

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.9 OF 2017

Firoz Ahmed Siddiqui ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Ashutosh R. Gole, Advocate for the Applicant.

Mr.R.M.Pethe, APP for the Respondent/State.

Mr.R.S.Narote, API, Police Station, Nalasopara present in person.

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CORAM : A.M.BADAR J.

DATED : 30th OCTOBER 2017.

P.C. :

1 This is an application for pre-arrest bail in Crime No.96 of 2016 for offences punishable under Sections 420, 465, 468, 471 read with Section 34 of the Indian Penal Code as well as Sections 53 and 54 of the Maharashtra Regional Town Planning Act.

2 Heard the learned Advocate appearing for the applicant/accused. He drew my attention to the FIR as well as Development Agreement and contended that as per Clauses 12, 13 and 14 of this Development Agreement, the entire responsibility of taking permission from the Government Authorities for developing

the land was entrusted to the co-accused and not to the present applicant.

3 The learned APP opposed the application by placing reliance on opening paragraph of the Agreement and by contending that the applicant being owner of the land was entitled for 35% of the finished product i.e. the constructed portion of the building. The learned APP further argued that the applicant had sold out the 35% of the share in the building by annexing forged documents to the Conveyance Deed and, therefore, his complicity in the crime in question is established.

4 I have carefully considered the rival submissions and also perused the charge-sheet, which is also filed against the present applicant along with co-accused. The FIR itself shows the averments to the effect that the Commencement Certificate as well as Building Permission were never issued by the Competent Authorities of the concerned department of the Municipal Council, but with the aid of forged documents, the building was constructed unauthorizedly and it was sold out to the purchasers.

5 The present applicant is not the Builder. He is a Power of Attorney Holder of the land owner. He is First Party to the Development Agreement. The Second Party is partners of Sai Darshan Construction namely Sunil Kolambe, Vijay Nitore and

Dilip Khale. They are co-accused in the crime in question. The Development Agreement shows rights and liabilities of parties to the Agreement. Clause 12 of the Development Agreement shows that the First Party i.e. the present applicant has declared unequivocally that the land in question is an agricultural land as per the record of the Revenue Department. Clause No.13 shows that development of the land was to be done solely by the Sai Darshan Construction, Second Party to the agreement. Sunil Kolambe, Vijay Nitore and Dilip Khale were partners of Sai Darshan Construction. Duty of obtaining necessary permissions from all Government Department was casted on the Second Party i.e. Sai Darshan Construction. The prosecution case is to the effect that the necessary permissions required for effecting constructions were never obtained, but forged permissions were used and development work was done. As the duty to obtain such permission was not imposed on the present applicant and as it was duty of the Developer to seek necessary permissions, in my considered view, the applicant cannot be made liable for forged documents including Commencement Certificate and Building Permission. True it is that in the Development Agreement, it is contended that the applicant has 35% of the share in the finished product i.e. constructed building, but by that it cannot be inferred that the forged documents were prepared by the applicant, who is land owner on which the building was constructed. Nothing is pointed out to show that the applicant has complicity in forging

the documents and using the forged documents. In the wake of this evidence against the present applicant, his alleged involvement in other crimes pales into insignificance. Therefore, the Order :

- (i) The application is allowed.
- (ii) The Order dated 5th January 2017 granting anticipatory bail to the present applicant is confirmed on the same terms and conditions.
- (iii) The application is accordingly disposed of.

(A.M.BADAR J.)