Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 237 OF 2016

Naushad Abdul Ali Shaikh ... Applicant
Vs.
The State of Maharashtra ... Respondent

ANTICIPATORY BAIL APPLICATION NO. 252 OF 2016

Prakash Sudhakar Kamat ... Applicant
Vs.
The State of Maharashtra ... Respondent

ANTICIPATORY BAIL APPLICATION NO. 292 OF 2016

Sanjay Nana Jadhav ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. S.A. Jabbar i/b. Mr. Rajesh P. Khobragade, Advocate for the applicant in ABA/237/2016.
Mr. S.K. Shinde, P.P. a/w. Mr. S.H. Yadav, APP for the State.
Mr. Kuldeep S. Patil, Advocate for the applicant in ABA/252/2016.
Mr. P.G. Sarda, Advocate for the applicant in ABA/292/2016.
Mr. Shivaji S. Jaipatre, P.S.I., Nalasopara Police Station present.
Mr. Suhas P. Kamble, P.S.I. Nalasopara Police Station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **11th March, 2016.**

P.C.:

These three Anticipatory Bail Applications are heard together. All the three applicants are prosecuted for the offences of cheating and forgery punishable under sections 420, 465, 468, 471, 504 r/w. 34 of the Indian Penal Code. The offences against applicants Naushad Abdul Ali Shaikh and Prakash Sudhakar Kamat is registered at the instance of Hemal Ghanshyam

Desai in C.R. No. 315 of 2015 with Nalasopara Police Station on 6th December, 2015 and the offence against applicant Sanjay Nana Jadhav is registered at the instance of Dilip Keshav Varma at C.R. No. 332 of 2015 with Nalasopara Police Station on 30th December, 2015. The nature of the offence and the manner in which the offence committed is same, hence these three Applications are disposed of by a common order.

2. This offence pertains to 30 unauthorized plots constructed on a Government land bearing Survey Nos. 32-A-2 of Nallasopara. This land is owned by the Government and in the year 1948 it was granted as Vatan land to Shravan Jadhav. Thereafter on 21st July, 2010 Sanjay Jadhav and More purchased this land by unregistered agreement of sale for Rs.45 lakhs. Then Sanjay Jadhav executed Agreement of Sale of the said land with Dilip Singh on 20th December, 2011. A forged NOC was obtained from CIDCO and on the basis of bogus plans, which was shown virtually as approved from the Corporation, the construction was carried out. Dilip Singh entered into an Agreement of Assignment of Development and Construction rights to various company and those companies/firms constructed 30 plots on this land. All the 30 plots were constructed during the period 2012-13 and the flats in all these plots were sold and possession of the respective tenements were given to the concerned flat purchaser. In the year 2012-13, in Writ Petition, the Division Bench of this Court has

ordered that the plot standing on Survey No. 32A are unauthorized as the land belongs to the government and directed demolition of these plots. Out of 30 plots, three plots are demolished. The flat purchasers, who were completed cheated by the builder/developer and the persons who launched the scheme, went to the police station and gave complaint against them. The applicants/accused are persons who are involved in this unauthorized construction. Hence, the offence was registered.

3. The learned counsel for the applicants/accused have submitted that the applicants/accused are innocent and they are not concerned with this unauthorized construction. The construction is carried out by some other companies and one Dilip Sinh to who they are not concerned. The learned counsel for applicant Naushad has submitted that the applicant gave finance to Dilip Sinh and besides that he is not at all concerned. He did not obtain any permission from the authority or he is not concerned with the actual development process. The applicant is innocent.

4. The learned counsel for applicant/Prakash has stated that the applicant was only a commission agent and he is not concerned with this. The learned counsel for applicant/Sanjay has argued that the role of applicant is nil in this offence. He was the owner of land and he assigned the right of development to accused no. 1/Dilip Sinh, who has constructed

the entire plot. All the learned counsel has submitted that no specific role is attributed to the applicants and they all are entitled to pre-arrest bail.

4. Learned P.P. Mr. Shinde has opposed the Applications. He pointed out that the land belongs to State of Maharashtra. However, the land was purchased by Sanjay on 21st July, 2010 and in recitals in Clauses 2 and 3 of the Agreement, the land was shown as agricultural land and the rights were given to Sanjay Jadhav that he will develop the land and in the Agreement of Sale dated 20th February, 2011, Dilip Sinh came in picture as a developer/builder, however, in the said Agreement dated 20th February, 2011, the type of land is shown as N.A. plot. Thus, this shows that in between these two agreements, i.e., 21st July, 2010 and 20th February, 2011, the land was converted from agricultural land to non-agricultural land. He submitted that NOC obtained by CIDCO is a forged document. No NA permission was ever given by the Government authority in respect of this land. Not a single permission was obtained from the Corporation for the construction of the plots. The plans were never submitted to the Corporation and no plan got sanctioned about any plot. He submitted that all the documents are fake and custody of all these applicants are very much required for effective investigation.

5. Heard the submissions of the learned counsel. At the instance of the

order of Division Bench in Writ Petition, three plots out of 30 are demolished. The plots constructed are unauthorized. It is not the case of 3-4 plots but total 30 plots were constructed. The applicant/Sanjay Jadhav is the owner of said land as pointed out by learned P.P, however, the role of this applicant/accused *prima facie* is obvious. The applicant/accused Naushad has given finance to this project. Learned APP has submitted that 45% of the total finance is by Naushad. It is difficult to believe at this stage that a person who has financed for construction of 30 plots did not bother about his money and did not receive anything. The role of applicant/Prakash Kamat also is *prima facie* shown, as learned APP has pointed out that Prakash Kamat not only acted as commission agent but three plots were made in his name and then from his, the development rights were given to some other company. It appears that a particular modus operandi is used by all these accused especially accused Sanjay and Naushad and principal accused Dilip Sinh while constructing these plots. It is a big fraud played on the public without any permission of CIDCO and without having approved sanctioned plan from the Corporation, total 30 plots were constructed and it was represented before the members of the public that it is a residential scheme launched on NA plot on the basis of approved plan. The flat purchasers have mortgaged these plots with various banks and have obtained loans. Thus, not only the members of the public are deceived but different banks with whom the flats are mortgaged,

they are also duped. The impact and range of the offence is also to be taken into account in such matters. In this case, the custodial interrogation of all these accused is undoubtedly necessary for effective investigation as there is a deep rooted forgery and fraud which is required to be unearthed. Hence, the Anticipatory Bail Applications are rejected.

6. At this stage, the learned counsel Mr. Kuldeep Patil for applicant Prakash Kamat prays for continuation of the interim relief, as he wants to challenge this order before the Supreme Court.

7. In the Sessions Court, no interim protection was granted, pending Anticipatory Bail Application. Before the High Court though interim protection was given, considering the gravity of the offence and as I am of the view that custody of the applicants are required for effective investigation, prayer for extension of interim protection is refused.

(MRIDULA BHATKAR, J.)