

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.423 OF 2018

(Shaikh Ibrahim Shaikh Mehboob Vs. The State of
Maharashtra & Anr.)

...
Mr. G.A.Kulkarni h/f Mr. R.S.Deshmukh, Advocate for
Applicant

Mr. A.R.Kale, APP for Respondent-State

Ms. Rashmi S. Kulkarni, Advocate for Assisting APP

...

CORAM : MANGESH S. PATIL, J.

DATED : 6th June 2018

PER COURT :-

This is an application under Section 438 of the Cr.P.C. seeking anticipatory bail for the applicant in connection with Crime No.86 of 2018 registered with City Chowk Police Station, District Aurangabad for the offences punishable under Sections 406, 467, 468, 420 read with Section 34 of the Indian Penal Code.

2. The FIR has been lodged by an individual alleging that six plots were sold to him by the applicant for total consideration for Rs.3,00,000/-. The property was not transferable. When he realized the fact and approached the applicant, the latter offered him to transfer some

other property. However, inspite of lapse of time the applicant did not transfer any property to him. He therefore demanded back the amount of consideration but since the applicant did not oblige him the FIR came to be lodged and the offence was registered.

3. The learned advocate for the applicant would submit that as per the practice, a notarized document was executed even in his favour by which he apparently got the properties which he later on in a similar manner sought to transfer to the informant. The informant since beginning was aware that this was the manner in which the properties were being transferred. There was no element of cheating. The transaction had taken place in the year 2011. At no point of time he had made any other grievance till lodging of the FIR. The dispute is purely of civil nature and perhaps because he has lost the remedy by lapse of time the FIR has been lodged.

4. The learned advocate for the applicant would submit that there is no element of deception muchless since beginning. Merely because the transaction could

not fructify, no criminality can be attached and the applicant may be granted anticipatory bail.

5. The learned APP assisted by the learned advocate for the original informant opposes the application. He submits that the applicant has knowingly transferred the property which is not transferable. That is sufficient to attribute him with an element of deceit. The applicant has derived the benefit in the form of money which has failed to refund. The money is to be recovered. The investigation is still in progress. Custodial interrogation of the applicant is necessary and he may not be granted anticipatory bail.

6. I have carefully gone through the police papers and perused the record. Accepting the allegations in the FIR at their face value, it is apparent that the informant has sought to purchase the properties which were not transferable. For that matter prima facie even the applicant seems to have got the plots / properties transferred in his name in a similar manner. The transaction has taken place in the year 2011 and merely

because the applicant has not repaid the amount of consideration, prima facie no criminality can be attached. The dispute apparently is of civil nature and custodial interrogation of the applicant is not necessary. He has already been protected by way of interim order which deserves to be confirmed with a condition added so that he co-operates the Investigating Officer as and when called by him till filing of the charge-sheet. Hence I pass the following order :

ORDER

- (i) The application is allowed.
- (ii) Ad-interim relief is confirmed with the same terms and conditions with an additional condition that the applicant shall attend the concerned Police Station as and when called by the Investigating Officer and shall co-operate him till filing of the charge-sheet and that he shall not tamper the evidence.

(MANGESH S. PATIL, J.)

...

vmk/-