

MHCC050067802022



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

ANTICIPATORY BAIL APPLICATION NO.2031 OF 2022
(CNR NO.MHCC05-006780-2022)

1. **Mr.Vipul Himmatlal Shah,**
Age: 62 years; Occ: Business,

2. **Mr.Murari Vipul Shah,**
Age: 40 years; Occ: Business,
Both are residing at 603, Riddhi
Palace, Grand Villa Hotel, Off.
S.V.Road, Borivali (E),
Mumbai - 400 092.

...Applicants/Accused

V/s.

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

...Respondents

Ld. Advocate Yogesh Joshi for the Applicants/ Accused.
Ld.APP Smt.Purnima Chauhan for the State.
Ld. Advocate Smt.Aishwarya K. Lata for the complainant.

::2::

ABA.2031/2022

CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE

SHRI N.L.KALE

(C.R.NO.14)

DATE : 28th December, 2022.

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.1565/2022, registered at Borivali police station, for the offences punishable under sections 406 & 420 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 applicants are the Directors of M/s.Surya Landmark Developers Pvt. Ltd. They are dealing in construction business.

3. It is further alleged that, the relations in between the complainant Manoj Shah and the applicants were good. In the year 2014, Applicant Vipul Shah informed the complainant that, they are starting construction of new building at Borivali (W). He told the complainant that, if, complainant invested an amount in the said project, then, he will be profited or get flat in that project. The applicant Vipul gave assurance to that effect to the complainant. Therefore, the complainant, was ready to hand over an amount to the applicant No.1. Then, from January 2014 to September 2017, the complainant and his relatives Ratanshi Satara, Ramji Satara, Kanchan Satara, Mahendra Gala etc. handed over an amount of Rs.2,24,00,000/- to the complainant to invest in the alleged project of the

applicant and to get flat in "Gokul Dream" project.

4. Thereafter, till year 2017, the applicants given an interest to the complainant and his above relatives for the aforesaid amount obtained by them. Thereafter, the applicants failed to give an interest as well as flat to the complainant and witnesses, as agreed. It is specifically alleged that, the applicants had given an allotment letter dtd.01/09/2017 to the complainant and witnesses, in respect of a flat in the said project. They also assured that, they will deliver a possession of the said flat to them within 6 months. The applicants also, gave an allotment letter of car parking area to the complainant and witnesses.

5. Thereafter also, the applicants never handed over a possession of the agreed flat or an amount obtained by them. When, complainant made an inquiry about Gokul Dream project of the applicants, he came to know that, Hon'ble High court terminated an appointment of the applicants from the said project. According to the complainant, the applicants deliberately and intentionally suppressed this fact from them, only to grab the amount and to cheat the complainant and his relatives.

6. Thus, according to complainant the applicants, obtained very huge amount from him and his relatives for a flat in Gokul Dream project and failed to comply their promise / assurance. According to complainant, the applicants committed criminal breach of trust and cheating with them. Hence, complainant lodged a report against the applicants for alleged cheating etc. On the basis of his said report, Borivali

police station registered this crime and started investigation.

7. By filing this application both the applicants claiming pre-arrest bail to them. They alleged that, they have not committed any cheating or criminal breach of trust as alleged in a compliant. According to the applicants, a transaction in between them and the complainant is purely civil in nature and false crime is registered against them. They alleged further that, as per the contents in a complaint, ingredients of cheating as well as criminal breach of trust *prima facie* not attracted. They are ready to abide by the condition imposed upon them.

8. This application is strongly resisted by prosecution by filing reply vide Exh.6. According to the prosecution, allegations made by complainant against the applicants / accused are serious one. According to the prosecution, custodial interrogation of the applicants is necessary for the purpose of investigation. IO. contended that, huge amount is involved in the offence and for the purpose of detail investigation custodial interrogation of the applicants is necessary. According to the prosecution, similar kind of offences have been registered of the applicants in other police stations also. Prosecution prays to reject the prayers.

9. In this matter, intervenor / original complainant is appeared and resisted the prayer by filing an affidavit of objection vide Exh.5. Original complainant contended that, both the applicants intentionally and deliberately suppressed from them regarding an order of Hon'ble High court about termination of an appointment of the applicants from Gokul Dream project. He further contended that, only to grab an amount from

them, both the applicants committed cheating, fraud with them.

10. Ld. advocate Shri Yogesh Joshi appearing for the applicants submitted that, a real dispute in between the applicants and the complainant is in respect of civil nature. But, police machinery have falsely registered an offence of cheating and criminal breach of trust. According to him, the ingredients of the said offences *prima facie* not established from the contents in a complaint. He relied upon a letter of allotment dtd.01/09/2017 given by the applicants and an order of Hon'ble High court dtd.06/03/2020 by which, the applicants have been terminated from the said project. He submitted that, at the time of giving of an allotment letter dtd.01/09/2017 by the applicants, Hon'ble High court had not terminated an appointment of the applicants from the said project.

11. He submitted further that, litigation was pending before Hon'ble High court regarding the disputed project and hence, the applicants not delivered a possession of the agreed flat to the complainant and his relatives. Applicants admitted the fact of receipt of an amount of Rs.2,24,00,000/- from the complainant and the witnesses. Ld. advocate of the applicants further relied upon, allotment letter dtd.09/05/2019, given by the applicants and the consent terms filed before Hon'ble High Court. On the basis of the same, he submitted that, new developer is appointed for the said project and as per the consent terms and allotment letter dtd.09/05/2019, the complainant had accepted a flat in another project namely "Gokul Aaradhana". He relied upon photographs of the said new project. *He also relied upon an order dtd.22/06/2022 passed by*

Hon'ble High court in ABA No.1628/2022 and submitted that, though this court rejected ABA No.621/2022, in regard to C.R.No.507/2022 registered against the applicants, the Hon'ble High Court has granted anticipatory bail in that matter.

12. He submitted further that, since the inception an intention of the applicants were not to cheat the complainant and witnesses. But, due to unavoidable circumstances, the applicants could not completed the said project. He prays to allow the prayer.

13. Ld. APP Smt.Chauhan submitted that, ABA No.621/2022 filed by the applicants in respect of similar kind of offence is rejected by this court by an order dtd.18/06/2022. She submitted further that, huge amount is involved and allotment letters on which the applicants are relying are in respect of different properties. She submitted further that, new allotment letter in respect of flat in Gokul Aaradhana project is no concerned with the flat and an amount in this offence. According to her, for detail investigation, custodial interrogation of both the applicants is necessary.

14. Ld. advocate appearing for original complainant submitted that, new allotment letter on which the applicants are relying is in respect of different flat and property. According to her, the complainant, has separately invested an amount for a flat in Gokul Aaradhana project. She supported the arguments advanced by Ld. APP and prays to reject the prayers.

15. Ld. advocate of the applicant relied upon the findings recorded by *Hon'ble Bombay High court in the matter of Shrenik Jain V/s. The State of Maharashtra, (2014 SCC Online BOM.549)*. Those guidelines are in regard to interim protection. Hence, to deal with final prayer in the application, when the matter is at investigation stage, those guidelines are not applicable in favour of the present applicants.

16. From the say of I.O., it appears that, other two crimes of similar nature are registered against the applicants in other police station. No doubt, by passing an order dtd.22/06/2022 in ABA No.1628/2022, Hon'ble High Court granted anticipatory bail to the applicants. But, on perusal of the contents in para 5 of the said order, it appears that, the said protection is granted to the applicants as an interim relief only. Thus, Hon'ble High Court has not confirmed or granted final anticipatory bail to the applicants in C.R.No.507/2022 registered at Samta Nagar police station. Therefore, an order passed by Hon'ble High court in ABA No.1628/2022 is not useful or helpful in favour of the applicants.

17. Thus, *prima facie* it appears that, similar kind of offences are registered against the applicants in other police stations also and in one of the crime this court has rejected their prayer regarding pre-arrest bail. This can be treated as an incriminating evidence / ground against the applicants.

18. No doubt, according to the applicants, as per the consent terms filed before Hon'ble High Court and new allotment letter given to the complainant, the complainant was agreed to get flat in other scheme

i.e. Gokul Aaradhana project. But, original complainant and prosecution not accepted these contentions of the applicants. As per submissions made by Ld. advocate of original complainant, an amount invested by the complainant in Gokul Aaradhana scheme is separate transaction and the same is not in respect of the transaction in question. Hence, though applicants are relying upon, consent terms and new allotment letter of Gokul Aaradhana project, at present, it can not be said that, the complainant had accepted a flat in said new project, in lieu of a flat in Gokul Dream Project itself. Actually, this aspect is to be investigated thoroughly.

19. From the submissions made on behalf of the applicants and as per the documents on record *prima facie* it appears that, both the applicants have obtained a huge amount from the complainant and witnesses in the year 2017 by giving an assurance to give flat to them in Gokul Dream Project itself. But, both the applicants failed to do so. The applicants themselves accepting that, the amount paid by them to the complainant is an interest regarding the amount accepted for said flat in Gokul Dream Project. At present, the contents in a complaint, *prima facie* established and reflects that, the applicants not fulfilled their promise given by them to the complainant and his relatives.

20. Moreover, on perusal of allotment letter dtd.09/05/2019 given by the applicants to complainant regarding a flat in Gokul Aaradhana project, it revealed that, there is no mentioned therein that, the said flat is given to the complainant by the applicants in lieu of agreed flat in Gokul Dream project itself. Hence, at present, allotment letter

dtd.09/05/2019 on which the applicants relying can not be used or treated as reliable evidence in their favour.

21. In consent terms, in Commercial Suit No.182/2021 there is no specific mentioned that, the complainant and witnesses in this crime accepted a flat from the applicants in Gokul Aaradhana project in lieu of flat in Gokul Dream Project. Gokul Aaradhana project is in respect of CTS No.281 and Gokul Dream Project is in respect of different property. Considering this aspect, at present, the contentions raised by the applicants can not be accepted as it is. Therefore, an objection raised by complainant that, allotment letter dtd.09/05/2019 is not in respect of Gokul Dream Project is found to be trustworthy and reliable.

22. Considering all the above aspects and specific allegations made in a complaint, I am of the view that, *prima facie* ingredients of cheating and criminal breach of trust made out against the applicants, from the contents in a complaint. The matter is under investigation. It is a fact that, to recover an amount involved in the crime, police custody is not necessary. But, as discussed above, there are many other aspects which needs detail investigation in this matter. Considering nature of the offences and specific allegations against the applicants, their custodial interrogation by I.O. is quire necessary.

23. For aforesaid discussion, I am of the view that, the applicants have not made out a case to use discretion in their favour. Hence, this application deserves to be rejected. Hence, I proceeded to pass following order:

::10::

ABA.2031/2022

ORDER

Anticipatory Bail Application No.2031 of 2022 is rejected and disposed off accordingly.

(Order pronounced in open Court)

Date: 28.12.2022

(N.L.KALE)

**THE ADDL.SESIONS JUDGE
CITY CIVIL & SESSIONS COURT,
BORIVALI DIVISION, DINDOSHI**

Order dictated on : 28.12.2022
Order typed on : 28.12.2022
Checked, corrected & Signed on : 28.12.2022

::11::

ABA.2031/2022

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

UPLOAD DATE

AND TIME : 28/12/2022 at 02.40 P.M.

Ms. S.S.Chudji

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	28/12/2022
Judgment/Order signed by P.O. on	28/12/2022
Judgment/Order uploaded on	28/12/2022

::12::

ABA.2031/2022