



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

ANTICIPATORY BAIL APPLICATION NO. 1862 OF 2022

IN

(C. R. No. 1179 of 2022 of MIDC Police Station, Mumbai)

Vipul Rajendra Shah,

Age : 56 yrs., of Mumbai.

R/o : having office at Row House No. 2,
Krishna Heritage Co. Op. Hsg. Society,
New MHB Colony, Gorai Road, Borivali W.
Mumbai 400 092

..Applicant

V/s

**The State of Maharashtra
(through MIDC Police Station)**

..Respondent

Ld. Adv. Rashid Khan, for the applicant.

Ld. APP P.K. Mahajan, for the State.

Ldv. Adv. Nanda Singh, for intervenor.

**CORAM : H.H. THE ADDITIONAL SESSIONS
JUDGE R.M. MISHRA
(C.R.NO.4)**

DATE : 07th December, 2022

ORAL ORDER

This is an application for the grant of anticipatory bail under section 438 of the Cr.P.C., in connection with C.R. No. 1179 of 2022 registered with MIDC Police Station, for the offence punishable under section 420 of the Indian Penal Code.

2 Perused application and say. Heard learned advocate for the applicant, the intervenor and the learned APP for the State.

3 On 14/11/2022, at the instance of one Tarasingh Ramsingh Nagpal aforesaid offence came to be registered.

As can be seen from the FIR, earlier the informant had lodged the report against one Rahul Ishwar Kapoor and Kiran Laxmandas Shah and on that basis Crime No. 395 of 2017 under sections 406, 420 read with section 34 of the Indian Penal Code came to be registered in the Police Station MIDC. Accordingly, both accused were arrested in the said crime. During the pendency of the bail application in the said crime amicable settlement took place between them. It was agreed that Rahul Kapoor would pay Rs. 10,00,000/- and Kiran Laxmandas Shah would pay Rs. 4,00,000/-. It was also agreed that Rahul Kapoor is giving his flat No. 1503 to the first informant which has been booked with the present applicant as being developer of Vrushabh Real Estate Developers Pvt. Ltd. who is also Director of the said company. When the informant contacted with the applicant, he was assured by the applicant that he would hand over the possession of the said flat No. 1503 within short time. Accordingly, Consent Terms came to be filed before the Hon'ble Bombay High Court and in view of no objection on the part of the informant, accused Rahul Ishwar Kapoor and Kiran Laxmandas Shah came to be released on bail.

4 Thereafter, on 02/05/2019 the applicant executed registered Agreement for Sale of the flat No. 1503 by taking balance amount of Rs. 14,85,000/- alongwith GST amount of Rs. 5,75,000/- from the informant. As per the agreement entered into between the

applicant and the informant, it was agreed that the said applicant would hand over the possession of the said flat within 12 months. On failure to hand over the possession of the flat within 12 months, it was agreed that the applicant shall pay the compensation of Rs. 35,000/- per month. However, the applicant failed to give the possession of the flat to the informant. When the informant made enquiry in the Mumbai Municipal Corporation, he came to know that the applicant has been granted permission to construct 14 floors only in the said building. In fact, the applicant had agreed to sell the flat of 15th floor to the informant. On being found that the informant has been cheated by the applicant, report came to be lodged accordingly.

5 By this application the applicant has contended that he is permanent resident of Mumbai. It is contended that the applicant is innocent and he is falsely implicated in this crime. The informant was aware that the applicant has filed an application for permission to raise of the floors of the building and after taking inspection of the documents he was ready to take risk of registering the flat in his name. Since the permission to raise the floors from 15th to 19 floor was not given, therefore, the applicant was not in a position to hand over the possession of the said flat to the informant. The applicant belongs to the reputed family and he has no earlier antecedent. The applicant will not be required for custodial interrogation. He is ready to abide the conditions imposed by the court and also ready to cooperate in investigation. The applicant, therefore, prayed for his release on anticipatory bail.

6 Application is resisted by the prosecution vide say Exh. 3 mainly on the ground that the applicant executed registered

Agreement for Sale towards the flat of 15th floor though he was granted permission to construct the building upto 14th floor only. In order to recover the agreement which was entered into between the applicant and Rahul Kapoor and to elicit material information, custodial interrogation of the applicant will be required. The applicant is habitual offender and another offence of cheating is registered against him in Goregaon Police Station. In support of his submissions learned APP placed his reliance on -

P. Chidambaram Vs Directorate of Enforcement [AIROnline 2019 SC 1001]

Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Anr. [AIROnline 2021 SC 397]

7 The informant also resisted the application by way of intervener application.

8 I heard the submissions of the learned Adv. Mr. Rashid Khan for the applicant, learned advocate for the intervener and learned APP Shri Mahajan. I have also gone through the case diary. Upon careful consideration of the entire facts and circumstances, it reveals that in the earlier Crime No. 395 of 2017, Rahul Kapoor who is the accused in that crime agreed to give his flat No. 1503 which he had booked with the present applicant towards the amount of Rs. 1,00,00,000/-which was to be recovered from Rahul Kapoor by the informant. Thereafter, on 02/05/2019 the applicant executed registered Agreement for Sale regarding the said flat in favour of the informant in view of the settlement took place between the parties in Crime No. 395 of 2017. All these circumstances, clearly indicate that since inception, the applicant was/is having intention to cheat the

informant. In spite of the fact that no any such permission is obtained to construct 15th floor in the said building, the applicant not only got executed registered agreement with the informant but he has also obtained further amount of Rs. 14,85,000/- together with GST amount of Rs. 5,75,000/-. As per the agreement entered into between the applicant and the informant, it was also agreed that the applicant would pay compensation of Rs. 35,000/- per month, if the applicant failed to hand over the possession of the said flat within 12 months from the date of agreement 02/05/2019. The applicant also failed to pay compensation which was agreed between the parties.

9 It is pertinent to note that the informant is a senior citizen aged about 77 years. Earlier he was cheated by one Rahul Kapoor and Kiran Laxmandas Shah in Crime No. 395 of 2017 under section 406, 420 of the Indian Penal Code. In the expectation that the informant would get this flat in consideration of his amount of Rs. 1,00,00,000/-, he entered into an amicable settlement with those accused and agreed to take this flat from the applicant which was booked with him by Rahul Kapoor. Though the applicant was aware that he did not obtain permission to construct 15th floor onwards in the said building, he has executed registered Agreement for Sale on 02/05/2019 by accepting further amount of Rs. 14,85,000/- together with GST amount of Rs. 5,75,000/- from the informant. Another significant thing to be taken into consideration is that similar offence is already registered against the applicant in another Police Station Goregaon which shows that the applicant is habitual offender. Having regard to the ratio laid down in the case law cited supra and in view of the aforesaid facts and circumstances, I am of the view that no prima-facie case is made out by the applicant under section 438 of

the Code of Criminal Procedure by way of protection of pre-arrest bail. In this view of the matter, following order is passed :

ORDER

- 1) Anticipatory Bail Application No. 1862 of 2022 is hereby rejected and disposed of accordingly.
- 2) The concerned Police Station be informed accordingly.

Dt. 07/12/2022

(R.M. MISHRA)
Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dictated on : 07/12/2022
Transcribed on : 07/12/2022
Checked on : 07/12/2022
Signed on : 07/12/2022

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”	
07/12/2022 at 5.18 p.m. UPLOAD DATE AND TIME	Mrs. S.B. Vichare NAME OF STENOGRAPHER
Name of Judge (with Court room no.)	HHJ R.M. Mishra, City Civil & Sessions Court, Borivali Div., Dindoshi, Mumbai (C.R.No. 04)
Date of Pronouncement of JUDGEMENT/ORDER	07/12/2022
JUDGEMENT/ORDER signed by P.O. on	07/12/2022
JUDGEMENT/ORDER uploaded on	07/12/2022