

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1665 OF 2018

Mukesh Varghees Nair

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Hrishikesh Mundargi for the applicant.

Ms. A.A. Takalkar, APP for the Respondent-State.

Mr. Abhijit Patil, PSI, Tuling Police Station is present.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 29th OCTOBER, 2018.

P.C.

1. This is an application for bail in connection with C.R. No. I-471 of 2018 registered with Tulinj Police Station for the offence punishable under Sections 420, 465, 467, 468, 471, 474, read with 34 of Indian Penal Code and Section 52, 53, 54 of MRTP Act and under Section 3,4 of MOFA Act.

2. Brief facts of the prosecution case is that complainant is Assistant Commissioner, Vasai-Virar, Municipal Corporation, Ward No. D, Nalasopare (East), Tal. Vasai, Dist. Palghar. On 12th May, 2017 a notice was issued to accused No.1 for 'stop work' in respect of construction of building at Survey No. 143, Hissa Nos. 1a, 1b at village Achole, Nalasopara. Thereafter by the inquiry conducted by

the Department it was revealed that accused No.1 had done unauthorized construction and had not removed the said unauthorized construction within time. Complaint dated 18th January, 2018 for the offence under Sections 52, 53, 54 of MRTP Act was filed against the accused. As per the record of the Corporation, the CIDCO had granted commencement certificate in favour of accused No.1 to construct building comprising of Ground + 7th Floors consisting of 43 flats and 33 shops. It is alleged that accused without informing the Corporation had illegally carried out excessive construction on the said premises. Some of the flats were sold by the accused. In respect of some flats, the accused No.1 had executed registered sale-deed. In one of the said sale-deed, the complainant noticed order dated 3rd November, 2009 issued by CIDCO granting permission to accused No.1 to construct basement + ground + 7th floor consisting of 48 flats and 104 shops. It is alleged that said letter dated 3rd November, 2009 is a bogus and a forged documents and therefore FIR was logged with the aforesaid police station for the said offences.

3. Applicant was arrested on 2nd June, 2018. Investigation is completed and chargesheet has been filed. Applicant preferred an application for bail before the learned Magistrate at Vasai Court,

which was rejected vide order dated 4th June, 2018 and subsequently, application preferred before the Sessions Court was also rejected on 18th June, 2018.

4. Learned counsel for the applicant submitted that entire matter relates to the document. The applicant is in custody from the date of arrest. Investigation is completed and chargesheet has been filed. Further detention of the applicant is not necessary. It is further submitted that applicant is not involved in the forgery of the order dated 3rd November, 2009. It is submitted that accused No.1 was granted permission to carry out the construction. The applicant is not concerned with the construction activities conducted by the accused No.1. It is further submitted that he did not share the profits of the business. The role which has been assigned to the applicant was to provide requisite permission etc. It is submitted that memorandum of agreement was executed between accused No.1 and the applicant on 9th September, 2008 and the work which was assigned to the applicant was to provide requisite permission for a consideration of Rs.1,50,000/- per building. It is submitted that applicant has not played any role in the entire transaction. It is submitted that alleged permission was obtained on 3rd November, 2009 and the FIR has been lodged on

3rd May, 2018 after nine years after the procurement of the alleged document. It is further submitted that architect has been granted anticipatory bail by this Court vide order dated 7th September, 2018 in Criminal Bail Application No. 1810 of 2018. It is submitted that there are no criminal antecedents against the applicant. Further detention of the applicant is not necessary.

4. Learned APP submitted that permission dated 3rd November, 2009 was false and fabricated. Accused No.1 had entered into agreement with the applicant and in accordance with the said agreement, the applicant was supposed to provide the requisite permission. It is therefore submitted that forged permission was forwarded by the applicant/accused and his complicity is established in the said crime. It is submitted that accused No.1 had constructed the flats and shops on the basis of false and fabricated permission dated 9th September, 2008. Hence, it is prayed that application be rejected.

5. I have perused the chargesheet. FIR has been lodged on 3rd May, 2018. Accused No.1 has alleged to have constructed the building. It is apparent that accused No.1 was granted permission to construct the building vide order dated 24th July, 2009 and allegedly false document was utilized by the accused No.1 in the

form of permission dated 3rd November, 2009. It is pertinent to note that said document was allegedly procured in 2009. FIR was lodged after a period of nine years. It is alleged by the complainant that the said permission was part of the agreement which was executed with one of the purchaser of the flat. There is no evidence to show that the applicant had prepared the forged document and handed over it to accused No.1. It is necessary to note that architect was concerned with the construction of the building was not arrested and chargesheet was filed against him and he was required to appear before the trial Court. Apprehending that trial Court may take him into custody he had preferred an application before this Court which has been allowed vide order dated 7th September, 2018. The applicant is not concerned with the construction activities and he was engaged in accordance with the agreement dated 9th September, 2009. It is pertinent to note that chargehseet indicate that architect had resigned on 22nd September, 2017. However, he did not inform about the said fact to the Corporation and had abetted accused No.1 to construct the building unauthorisedly. In the light of the aforesaid circumstances and considering the fact applicant is in custody from 2nd June, 2018, investigation is completed and

chargesheet has been filed, the case for grant of bail is made out.

Hence, I pass the following order.

ORDER

- i. Criminal Bail Application is allowed;
- ii. Applicant is directed to be released on bail in connection with C.R. No.I-471 of 2018 registered with Tulinj Police Station on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. Applicant shall report Tulinj Police Station once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon till conclusion of the trial.
- iv. Applicant shall attend the trial Court from the date of hearing unless exempted by the trial Court for some reasons;
- v. Application stands disposed off.

Digitally signed
by
Sachidanand
Kuttan Nair
Date:
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(PRAKASH D. NAIK, J.)