

Nalawade

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1160 OF 2016

Mr. Devji Bhika Choudhary.

..Applicant.

vs.

The State of Maharashtra.

..Respondent.

WITH

ANTICIPATORY BAIL APPLICATION NO.1162 OF 2016

Mr. Laxmibai Shalik Mhatre and ors.

..Applicants.

vs.

The State of Maharashtra.

..Respondent.

Mr. A.P. Munderggi, Sr. Advocate for the Applicant.

Mrs. S.S. Kaushik, APP for the Respondent-State in
Anticipatory Bail Application No.1160/2016 & 1163/2016.

Mrs. Rutuja Ambekar, APP. For the State in Anticipatory
Bail Application No.1161/2016 & 1162/2016.

CORAM :A.S.GADKARI, J.

DATE : 18th October, 2016

P.C.

1) The applicants are apprehending arrest in Cr
No.I-51 of 2016 dated 12.5.2016 registered with CBD
Police Station, Navi Mumbai under Sections 420, 465, 467,
468, 471 read with 34 of the Indian Penal Code.

2) Heard Mr. Mundergi, learned Sr. Counsel appearing for the applicants and the learned APP and also perused the original papers of the investigation produced before me by the learned APP.

3) The first information report is lodged by Mr. Sunil Tambe an employee of the CIDCO. It is stated in the said report that CIDCO has acquired the land from 95 Villages from District Thane and Raigad and by way of compensation as per the scheme the original landlords were entitled to be allotted 12.5% of the fully developed land by the CIDCO. It is stated that Mr. Sanjay Dande, Surveyor attached to the to the department of Chief Controller (Unauthorized Constructions) prepared a report. It is stated in the said report that Shri. Sanjay Dande, Surveyor of Department of Chief Controller after conducting survey of Gat No.200 and 201 found that the construction of RCC building of four storey structure by name Krishna Home (Shree Gee Dham) was being constructed and therefore, on 16.12.2015 after preparing location plan and taking photographs of the same issued a notice to the applicant Devji Choudhari the developer of the said plot of land. The applicant Devji Choudhari thereafter preferred RCS No.391/2015 in the Civil Court at

Vashi and the copy of the same was served upon the Chief Controller (Unauthorized Constructions) on 23.12.2015 and 29.12.2015. After verifying the documents annexed to the said plaint the department of Chief Vigilance Officer came to the conclusion that the document such as allotment letter, lease agreement, tripartite agreement and other documents are bogus and fabricated documents. It is also revealed that the possession letter and the boundary demarcation plan were also bogus and fabricated documents. It is further stated in the FIR that though Gat No.200 and 201 from Plot No.133 to 138 Sector 4-A was not allotted to anybody by the CIDCO the applicant Devji Choudhari of M/s. Shital Enterprises was constructing a building on the same.. It is further revealed to the Vigilance Department of CIDCO that by submitting forged and fabricated documents to the various authorities the applicant Devji Choudhari has tried to engulfed the property belonging to the CIDCO. It is further stated in the report that the alleged documents of allotment of the said plot of land bearing Nos. 133 to 138 situated on Gat No.201 & 202 Kopar Khairne was shown to have been allotted to Shivnarayan Shivram Bhoir, Smt. Laxmibai Shalik Mhatre, Smt. Anjali Shivram Bhoir and Smt.

Chandrabhaga Shivram Bhoir. However, it is revealed that the said original letter of allotment in the name of the said persons who have been shown as project affected persons is itself is a bogus document. He submitted that even the tripartite agreement dated 31.12.2013 was having forged signatures of the CIDCO officials and the bogus seals of the said authorities are affixed on it. It is stated in the said report that with a view to engul the property belonging to the CIDCO applicants herein with common intention prepared forged and fabricated documents and have submitted the same to the concerned authorities for constructing ground plus 4 storey building on plot Nos. 133 to 138, Sector 4A, Kopar Khairne, Vashi. In the premise, the first information is lodged.

The afore-stated Smt. Laxmibai Shalik Mhatre, Smt. Anjali Shivram Bhoir and Smt. Chandrabhaga Shivram Bhoir are the applicants in ABA No.1162/2016.

4) The learned counsel for the applicants submitted that as far as the applicant Devji Choudhari is concerned he has received the said documents from Shivnarayan Shivram Bhoir and Mr. Pawan Joy. He submitted that the said Pawan Joy was working as a freelance liaisoning officer in the office of the CIDCO and

he procured the said documents for applicant Devji Chudhari. He placed reliance upon the Memorandum of Understanding executed on a stamp paper dated 9.9.2010 (30.8.2010) The applicant Devji Choudhari has also filed an affidavit in support of his contentions thereby placing on record the said Memorandum of understanding. In the affidavit itself he stated that said Mr. Pawan Joy has expired on 26.6.2016. The learned counsel for the applicant submitted that the applicants in ABA No.1662/2016 were having no knowledge about the execution of the documents executed by their brother namely Shivnarayan Bhoir who has taken initiative in executing the documents on which the applicant Devji Choudhary has constructed the building. He submitted that during the pendency of the present application the applicant has attended the Investigating Officer and joined the process of investigation. He therefore, submitted that the custodial interrogation of the applicants is not necessary and prayed that the applicants may be granted pre-arrest bail.

Per contra the learned APP vehemently opposed the application and submitted that all the documents which are relied upon by the applicants are

bogus and fabricated documents. Though subsequently the applicant Devji Choudhari has paid certain charges to the Municipal Corporation for getting the approval to the building plan, that will not legalize the basic illegality committed by the applicant Devji Choudhari in preparing the bogus and fabricated documents. She submitted that within the jurisdiction of Navi Mumbai Municipal Corporation there is a spate of illegal constructions and the Division Bench of this Court has taken a note of the same in a Public Interest Litigation and therefore, she submitted that the present applications may be rejected.

5) I have perused the original file pertaining to the papers of investigation. It is to be noted here that in the first information report itself, it has been specifically mentioned that the documents which are annexed to RCS No.391 of 2015 were not genuine and that during the course of in-house investigation conducted by the Chief Vigilance Officer, it is revealed to the CIDCO authorities that the signatures and the seals of the said officers on the alleged allotment letter, tripartite agreement and other related documents are forged signatures and the said documents are bogus documents. During the course of investigation it is now revealed that the applicant in ABA

No.1161/2016 i.e. Devji Choudhari is the mastermind in the crime. The papers of investigation would reveal that the applicant Devji Choudhari in connivance with Shivnarayan Shivram Bhoir lured the applicants in ABA No.1162/2016 for monetary benefits. The applicant Devji Choudhari was aware of the fact that there was no allotment at all in respect of the afore stated plots in favour of the original landlords and he induced Shivnarayan Shivrm Bhoir to join in the crime. It appears from the record that Shivram is the father of the four accused persons and that the applicants in ABA No.1162/2016 along with Shivnarayan Bhoir were only prima facie entitled for allotment of the said plot though the final allotment was not effected in their favour. By the CIDCO. The investigation reveals that applicant Devji Choudhari gave the documents allegedly duly signed by the officers of the CIDCO with the seal of CIDCO to Shivnarayn Bhoir. The record of investigation further reveals that the applicants in ABA No.1162/2016 are the sisters of said Shivnarayan Bhoir and they received some payment from Shivnarayan and therefore, they have signed the said documents. It appears that the applicants in ABA No.1162/2016 hails from lower economical strata of the

society and were not aware of the repercussion of their signing the documents. It further clearly appears from the record that the applicant Devji Choudhari has created all the said bogus documents in the present crime and on the basis of the same has constructed the aforesaid building and sold the flats to the gullible purchasers.

In considered view of this Court unless and until the applicant Devji Choudhari is custodially interrogated the entire truth behind the crime cannot be unearthed. The complicity of the Devji Choudhari in the present crime is apparent from the record and in my view he cannot be protected by way of pre arrest bail. The ABA No.1160 of 2016 is accordingly rejected .

6) As far as applicants in ABA No.1162/2016 are concerned as stated earlier they were lured by their brother Shivnarayan Bhoir for the benefit of paltry amount. The said applicants were not aware of the repercussion of their signatures on the various documents and they effected their signatures under the directions of their brother Shivnarayan Bhoir. It further appears that the said applicants have not played major role in the crime except signing the necessary documents under the directions of their brother Shivnarayan and therefore, they are

entitled to be protected by pre arrest bail.

Hence,the following order.

a) The ABA No.1160 of 2016 preferred by Devji Choudhari is hereby rejected

b) The ABA No.1162 of 2016 is hereby allowed on following conditons:-

i) In the event of arrest of the applicants in ABA No.1162 of 2015 in CR No.51 of 2016 registered by CBD Police Station, Navi Mumbai the applicants shall be released on bail on their furnishing PR bond of Rs.25,000/- each with one or two separate local sureties in the like amount.

ii) They shall not tamer with the evidence and/ or influence prosecution witnesses.

iii) The ABA No.1162 of 2016 is allowed in the aforesaid terms.

(A.S.GADKARI, J.)