IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 443 OF 2017

Rajdev Meghan Saw … **Applicant**

V/s.

The State of Maharashtra … **Respondent**

WITH
ANTICIPATORY BAIL APPLICATION NO. 444 OF 2017

Israr Moinuddin Khan … **Applicant**

V/s.

The State of Maharashtra … **Respondent**

WITH
ANTICIPATORY BAIL APPLICATION NO. 885 OF 2017

Mukesh Shivdas Sonar … **Applicant**

V/s.

The State of Maharashtra & Ors. … **Respondents**

ANTICIPATORY BAIL APPLICATION NO. 894 OF 2017

Taher Yunus Poonawala … **Applicant**

V/s.

The State of Maharashtra & Anr. … **Respondents**

WITH
ANTICIPATORY BAIL APPLICATION NO. 895 OF 2017

Amit Bharatkumar Shah … **Applicant**

V/s.

The State of Maharashtra & Anr. … **Respondents**

WITH
ANTICIPATORY BAIL APPLICATION NO. 1329 OF 2017

Devendra Rajnikant Ladhani … **Applicant**

V/s.

The State of Maharashtra & Ors. … **Respondents**

WITH
ANTICIPATORY BAIL APPLICATION NO. 1382 OF 2017

Taher Ali Abbas Ali Undawala @
Mr. Taher Chechetwala … **Applicant**

V/s.

The State of Maharashtra & Ors. … **Respondents**

Mr. Raja Thakare a/w S.G. Rajput, Aditya Jadhav and G.P. Pai for the Applicants.
Mrs. J.S. Lohokare, APP for the Respondent/State in ABA Nos. 443/2017, 444/2017, 885/2017, 895/2017, 295/2017, 1329/2017.
Mrs. Rutuja Ambekar, APP for the Respondent in ABA/1382/2017.

CORAM : A.S.GADKARI, J.
DATE : 12th JANUARY, 2018

P.C.:

. The applicants are apprehending arrest in CR No.I-201-2016 dated

16.8.2016 registered with Nalasopara Police Station, District Palghar under Sections-420, 464, 468, 471 read with 34 of the I.P.C. and under Sections-52,53 and 54 of the M.R.T.P. Act, 1966.

2 Heard the learned Counsel for the Applicants and the learned APP. Perused the record of investigation.

3 The first information report is lodged by Shri. Prakash Jadhav, the Incharge Assistant Commissioner of Vasai-Virar Municipal Corporation.

It is the prosecution case in brief that, the Applicants being builders and/or developers forged and fabricated commencement certificates and other related Government documents pertaining to land bearing Survey Nos. 4 and 5 lying and situate at village Nilemore within the jurisdiction of Vasai-Virar Municipal Corporation and constructed illegal buildings thereon. It is further alleged that the development permission granted by the planning authority i.e. CIDCO has been forged and instead of constructing buildings as per the original development permission and commencement certificate, the accused persons in connivance with each other constructed not only additional buildings, but also constructed additional floors on it. It is also alleged that though construction permission was not granted to construct certain wings of the building, the Applicants and other accused persons have unauthorisedly constructed wing No.G to L of 7 floors. It is alleged that the Applicants by fabricating and/or forging various Government documents have constructed said buildings on Survey Nos. 4 and 5 lying and

situated at village Nilemore and have committed an offence as contemplated under Sections 420, 468, 471 of the Indian Penal Code.

4 Mr. Thakare, the learned Counsel appearing for the Applicants submitted that one person by name Shri. Narendra Patil has earlier filed a crime bearing No 197 of 2016 under Sections 420, 464, 465, 467, 468, 471 read with 34 of the Indian Penal Code against the Applicants and other accused persons with same allegations. He submitted that in the said crime police have already completed investigation and submitted charge-sheet before the Court of competent Jurisdiction. He submitted that the commencement certificate referred to therein is same, as has been alleged to have been forged and fabricated in the present crime. He submitted that as the present crime is registered on the same or similar allegation though by a different person, it amounts to second FIR in respect of the same cognizable offence, same incident or occurrence. In support of his contention he relied on a decision of the Supreme Court in the case of T.T. Antony V/s. State of Kerala and Ors, reported in 2001 CRI. L.J.3329.

He further submitted that the co-accused in the present crime namely Parag Parab has preferred a Writ Petition No. 154 of 2017 in this Court for quashing of FIR and this Court by way of ad-interim relief has directed that charge-sheet in the present crime shall not be filed against the Petitioner therein till the next date. He submitted that said co-accused Parag Parab has now been released on regular bail by the Trial Court. He further submitted that as

documents involved in both the crimes are same, the custodial interrogation of the Applicants is not necessary and they may be granted pre-arrest bail.

5 Per Contra, the learned APP vehemently opposed the application.

6 The perusal of the record clearly indicates that the commencement certificate alleged to have been forged in CR No. 197 of 2016 is totally different than one which is alleged to have been forged in the present crime i.e. in CR No. I-201/2016. It is the further allegation against Applicants that, by using the said forged and fabricated commencement certificates, they have constructed buildings on the aforestated piece or parcel of land though there was in fact no permission accorded by the Appropriate Authority to construct the same.

7 As far as the contention of the learned Counsel for the Applicant that, the present crime is a second FIR in respect of the same cognizable offence, the same incident or occurrence is concerned, it is to be noted here that the earlier crime i.e. C.R. No. 197 of 2016 is registered at the instance of Shri. Narendra Patil, a flat purchaser in the said building who after coming to the knowledge that the accused persons therein have constructed illegal buildings on the basis of forged and fabricated documents and sold the respective premises to the individual flat purchasers. The present crime is registered by the Assistant Commissioner of Vasai-Virar Corporation. As noted earlier, in Crime No. 197 of 2016 a separate and distinct commencement certificate used by the Applicants was a matter of investigation and in the present crime a separate and distinct forged

commencement certificate is a matter of investigation. Though the land beneath illegally constructed buildings is the same, it is this factum of distinction that, on the basis of two separate and distinct commencement certificates and other forged and fabricated Government documents, the criminal law is set into motion for investigation and it is therefore, in my considered view, the decision of the Supreme Court in the case of T.T. Antony (supra) is of no avail to the Applicants.

8 The record of investigation reveals that the Applicants are beneficiaries of the proceeds of crime *inter alia* profits derived from the said illegally constructed buildings on the basis of said forged and/or fabricated documents. The categorical allegation against the Applicants is that they in connivance with other accused persons have indulged into forging and fabricating the commencement certificates, development permission and other related documents and by using the said documents, it is alleged that they have constructed about 10 buildings on the said survey numbers wherein approximately 351 flats and 49 shops have been sold to about 400 gullible persons.

9 The record further indicates that this Court has rejected the anticipatory bail application of co-accused Anthony D'Silva and another bearing Anticipatory Bail Application No. 1886 of 2016 by an order dated 05.04.2017 and Ravindra R. Singh and Ors. bearing Anticipatory Bail Application No. 743 of 2017 by an order dated 26.04.2017. The record further indicates that the Hon'ble Supreme Court

did not grant relief to the accused person namely Dayaram Zuri Pal in ABA No. 743 of 2017 and has dismissed the Special Leave to Appeal (Criminal) No. 5627 of 2017 by its order dated 08.08.2017.

10 It is to be noted here that in Public Interest Litigation No. 85/2015 while taking serious note of the illegal constructions on the basis of the forged and fabricated development permission and commencement certificate, the Division Bench of this Court by its order dated 16.12.2015 has directed the concerned to take appropriate legal action against such persons involved in the said activities and it appears that the present crime registered against the applicants and other persons is the result thereof. As stated herein above, the investigation till date carried out by the police reveals that the applicants along with other accused persons have indulged into fabricating and/or forging the development permission and/or other related documents and have constructed unauthorized buildings and sold the flats therein to the gullible purchasers.

11 After taking into consideration, the gravity of the offence and the serious allegations against the Applicants, this Court is of the view that the Applicants do not deserve to be protected by the pre-arrest bail. The, applications are accordingly, rejected.

12 At this stage, Mr. Thakare the learned Counsel for the Applicants submitted that the Applicants are enjoying interim relief since April, 2017 and the same may be continued for the period of 3 weeks from today, as the Applicants intend

to challenge the present order before the Hon'ble Apex Court.

The learned APP vehemently opposed the said prayer.

14 However, after taking into consideration the fact that the Applicants have been protected since 25.04.2017, I am inclined to extend the interim relief for a period of 3 weeks from today. Hence, the operation and implementation of the present order is stayed for a period of the weeks from today.

(A.S.GADKARI, J.)