

MHCC020169302022



IN THE COURT OF SESSIONS FOR GREATER BOMBAY
(Presiding over by K. P. Shrikhande)

ANTICIPATORY BAIL APPLICATION No.2762 OF 2022

Applicant : **Mr. Dipen Velji Shah**
Age :- 45 Years,
Shubhada towers,
Opp. Traffic Headquarters, Pochkanwala
Road, Worli, Mumbai- 400 030.

- Versus -

Respondent: **STATE OF MAHARASHTRA**
vide its C.R. No.63 of 2021 registered at
Santacruz police station, Mumbai.

Shri Ankit Pandey, advocate for the applicant.
Shri Mahesh Thaker, advocate for intervener.
Shri Ajit Chavan, APP for respondent/State.

ORAL ORDER
(Dated 7th January, 2023)

This is an application moved by applicant-accused Dipen Velji Shah under section 438 of Cr.P.C. for grant of anticipatory bail. According to him, Santacruz police station has registered a crime No.63/2021 on 18/02/2021 for the offence punishable under sections 409 and 420 r/w 34 of the IPC on the report of Shrikant Digambar Kulkarni. According to him, he committed no offence; however, the complainant lodged a false report and gave the colour as criminal to the civil dispute and therefore, he has an apprehension of his arrest in the said crime and as such, he filed the present application.

2] As per the case of the prosecution, the applicant is one of the partners of 'JJ Associates' company and the office of the applicant is situated in the area of Santacruz (West), Mumbai. There was a meeting of the complainant with the applicant and his partners and, directors of 'Concrete Lifestyle and Infrastructure', and it was projected him that there is a clear title on the land, having plot No.72/A, Shivaji Park scheme Mahim, CS No.1782/A, and they wanted to construct the building on the said land and they are having necessary permissions from the concerned authorities, and the construction would be started within six months and believing upon their representation, the complainant booked 4 flats for the amount of Rs.6 Crores and it was agreed to give the advance amount of Rs.2 Crore and 52 Lakhs, and accordingly from time to time, the said amount has been given to the JJ Associates Company in the year 2007-08. According to the prosecution, amount of Rs.71 Lakhs was given time to time by the cheques, and amount of Rs.1 Crore and 81 Lakhs was given in cash.

3] According to the prosecution, the applicant and his company didn't start the project within the period as agreed and pulled on the matter time to time by putting forth the excuses. To earn the confidence of the complainant, the applicant would show some documents, but those documents were not complete for the purpose of starting the project. When the complainant found that the project was not started though considerable period was elapsed, the complainant suspected something fishy and therefore, he asked Velji, father of the applicant to give him the security for the amount he had given, and then Velji issued

two cheques, one cheque of Rs.71 Lakhs and another cheque of Rs.1 Crore and 81 Lakhs, both dated 31/12/2009 and Velji had also issued the receipts in respect of receiving the cash amount and the cheque. Thereafter also the construction of the project was not started and failed to deliver the possession of the flats and even failed to enter into the agreement and thus the applicant, his partners and JJ Associates Company had misappropriated the amount which was given for the purpose of purchasing the flats and therefore, feeling deceived, the complainant had lodged a report on 13/02/2016 at Santacruz police station, Mumbai, but no action was taken by the police on the said report.

4] According to the prosecution, the said project i.e. building was to be constructed by the company 'Concrete Lifestyle and Infrastructure'. Nilesh Dalal and Anuj Desai are the directors of this company. The applicant and his partners were saying that the amount has been given to Concrete Lifestyle and Infrastructure Company, by transferring in its bank account, but there is a dispute between his Company and Concrete Lifestyle and Infrastructure Company, and the both the companies were throwing the responsibility and blame on each others. Thus, as per the case of the prosecution, despite of receiving the amount of Rs.2 Crore and 52 Lakhs from the complainant, the applicant and his partners and his JJ Associates Company have cheated the complainant and also misappropriated the amount handed over to them.

5] The learned APP submits that certain documents in

respect of the transaction and the project are necessary to be seized for the purpose of investigation. According to him, despite of serving the notice under section 41 (A) (1) of Cr.P.C., the applicant failed to appear before the investigating officer and failed to co-operate in the investigation. If the anticipatory bail is granted to the applicant, the applicant would misuse his liberty and would not co-operate in the investigation and would create the hurdle in the investigation. According to the learned APP, possibility of destroying the evidence in case of granting anticipatory bail is looming large. He submits that the applicant may also create pressure on or threaten the witnesses to dissuade them from assisting in the investigation, and as such prayed for rejecting the application.

6] The counsel for the applicant submits that the dispute projected by the prosecution is purely civil in nature and there is no need of custodial interrogation, and as such prayed for granting anticipatory bail. He further submits that applicant is ready to abide by any condition and ready to co-operate in the investigation.

7] Ongoing through the application, reply filed by the prosecution, and on hearing both the parties and also the intervenor/complainant at length, it is appearing that transaction between the applicant and the complainant took place in the year 2007 and 2008. The applicant has not disputed receipt of the six cheques, total amounting to Rs.71 Lakhs from the complainant. But, the applicant has disputed receipt of the amount of Rs.1 Crore and 51 Lakhs. However, it

must be observed that undisputedly, applicant's father Velji had issued two cheques in favour of the complainant. One cheque was of Rs.71 Lakhs and another cheque was of Rs.1 Crore and 81 Lakhs. It also appears from the case of the prosecution that the applicant's father had also issued one receipt in respect of receiving the amount of Rs.71 Lakhs by cheques and another receipt for receiving Rs.1 Crore and 81 Lakhs by cash. Had the applicant's father not received the amount of Rs.1 Crore and 81 Lakhs from the complainant, his father would not have issued the cheque for the said amount in favour of the complainant towards security. Therefore, submission of the applicant that his company didn't receive the amount of Rs.1 Crore and 71 Lakhs cannot be believed upon.

8] The applicant has not disputed that his company received the part amount from the complainant towards purchasing 4 flats of worth Rs.6 Crores. When the applicant's company has received the said amount, it was his bounden duty to see that the building is constructed and the possession of the flats is delivered to the complainant, or at least amount received should have been returned to the complainant. The applicant's company has used the huge amount for years together. Though the applicant has come out with the case that amount of Rs.71 Lakhs was given to Concrete Lifestyle and Infrastructure Private Limited Company, who was supposed to construct the building, but the said Company failed to discharge its obligation and didn't construct the building within time, and the applicant himself is defrauded by Concrete Lifestyle and Infrastructure Private Limited Company and its directors.

9] It is important to note that as per the case set out by the applicant, amount of Rs.71 Lakhs was transferred to the account of Concrete Lifestyle and Infrastructure Private Limited Company which was received from the complainant, and because of failure to keep the promise by the said company, the applicant is feeling defrauded and cheated. If the applicant has the feeling of defrauding and cheating, what is wrong in assuming that the complainant has been cheated by the applicant when the applicant has received the huge amount of Rs.2 Crore and 52 Lakhs as advance amount for the purpose of purchasing the flat, but didn't deliver the possession of it and even not returned the amount that he received from the complainant.

10] It appears from the say of the prosecution that the construction of the said building has been recently completed by the Concrete Lifestyle and Infrastructure Private Limited Company. However, neither the said company nor the applicant is appearing ready to deliver the possession of the flats. Therefore, it is the clear case of cheating complainant and misappropriation of the amount as well. It cannot be said that it is purely civil dispute between the applicant and the complainant. When the transaction between the applicant and the complainant constitute the criminal offence, merely because the complainant has resorted to the civil remedy, it cannot be said that criminal prosecution is prohibited. Therefore, I find no merits in the contention of the counsel for the applicant that a false report is lodged by the complainant. Having regard to the nature of the crime and the way of committing the crime, I'm in

agreement with the submission of the learned APP and the counsel for the intervener that in-depth investigation is necessary and custodial interrogation is equally necessary for facilitating further and detail investigation. Therefore, I'm of the view that no case is made out for grant of anticipatory bail. Consequently, the application needs to be rejected. In the result, I proceed to pass the following order:-

O R D E R

The Anticipatory Bail Application No. 2762 of 2022 is rejected.



Date.07.01.2023

Date of Dictation : 07.01.2023

Date of typing : 07.01.2023

Date of signature : 07.01.2023

(K. P. Shrikhande)
Additional Sessions Judge
Gr. Mumbai, C.R.10

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
07.01.2023 at 05.55 p.m. UPLOAD DATE AND TIME	(Mr. S. V. AMBEKAR) NAME OF STENOGRAPHER

Name of the Judge	HHJ SHRI K. P. SHRIKHANDE (COURT ROOM NO.10)
Date of pronouncement of judgment/order	07.01.2023
Judgment/order signed by P.O. on	07.01.2023
Judgment/order uploaded on	07.01.2023