent to the institution of a civil suit in 2023, which clearly indicates that the matter is of civil nature. It is

urged that the allegations pertain to civil contractual obligations and that custodial interrogation of the applicant is not warranted. On these grounds, the applicant prays for grant of pre-arrest bail.

5. On the other hand, the learned APP and the learned Advocate appearing for the informant opposed the application. It is submitted that refusal to deliver possession despite receipt of full payment, and the act of creating third-party rights in respect of Flat No.202, clearly reveal dishonest intention from the very inception. Therefore, according to them, the application for pre-arrest bail deserves rejection.

6. I have considered the rival submissions and perused the material on record. The admitted position is that the transaction dates back to the year 2010. The complainant has already approached the Civil Court by filing Special Civil Suit No.211 of 2023 seeking relief in respect of the very same subject matter. The civil proceedings are pending. The complaint in question came to be filed in 2025, almost after fifteen years of the original transaction. The delay in initiation of criminal proceedings is a significant factor which cannot be ignored.

7. The allegations essentially pertain to non-execution of registered agreements and failure to deliver possession of Flat No.202. These are matters falling within the domain of contractual obligations. The execution of a notarized Memorandum of Understanding and a promissory note also indicates that the parties themselves treated the dispute as civil in nature. The complainant has chosen to institute a civil suit for specific relief,

which demonstrates that the primary grievance is contractual.

8. The offence under Section 406 IPC requires proof of entrustment and dishonest misappropriation. The offence under Section 420 IPC requires proof of dishonest intention at the inception of the transaction. At this stage, there is no material to prima facie establish that the applicant, at the very inception, harboured any fraudulent intent. On the contrary, part possession has been delivered and payments have been accepted over a period of time. The dispute, on the face of it, appears to be a fallout of non-performance of contractual promises.

9. It is well settled that when the allegations give rise to a purely civil dispute with criminal colour given to it, custodial interrogation of the accused is not justified. The matter can be investigated without subjecting the applicant to custodial arrest. No circumstance has been shown that the applicant is likely to abscond or tamper with evidence if protected by pre-arrest bail.

10. Considering the nature of allegations, the long lapse of time since the transaction, the pendency of civil proceedings, and absence of material to establish fraudulent intention at inception, I am of the opinion that custodial interrogation of the applicant is not necessary. The applicant deserves to be granted protection by way of pre-arrest bail, subject to suitable conditions.

11. Hence, following order:

- a) In the event of arrest in connection with Crime Register No.140 of 2025 registered with Kharghar police station, Navi Mumbai for offences punishable under Sections 406 and 420

of IPC, the applicant be released on bail on furnishing P.R. bond of Rs.25,000/-, along with one or two sureties in the like amount.

b) The applicant shall remain present before the concerned police station on 6th, 8th, and 10th October 2025 between 11:00 am to 2:00 pm and thereafter, as and when called by the investigating officer.

c) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

d) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

e) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the Court concerned, and shall not change the residence till the final disposal of the case.

12. Accordingly, the Anticipatory Bail Application is disposed of in above terms.

(AMIT BORKAR, J.)