

MHCC050068012022



**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

ANTICIPATORY BAIL APPLICATION NO.2037 OF 2022

IN

C.R.NO.1151 OF 2022

1. Hemant Mohan Agarwal
Age- 52 years, Occ.- Business,
Residing at B-1202, Bhavani Complex,
Bhavani Shankar Road,
Dadar (E), Mumbai – 400 028

 2. Neha Hemant Agarwal
Age – 48 years, Occ.-Business,
Residing at B-1202, Bhavani Complex,
Bhavani Shankar Road,
Dadar (E), Mumbai – 400 028
-Applicants

V/s.

The State of Maharashtra
Through MHB Colony Police Station. Respondents

Adv. Mr. Shubham Mhatre for applicant.
APP. Mr. Mahajan for State/respondent.

**CORAM : H.H. Additional Sessions Judge,
Shri S. N. Salve.**

Court Room No.15.

Date : 2nd January, 2023

ORAL ORDER

This is an application Under Section 438 of the Code of Criminal Procedure for grant of bail in anticipation of arrest in Crime No.1151/2022 registered with MHB Colony Police Station for the

offences punishable Under Section 420 and 406 r/w 34 of the Indian Penal Code (for short I.P.C.).

2. Applicants-accused contended that they are apprehending their arrest in connection with the aforesaid crime registered at the instance of the informant alleging therein that she along with the family friend booked the flat in their upcoming project. Booking amount of the said flat to the tune of Rs.2,50,000/- in the name of Siddhitech Developers was paid on 22.11.2010. Thereafter the applicants called the informant and the friend to deposit the amount of Rs.50,00,000/-. However, informant agreed to pay amount of Rs.22,67,500/- only. It is further alleged that an amount of Rs.60,23,283/- was paid to the Siddhitech Developers and despite the payment made to the applicants-accused, they failed to handover possession of flat No.3202 and one parking of Siddhi Samarpan C. H. S., Dahisar, Mumbai nor they were ready to repay the said amount. It is further alleged that after two years it was informed to the informant that the said flat was sold to one Divishkumar Gandhi. Thereafter, the informant lodged the complaint with the MHB Colony Police station for cheating. However, the applicants-accused assured to handover the flat No.3301 instead of flat No.3202 and accordingly entered into Memorandum of Understanding dated 24.08.2021. It is further alleged in the FIR that till date the applicants-accused have neither handed over the flat nor paid the amount. According to the applicants-accused, the present dispute is of civil nature. They are even ready to deposit the amount as per the schedule of the repayment given in the affidavit. They further contended that they are permanent residents of Mumbai. Their custodial interrogation is

unwarranted. Lastly, they prayed that they be enlarged on bail.

3. The prosecution has strongly opposed the application by filing say. It is submitted by the prosecution that in the year 2010 the accused persons accepted the amount from the informant and family friend, had agreed to handover the possession of the flat, however they sold the flat to the third person and thereby committed the offence punishable under Sec.406 and 420 of the I. P. C. It is submitted by the prosecution that investigation of the crime is on. If the applicants-accused are enlarged on bail, they may threaten or tamper the prosecution witnesses and evidence. Lastly, they prayed that bail application be rejected.

4. I have heard the Ld. advocate for the applicants – accused and Ld. APP for the State. It is argued by the Ld. Advocate for the applicants that the present dispute is of civil nature, therefore offences alleged against the applicants-accused are not attracted. It is further argued that there is no need of custodial interrogation. The accused also undertake to render their full co-operation for investigation. Lastly, he prayed that applicants-accused be enlarged on bail.

5. On the other hand, the Ld. APP for the State argued that the applicants-accused sold the flat which was allotted to the informant by issuing allotment letter which shows their intention to deceive the informant and family friend. It is further submitted that long back in the year 2010 the applicants-accused have accepted huge amount of Rs.1,17,46,572/- which is to be recovered from the

applicants-accused. Lastly, he prayed that if the applicants-accused are enlarged on bail, they may tamper the prosecution evidence and possibility of threatening the informant cannot be ruled out. Lastly, he prayed that bail application be rejected.

6. Having heard the Ld. Advocate for the accused and Ld. APP for the State, I have gone through the bail application, say filed by the prosecution and affidavit of schedule of payment tendered by the applicants-accused. Indisputedly, the applicants-accused are apprehending their arrest in connection with offence under Sec.420 and 406 of the I. P. C. The allegations against the applicants-accused are that in the year 2010 by paying amount of Rs.1,17,46,572/- the informant and family friend had booked the flat with the applicants-accused in their upcoming project and also issued allotment letter in respect of flat No.3202 and one parking. However, the applicants-accused sold the said flat to third person and even after entering into Memorandum of Understanding, the applicants-accused failed to provide flat No.3301 instead of 3202 to the informant and family friend. From the affidavit of schedule of repayment it is not in dispute that the applicants-accused have accepted huge amount of Rs.1,17,46,572/-from the informant against flat No.3202. It is the case of the prosecution that the applicants-accused have sold the flat to third person. The said fact has not been controverted by the applicants-accused. It is not the case of the applicants-accused that said flat is vacant and is to be handed over to the informant. Admittedly, the applicants-accused have sold the said flat and after that they entered into Memorandum of Understanding with the informant. This shows the intention of the applicants-accused to deceive the informant. It appears that the

investigation of the crime is on.

7. After having considered the nature of the allegations made against the applicants-accused, modus operandi of the applicants-accused, the amount involved in the crime, the fact that investigation is on and interrogation of the accused is required, I am of the opinion that this is not a fit case to exercise the power under Sec.438 of the Code of Criminal Procedure. Therefore, Applicants-accused are not entitled for bail.

In the result, the following order is made :-

ORDER

1. Anticipatory Bail Application No.2037 of 2022 is rejected.
2. Accordingly, Anticipatory Bail Application No.2037 of 2022 stands disposed of.

Dt.02/01/2023

(S. N. SALVE)
Addl. Sessions Judge,
City Civil & Sessions Court,
Borivali Division, Dindoshi, Mumbai

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE 03.01.2023
AND TIME : 11.15 a.m.

Mrs. T. S. Bhogte
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri S. N. Salve (Court Room No.15)
Date of Pronouncement of Judgment/Order	02.01.2023
Judgment/Order signed by P.O. on	03.01.2023
Judgment/Order uploaded on	03.01.2023