

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1313 OF 2016

Dilip Balram Patil

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Gaurav Parkar Advocate for the Applicant.

Mr. Vinod Chate APP for the State.

Mr. Vishwas Dattu Pandhare, Dep Zone II,
Navi Mumbai with Mr. S. S. Gaikwad, A.P.I.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 14th DECEMBER, 2016.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 103 of 103 of 2016 registered at Khandeshwar Police Station for offence punishable under section 420 r/w 34 of the Indian Penal Code.

2) At the outset, pursuant to the order dated 06/12/2016, the Investigating Officer of the present case i.e. Mr. Gaikwad is present before the Court along with papers of investigation. In view of this, order dated 01/12/2016 issuing non-bailable warrant against A.P.I. S. S. Gaikwad posted at Khandeshwar

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Police Station is hereby recalled. Pursuant to the order an inquiry was held and it appears from the papers of inquiry that on 28/10/2016, since Mr. Gaikwad was not keeping well, he had just taken an entry into the station diary and had left the police station. It is a matter of record that he had not returned on his duty for quite sometime. The senior officers also were not aware that he is taking medical treatment with Dr. Shelar. On the last occasion, a certificate was furnished before this Court showing that applicant was under treatment of Dr. Shelar from 23/10/2016 to 22/11/2016 for accelerated hypertension with angina. It is pertinent to note that the application was pending hearing since 03/08/2016 and the same could not be decided for want of papers of investigation. Today, officer is present. Senior police officer has stated that an inquiry is being made against Mr. S. S. Gaikwad and it would take its own course.

3) Reverting back to the facts of the present case, it appears that on 30/05/2016 Lavesb Bhoir lodged a report at the police station alleging therein that he was working with IDBI Intek Company at C.B.D. Belapur. He had come across an advertisement given by Om Sai Krupa Ganesh Builders and Developers and the name of the scheme was 'Swapna Nagari Homes'. He had

approached the builders. He had booked 1 bed room flat for a consideration of Rs. 6,37,000/-. He was assured that he will get the possession of the said flat within 15 to 16 months and that the flat would be admeasuring 375 sq. mts. He had verified as to whether the land of which the scheme was to be developed belonged to the builders and the answer was in the affirmative. He was also assured that the builder has obtained all necessary permission. After sometime, the name of the firm was changed to Siddhivinayak Group and Builders. The complainant had paid the amount by cheques to be drawn on IDBI Bank. He had paid amount of Rs. 6,00,000/-. According to the complainant, in May 2014, Ganesh Vaje had executed the sales agreement who had not given the allotment letter. There was no registration. He had persuaded Ganesh Vaje for allotment. He then realized that the office was closed. Ganesh Vaje evaded to receive the calls of the complainant. On the basis of the said report, crime no. 103 of 2016 is registered.

4) In the course of investigation, it was revealed that the sale agreement between the complainant and Siddhivinayak Builders was signed by the present applicant. The sale agreement also shows that the present applicant happens to be a partner of the said firm.

5) The learned counsel for the applicant submits that he is not the partner of the said firm and that the applicant had never entered into any kind of agreement with the complainant and therefore his name does not appear in the F.I.R.

6) In the course of investigation, the Investigating Officer has also recorded the statement of brothers of the applicant namely Harish Patil and Deepak Patil. They have categorically stated that the present applicant is partner of the said firm. The land on which the scheme was to be developed i.e. survey no. 72/4 was owned by the father of the applicant. That the father of the applicant expired on 03/06/2016. On survey no. 72/2, one Anil Pote and Sunil Pote had started the construction work and the applicant was supplying building material. At that time, he met Ganesh Vaje. According to Harish Patil, Ganesh Vaje had purchased the land from the present applicant at the rate of Rs. 8,00,000/- per Guntha. The said transaction was acted upon by the father of the applicant, present applicant and Ganesh Vaje. Consideration was Rs. 3,28,00,000/-. It is further stated that the applicant was in jail for offences under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and when he was enlarged on bail he had seen that

Ganesh Vaje had started the construction on the said site and therefore, he changed the name of Chiplai Builders and Developers to Siddhivinayak Group Construction. They had installed the board in the name of 'Chiplai Builders and Developers'. The submission that the applicant is not concerned with the said transaction is misleading statement and it appears that the applicant has not instructed the learned counsel for the applicant properly and has not apprised him of the facts of the case. It appears that many people have been cheated by Ganesh Vaje and the present applicant. Ganesh Vaje has been arrested and has been enlarged on bail.

7) In the facts of the case, applicant does not deserve relief under section 438 of the Code of Criminal Procedure, 1973. Hence, application being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)