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ABA.1853/2022

MHCC05-006178-2022



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

**ANTICIPATORY BAIL APPLICATION NO.1853 OF 2022**  
**(CNR NO.MHCC05-006178-2022)**

**Hemant Raghunath Mali,**  
Age: 43 years; Occ: Self-Employed,  
of Mumbai Indian Inhabitant  
Residing at : Mali House, Mali  
Compound, Holly Cross Road, ,  
Veer Hanuman Nagar Road,  
L.M.Road, Navagaon, Dahisar (W),  
Mumbai - 400 068.

**...Applicant/Accused**

**V/s.**

**State of Maharashtra**  
Through M.H.B.Colony Police Station

**...Respondent**

Ld. Advocate K.R.Singh for the Applicant/ Accused.  
Ld.APP Shri P.K.Mahajan for the State.

**CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE**  
**SHRI N.L.KALE**  
**(C.R.NO.14)**

**DATE : 30<sup>th</sup> November, 2022.**

**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.1029/2022 registered at M.H.B.Colony Police station, for the offences under sections 420 & 406 of the Indian Penal Code, 1860.

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

2. Applicant is a builder by profession and alongwith his partners, he is dealing in a business of construction work. It is alleged that, in September 2018, an informant met the applicant, at his construction site at Shree Ganesh Aaradhya Apartment, Near Siddhivinayak Mandir, Near Dahisar Bus depot, Dahisar (W), Mumbai. She agreed to purchase flat No.501 of that site. The applicant told an amount of said flat as Rs.40,00,000/- to the informant. The informant agreed to pay the said amount.

3. It is further alleged that, on 11/09/2018, the informant / complainant gave Rs.2,00,000/- in cash to the applicant, for the above transaction. The applicant delivered the receipt about the same to the informant. Thereafter, again on 18/09/2018, the informant transferred Rs.10,00,000/- from her joint account to the applicant through RTGS. Then again on 21/09/2018, the informant transferred Rs.5,00,000/- from her joint account to the applicant through RTGS. From time to time, the informant has transferred an account of consideration of the said flat to the applicant. the informant has transferred total amount of Rs.40,00,000/- to the applicant to purchase the above flat as agreed between them.

4. It is further alleged that, in December 2018, MOU executed by the applicant, in respect of the above transaction, in favour of the complainant. In that MOU the applicant admitted the receipt of the aforesaid amount from the informant. It was agreed in between them that, if, the applicant fail to give the possession of the said flat to the informant within 6 months then, till handing over possession of the said flat, the applicant should pay Rs.15,500/- to the informant, as a rent. It was also agreed further that, if, within one year the applicant failed to deliver the possession of the said flat to the informant, then he should return an amount of Rs.40,00,000/- with an interest at the rate of 1% per month on amount of Rs.40,00,000/-.

5. It is further alleged that, the applicant failed to give possession of the said flat to the informant as agreed. Hence, he paid the amount of rent and interest also, till September 2021. In October 2021, the applicant denied to give possession of the said flat to the informant. He also failed to registered the agreement of said flat with the complainant as per the provisions of MOFA Act.

6. Thus, according to the complainant, the applicant has obtained huge amount from her for the flat in his construction site. But, the accused / applicant failed to deliver the flat to her. So also, a cheques given by the applicant to her, are returned unpaid. Thus, according to complainant, the applicant herein, has committed a cheating with her, without providing a fact in his scheme and by obtaining whole consideration amount from her.

7. Therefore, on the basis of the aforesaid allegations, the complainant filed a complaint application against the applicant. On the basis of the same, police registered this crime and started investigation.

8. In this matter previously ABA No.1203/2022 was filed by the applicant. But at that time, no any crime was registered against the applicant. Hence, by passing an order in that matter, the I.O. was directed to issue 48 hours notice in advance, to the applicant if a crime is registered against the applicant. Then, the I.O. issued notice dtd.17/11/2022 u/s 41 (1) (d) of Cr.P.C. to the applicant asking him to appear before him for a purpose of inquiry. Hence, the applicant is having an apprehension that, police may arrest him in a false crime.

9. According to the applicant, he has not committed any cheating or other offence as alleged. He alleged further that, whatever transaction happened in between him and Rupali Narvekar is of Civil in nature and no cheating committed by him with the informant. He is ready to abide by the conditions imposed upon him. He alleged further that, he has not committed any cheating and part of the amount of the complainant is returned to her by him. He prays to allow the prayer.

10. This application is strongly opposed by prosecution by filing reply vide Exh.02. According to the prosecution, an investigation on the basis of a complaint lodged by Smt.Rupali Narvekar is going on. Prosecution further contended that, the applicant was having dishonest intention and hence, he is not delivering a flat to the complainant though, the complainant has paid entire consideration amount. I.O. further

contended in his say that, he wants to recover important documentary evidence from the applicant and hence, his custodial interrogation is necessary.

11. Ld. Advocate for the applicant submitted that, the alleged transaction of purchase of flat in the scheme of applicant by the informant is of purely civil in nature. He submitted further that, the informant and police authorities have falsely converting the civil dispute in criminal nature and they want to implicate the applicant in as false crime. He submitted further that, as per clause in MOU executed in between the applicant and informant, their dispute should be referred to Arbitrator and not solved by police. According to him, police already issued notice U/s.41(1) of Cr. PC to the applicant and applicant is ready to co-operate in investigation process.

12. Ld. Adv. of the applicant further submitted that, the applicant has paid more than Rs.6,00,000/- (Six Lakhs) to the complainant and his intention is not to cheat the complainant. He further submitted that, there is dispute in between the complainant and her husband and hence, complainants husband informed the applicant, not to take further steps in regard to the flat in dispute. He relied upon notice issued by complainants husband, MOU etc.

13. Ld. APP Shri. Panchpohar submitted that, since the beginning and intention of the applicant was to cheat the complainant. He submitted further that, to seize/ recover documentary evidence, custodial interrogation of the applicant is necessary.

14. Ld. advocate of the applicant relied upon the findings recorded by Hon'ble Apex Court in the matter of Randheer Singh V/s State of U.P. (Cri. Appeal No.932/2021). On perusal of the said ruling, it reveals that, those findings are in respect of matter u/s 482 of Cr.P.C. i.e. inheritant powers. But this Court has not vested such powers. Hence, the findings in the above matter are not applicable to case in hand.

15. Ld. advocate of the applicant also relied upon the findings recorded by the Hon'ble Apex Court in the matter of Syeed Ibrahim V/s State of U.P. (Cri. Appeal No.295/2022). In that matter there was a dispute of a will. Those findings are in respect of an order u/s 482 of Cr. P.C. The facts in that matter are totally different than the facts of case in hand. Hence, those findings are not application to case in hand.

16. Ld. Advocate of the applicant further relied upon the findings of Apex Court in the matter of Mitesh Kumar Shah v/s State of Karnataka (Cri. Appeal NO.1285/2021). In that matter FIR filed against the appellants was challenged u/s 482 of Cr.P.C. This Court has not vested with such powers. Hence, the findings recorded in the above matter are not applicable to decide a prayer in this matter.

17. It is a fact that, previous ABA filed by applicant is disposed off by issuing directions to the I.O. But at that time, no any offence / crime was registered against the applicant. Now after making an inquiry of complaint application given by the complainant, police have registered a crime. No doubt, documents filed by the applicant shows that, the

husband of the complainant has taken an objection to deliver a possession of said flat to her. But record shows that, the applicant has obtained very huge amount from the complainant by giving assurance that, he will sale the said flat to her and deliver it's possession to her, as early as possible. Till the date, the applicant failed to do so.

18. It is a fact that, the applicant has returned some amount to the applicant. But from this conduct, it can not be said that, his intention was not of the cheating. There are specific and clear allegations in FIR that, since the inception an intention of the applicant is to cheat the complainant only. Till huge amount of the complainant is due with the applicant. It is a fact that, by filing a criminal case a recovery of due amount can not be made. But here the allegations in a complaint prima-facie reflects that, by taking disadvantage of a dispute in between the applicant and her husband, the applicant not delivered possession of the flat to the complainant and he also not made the payment of the complainant.

19. In a say of I.O. it is mentioned that, I.O. wants to recover/ seized the documents relating to the flat, from the applicant. Hence, to seize those documents from the applicant, his physical custody with police is quite necessary.

20. Therefore, considering the specific allegations in a complaint and a ground of seizure of documents from the applicant, I am on the view that, the applicant has not made out a case, to use discretion in his favour. Hence, I proceeded to pass following order:

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**ORDER**

Anticipatory Bail Application No.1853 of 2022 stands rejected and disposed off accordingly.

**(Order pronounced in open Court)**

**Date: 30.11.2022**

**(N.L.KALE)**

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

Order direct dictated on : **29.11.2022**

Checked, corrected & Signed on : **30.11.2022**



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

UPLOAD DATE

AND TIME : **30.11.2022** at 05.15 P.M.

Mrs. Madhura M. Palav

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri <b>N. L. Kale</b> (Court Room No.14)
Date of Pronouncement of Judgment/Order	<b>30.11.2022</b>
Judgment/Order signed by P.O. on	<b>30.11.2022</b>
Judgment/Order uploaded on	<b>30.11.2022</b>

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