

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1770 OF 2018

Divyesh Pratapsinh Shah, Age 61 years,
Occ.Architect, R/o.Flat No.C/402,
Haripreet CHSL, Tagore Road,
Near Poddar High School, Santacruz (W),
Mumbai-400 054.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Sanjeev P. Kadam I/by Prashant Badole for applicant.
Mr.Arfa Sait, APP, for State.
Mr.S.S.Ranaware, API, Tulinj Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th September 2018

PC :

1. This is an application for anticipatory bail. The applicant is apprehending arrest in connection with CR No.287 of 2018 registered by Tulinj Police Station, Palghar under Sections 420, 465, 467, 468, 471, 474, 120(B) read with Section 34 of Indian Penal Code, Sections 3, 4 and 13 of MOFA Act and Sections 52, 53, 54 of Maharashtra Regional and Town Planning Act.

2. Brief facts of the prosecution case are that M/s.Anant Ashray Constructions through its partners, Dattatray Dhule and Anasuya Shetty had developed a plot of land situated at Village Achole, Survey No.104, Hissa No.8 and constructed a building namely Sai

Kirti. Vide letter dated 27th December 2003, CIDCO had granted permission to construct G+3 floors containing 21 flats and to use FSI of 629.99 sq.mtrs. The complainant initiated inquiry against the developers as they did not carry out construction as per sanction letter. It was noticed that the accused had constructed G+4 floors for 40 flats which is contrary to the permission granted by CIDCO. It was also found that the developers had prepared forged and fabricated CIDCO permission and on the basis of said document, the flats and shops in the building were sold. The applicant was an Architect who was engaged by the developers.

3. The applicant preferred application for anticipatory bail before the Sessions Court which was rejected on 24th August 2018. The contention of the applicant is that he has been falsely implicated in this case. He was appointed as an architect by Mr.Datta Dhule of M/s.Anant Ashray Constructions in the year 2002-03 to bring requisite permissions from Municipal Corporation/CIDCO for construction of said building. The applicant on behalf of Anant Ashray Constructions had submitted all the requisite documents as given by his clients and had obtained permission for construction of said building i.e. G+3 floors as per approved plan of Municipal Corporation/CIDCO and has accordingly given the said approved plan to the said developers. In the year 2007 Mr.Datta Dhule of M/s.Anant Ashray Constructions had decided to sell the project to M/s.Sai Enterprises, a partnership firm of Mr.Pannalal Mishra and accordingly the deal was carried out and while the said deal was carried out in the year 2007, the applicant had tendered his resignation as architect of M/s.Anant Ashray Constructions. It is submitted that as per the common practice, Mr.Dhule had supplied

the resignation of the applicant to Mr.Santosh Tiwari of M/s.Sai Enterprises and it was his duty to appoint fresh architect and along with appointment of fresh architect, the resignation of the applicant was to be submitted to CIDCO and Municipal Corporation. The applicant was not aware about any unauthorized construction being carried out by new developer as it was beyond his scope of work. It is submitted that in view of his resignation he was not responsible and cannot be attributed the role of acting in connivance with other accused for committing the said crime. It is submitted that the Divisional Assistant Commissioner, Prabhag Committee-E, Nallasopara East, Vasai Virar City Municipal Corporation by his letter dated 8th August 2018 addressed to Police Inspector had submitted additional information in respect to the said FIR and in the said letter it was informed that in the month of October-2002, the owner of the said land had sold the said property to M/s.Anant Ashray Constructions by unregistered agreement. It was also informed that the owner of the said land had given power of attorney to M/s.Anant Ashray Constructions to carry out the work of constructions as per registered power of attorney dated 12th November 2002. It was also informed that by tripartite agreement dated 20th February 2007 between Mrs.Annusaya Shetty and others, the property was sold to Sai Enterprises through its partner Pannalal Mishra. It was also mentioned that M/s.Anant Ashray Constructions vide their letter dated 11th April 2017 have given to Sai Enterprises through partner Mr.Santosh Tiwari a copy of non agriculture permission, CIDCO order and other documents along with resignation letter dated 13th April 2007 of the architect and CD of the building. It was also informed that the applicant had given his resignation vide letter dated 12th February 2007 to M/s.Anant Ashray Constructions. It is

submitted that taking into consideration the aforesaid circumstances, custodial interrogation of the applicant is not necessary.

4. Per contra, learned APP submitted that the applicant was an architect appointed by the developers. The factum of resignation, as contended by the applicant, is suspicious and is after thought. The documents relating to resignation are apparently created to take the benefit. It was his responsibility to seek permission. He had acted in connivance with other accused. Learned APP also brought to my notice the documents including conveyance deed dated 20th February 2007 as well as agreement for sale dated 6th October 2009. It is submitted that the name of applicant is reflected as architect even in the document of 2009. The applicant had not forwarded the purported resignation to the competent authorities. It is further submitted that the accused had created and forged the documents of permission allegedly issued by CIDCO and carried out illegal construction of G+4 floors for 40 flats, although original permission was only for G+3 floors and for 21 flats. Learned Sessions Court while rejecting the application of the applicant for anticipatory bail has observed that the offence is of serious nature. The applicant is also involved in another crime. It was also observed that the involvement of applicant is implicit from the material on record. The offence involves creation of false and fabricated documents. The report filed by the investigating officer opposing the application for anticipatory bail before the Sessions Court also indicate the involvement of applicant. It is mentioned therein that the applicant had provided his letter of appointment as an architect to CIDCO, however, he did not deem it appropriate to provide resignation letter to the said authority. It is also mentioned that name of the applicant

is reflected in the sale deed of 2009 which also indicate that he had continued to be the architect for the said project. It is also mentioned that in other correspondence also there is no reference in any manner about resignation of the applicant as an architect of the said developers.

5. Taking into consideration aforesaid aspects and the nature of material available with the investigating officer, case for grant of anticipatory bail is not made out. Hence, the application is rejected.

6. Learned advocate for applicant submits, on instructions, that the applicant be granted two weeks time to surrender. In view of the submission, the applicant is granted two weeks to surrender before the investigating officer.

(PRAKASH D. NAIK, J.)

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