

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 740 OF 2015

Iqbal Singh Matharu. ... Applicant.

Versus

The State of Maharashtra. ... Respondents.

Mr. Rajeev Chavan, Sr. Counsel i/b. Mr. Balkrishna G. Tangsali,
advocate for Applicant.

Mr. Datta Mane, advocate for intervenor.

Ms. S.S. Kaushik, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 8, 2015

P.C.:

1 Heard the learned Counsel for the applicant, learned Counsel
for intervenor and the learned APP for State. Perused the papers.

2 This is an application under section 438 of the Code of Criminal
Procedure, 1973. The applicant herein is apprehending his arrest in

Crime No. 167 of 2015 registered at Byculla Police Station for offence punishable under Section 406, 420 of the Indian Penal Code.

3 It is the case of the prosecution that on 22nd April, 2015 Saifuddin Kaka lodged a report at the police station alleging therein that he is residing in Infinity Tower, B-Wing since four years prior to lodging of the report. That the present applicant is a builder and is building a complex at Ghodapdeo Cross Lane No. 2, 163, Rambhau Bhogle Marg, Mumbai. The building is of 21 floors. According to the complainant, he was informed by the builder that the builder/developer has obtained all necessary “no objection certificate” and that the BMC has issued commencement certificate. He was also assured that he would get occupation certificate by December, 2012. He had executed a registered agreement with the builder. The informant had booked flat No. 1202 on the 12th floor admeasuring 707 sq.ft for consideration of Rs. 47,08,619/-. He has given the details of the payment made by him through various modes. He has alleged that alongwith other members of the society, he has been to

the spot and noticed that the applicant herein had not completed the project. They enquired with the office of the BMC and there the complainant learnt that the construction had commenced without obtaining necessary permission and that the permission was granted to build only upto 10th floor, whereas he has built the upper floors without permission. On the basis of his report, offence was registered.

4 The learned Counsel for the applicant has drawn the attention of this Court to the permission granted by the BMC for building 21 floors which reads as under :

“Subsequently M/s. Aparna Consultant had submitted amended plans and after obtaining Hon'ble M.C.'s approval, amended plans were issued by this office on 1.9.2009 for building comprising of two Wings of which Wing 'A' having Ground + 1st + 2nd to 4th (Pt.) floor for podium car parking +5th to 20th floors having height 64.35 Mt. and Wing 'B' comprising of Gr. + 1st to 4th (Pt.) floors + 5th to 21st floors having height 67.05 Mt. Subsequently, C.C. Was issued upto 10th floor on 14.1.2011 for 'A'

Wing and 'B' Wing. As approved earlier, the entire building is accepted as composite building.”

It can therefore, be said that the permission was granted and the applicant is carrying out construction as per the permission granted by the BMC. The applicant has also given an undertaking to that effect.

5 In the above mentioned premises, the applicant deserves grant of pre-arrest bail.

6 The above observations are prima facie in nature. The same shall not be considered while deciding application for discharge or quashing of FIR or at the time of trial. The trial Court shall decide the matter in accordance with law uninfluenced by the observations made hereinabove.

7 Hence, the following order is passed :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more sureties in the like amount.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)