

MHCC050064272022



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

ANTICIPATORY BAIL APPLICATION NO.1923 OF 2022
(CNR NO.MHCC05-006427-2022)

Prakash Dinkar Yadav,

Age: 60 years; Occ: Agent,
Office at B/3, Suyog Building,
Plot No.09, Gorai No.2, Borivali (W),
Mumbai - 400 091.
Permanent address at 271/A-1,
Sai-Sadan CHS, Opp. Shivneri,
Borivali (W), Mumbai - 400 092.

...Applicant/Accused

V/s.

State of Maharashtra
(at the instance of Kandivali
police station).

...Respondents

Ld. Advocate Santosh Pawar for the Applicant/ Accused.
Ld.APP Shri Panchpohar for the State.

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CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE

SHRI N.L.KALE

(C.R.NO.14)

DATE : 9th January, 2023.

ORDER

This is an application u/s.438 of the Criminal Procedure Code 1973 filed by the applicant for seeking Anticipatory Bail in C.R.No.131/2022, registered at Kandivali police station, for the offences punishable under sections 420, 406, 465, 468, 471 r/w.34 of the Indian Penal Code, 1860.

Brief facts which gives rise to file the present application are as under: -

2. It is alleged that, the complainant is residing at the given address alongwith his family members. He is serving as Sr. Inspector, in MCGM.

3. In the year 2016 to 2018, he was residing at Badlapur and his office was situated at Kandivali (W). Hence, for a purpose of his service, he was required to travel for the said long distance. Therefore, the complainant was searching a house / place of residence in Kandivali (W) area. A person namely Shivaji Ghag was working in his office introduced the complainant with Mayuresh Kadam and Prakash Yadav (present applicant), to solve a problem of his residence near the office. He told to complainant that, Mayuresh Kadam and the applicants are partners and they are dealing in business of selling and purchase of flats. Then, they

shown one flat to the complainant, which is owned by Atmaram Zore situated at MHADA building, flat No.2/204, Charkop, Sector - 8, Kandivali (W). He told to complainant that, price of the said flat is Rs.53,25,000/-. Complainant accepted the said proposal. Accordingly, an agreement dtd.15/03/2018, came to be executed between the complainant and Atmaram Zore to purchase said flat. The said flat owner obtained Rs.1,52,000/- in cash from the complainant for the said transaction.

4. Thereafter, during the period of 28/03/2018 to 10/10/2018, complainant and his wife and complainant's brother delivered an amount of Rs.40,82,000/-, by cheque to purchase the said flat. Then, after 8 days, when complainant inquired in his bank about those cheques, he came to know that, an amount of those cheques is credited in the account of Mayuresh Kadam and his wife Jayshree Kadam. Hence, the complainant inquired about the same to Mayuresh Kadam and he disclosed that, flat owner Shri Zore is out of station and after his returning the said amount will be given to him. The complainant got suspect and hence, he asked Mayuresh to return his above amount to him. Then Mayuresh Kadam told to complainant that, the above transaction of flat is cancelled and he assured the complainant that, he will search a new flat / house for him.

5. Thereafter, Mayuresh told to complainant that, his friend Pankaj Zha and he is having two flats in new scheme of MHADA at Sector - 8, Charkop, Kandivali (W). He assured the complainant that, he will give a one flat in that scheme to the complainant and also assured that, the said construction will be completed in two months. Thereafter also, the

complainant demanded his amount to him. At that time, Mayuresh told to complainant that, he will give a tenanted flat to the complainant to fulfill his need.

6. It is alleged further that, from June 2018 to April 2019, the complainant residing at tenanted premises as per say of Mayuresh. After expiry of a period of a tenanted premises, the owner of the said tenanted premises asked the complainant to vacate the same. Therefore, from May 2019 to 31/03/2020, complainant shifted in another tenanted premises. He resided there till September 2021.

7. It is further alleged that, on 11/11/2018, an agreement executed in between the complainant and Jairam Dhangekar to purchase flat of Shri Dhangekar, through Pankaj Zha. Rs.10,00,000/- given to Shri Dhangekar by Mayuresh and applicant, from the amount obtained by them from the complainant.

8. The complainant came to know from other persons that, Mayuresh Kadam, his wife and the applicant are cheater and they have committed cheating with many persons in transactions of immovable property / flats. The complainant got knowledge that, the above persons committed cheating with him also and obtained huge amount from him and not given any flat to him.

9. Thereafter, he filed a report at Kandivali police station against the applicant, Mayuresh Kadam, his wife for aforesaid cheating. On the basis of his said report police registered the present crime.

10. Now, by filing this application applicant Prakash Yadav seeking pre-arrest bail for him. According to the applicant, he has not committed any cheating with the complainant, as alleged. He alleged further that, no any amount in the transaction of the said flat is given to him by the complainant or Mayuresh Kadam etc. He alleged further that, he is senior citizen and falsely implicated in this crime.

11. This application is strongly resisted by prosecution by filing reply vide Exh.2. According to prosecution, there are specific allegations against the applicant about alleged cheating with the complainant. According to I.O., custodial interrogation of the applicant is necessary.

12. Ld. advocate Shri Pawar appearing for the applicant relied upon the contents in a FIR and argued that, the amount in this transaction is deposited directly in the account of Mayuresh Kadam and his wife. According to him, the applicant is no concerned with the said amount as well as any agreement, document in respect of the flat of the complainant. He submitted further that, applicant is ready to co-operate with investigation machinery and his custodial interrogation is not necessary for any purpose.

13. On the contrary Ld. APP Shri Panchpohar submitted that, investigation is in progress. Other co-accused are yet not arrested. He submitted further that, in a complaint there are specific and clear allegations that, this applicant is also having a common intention with other accused to cheat the complainant. He prays to reject the prayer.

14. No doubt, the applicant herein is more than 60 years old. But, mere this fact is not sufficient to allow the prayer and to draw an inference that, he is not committed the alleged cheating. On perusal of the contents in a complaint, it appears that, the complainant has made specific and clear allegations against the applicant that, he also, committed a cheating with him. It is a fact that, there is nothing to show that, the complainant had delivered any amount to the applicant. But, the contents in FIR *prima facie* reflects that, this applicant has induced the complainant to hand over a huge amount to co-accused Mayuresh Kadam and his wife to purchase a flat. It is also a fact that, at present there is nothing to show that, co-accused Mayuresh transferred or delivered any amount to the applicant. But, still the matter is under investigation. From the report of I.O., it appears that, he wants custodial interrogation of the applicant for detailed and further investigation. The complainant has stated that, this applicant induced to him to purchase the flat as per say of other co-accused.

15. Thus, inducement to the complainant on a part of the present applicant is *prima facie* established from the contents in a complaint. Considering the stage of investigation. Specific allegations made in a complaint against the applicant, I am of the view that, further detailed investigation can not be carried out without custodial interrogation of the applicant. In a result, the applicant has not made out a case to grant pre-arrest bail to him. Hence, I proceeded to pass following order:

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ORDER

Anticipatory Bail Application No.1923 of 2022 is rejected and disposed off accordingly.

(Order pronounced in open Court)

Date: 09.01.2023

**(N.L.KALE)
THE ADDL.SESIONS JUDGE
CITY CIVIL & SESSIONS COURT,
BORIVALI DIVISION, DINDOSHI**

Order direct dictated on computer on : 07.01.2023
Checked, corrected & Signed on : 09.01.2023

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

UPLOAD DATE

Ms.Madhura M. Palav

AND TIME : 09/01/2023 at 05.15 P.M.

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri N. L. Kale (Court Room No.14)
Date of Pronouncement of Judgment/Order	09/01/2023
Judgment/Order signed by P.O. on	09/01/2023
Judgment/Order uploaded on	09/01/2023

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