

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 925 OF 2016.

Rajendra Amrutlal Patel .. Applicant.
Vs.
The State of Maharashtra ..Respondent.

Mr Khush I. Khandelwal i/by Khandelwal Associates, for the Applicant.
Smt. Rutuja Ambekar, APP for the State.

CORAM : A.S.GADKARI, J.
DATE : 27th September, 2016

P.C.

- 1) The applicant is apprehending arrest in CR No. I-316 of 2015 dated 7/12/2015 registered with Nalasopara Police Station, District Palghar under sections 420, 465, 468, 471, 506 (II) read with section 34 of the Indian Penal Code and under section 53 and 54 of the Maharashtra Regional Town Planning Act, 1966.
- 2) The first information report is lodged by Smt. Jonita S. D'souza. It is stated in the first information report that the complainant booked flat no. 1 and 2 on the ground floor in the building known as Maitri Apartment in the year 2011. The said building was constructed by a firm namely Maitri Enterprises. The complainant entered into an agreement of sale with the partners of the said firm (co-accused). The complainant in pursuance of the agreement paid total consideration of

Rs.15,00,000/- to the said firm namely Maitri Enterprises. The complainant received the possession of the said flats on 28/10/2011. Till the year 2015 the complainant did not get the possession of the said flats. The said building was constructed on survey number 32. In October, 2015 the informant came to know that the buildings which were constructed on survey no. 32 were declared as unauthorised was to be demolished by the Municipal Corporation. The complainant therefore contacted the partners of the Maitri Enterprises who in turn assured her that their building is legal and no adverse steps would be taken by the Municipal Corporation. The complainant subsequently received the information that the building namely Maitri Apartment constructed by the firm namely Matri Enterprises is illegal and unauthorized building and was constructed on the basis of forged and fabricated documents and without the approval of the CIDCO. The complainant further realized that on the basis of said forged and fabricated documents the partners of the firm Maitri Enterprises entered into an agreement with her and have accepted the said amount of consideration. In the premise the said first information report was lodged.

3) During the course of investigation, it is revealed to the investigating agency that the applicant is the partner of the said Maitri Enterprises. That the said building was constructed by submitting bogus and fabricated documents with the Corporation. That the applicant and the

co-accused have submitted forged documents while constructing building and subsequently sold the flats therein to the prospective purchasers.

After completion of investigation the police have submitted the charge-sheet against the co-accused and by showing the applicant as an absconding accused.

4) The learned counsel for the applicant submitted that the applicant never actively participated in the transaction of the firm. That he was not having knowledge that the building was being constructed by submitting fabricated documents with the Competent Authority. That during the course of investigation the police have seized all the documents and have submitted the charge-sheet against the other accused persons. He, therefore, prayed that the custodial interrogation of the applicant is not necessary and submitted that the applicant may be granted pre-arrest bail.

5) Per contra, the learned APP vehemently opposed the application and submitted that the evidence on record discloses that since the inception the applicant was aware of the fact that the building was being constructed on the land belonging to the Government, by submitting forged and/or fabricated documents with the Municipal Corporation. She further submitted that the applicant is an active partner of the said firm and has received the monetary benefits after the sale of the flats to the purchasers. She submitted that the investigation with respect to the applicant that, as to where the applicant has utilized the funds or the

benefits arising out of the present crime is to be traced out. She submitted that there is a rise of unauthorized construction in the said area and gullible flat purchasers are being deceived by representing that the constructions are authorised. She further submitted that the Division Bench of this Court has also taken a serious view of such type of constructions. She, therefore, prayed that the present application may be rejected.

6) Perused the papers annexed to the application and papers pertaining to the investigation. It is admitted that the applicant is/was the partner of the said Maitri Enterprises. That the said Maitri Enterprises has constructed the illegal and unauthorised building in question. The said building in question has been constructed by submitting fabricated documents with the Corporation on a plot of land belonging to the Government. It is only when the first informant revealed that the said construction is unauthorized and illegal, she lodged the first information report. The applicant is the beneficiary of the fruits of the present crime. He has shared the profit along with the other accused persons. It appears that the exact role played by the applicant in the present crime is yet to be further ascertained by the investigating agency. The same is not possible without the applicant being custodially interrogated.

7) After taking into consideration the gravity of the offence, the serious allegations against the applicant and the need of custodial

interrogation to unearth the facts behind the entire crime, I am of the considered view that this is not a fit case to grant pre-arrest bail to the applicant. The application is accordingly dismissed.

(A.S. GADKARI, J.)