

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1979 OF 2018

Pradeep Baban Naik, Age 42 years,
Occ.Business, R/o.At Gaas, Gaas Bus Stop,
Post Sopara, Vasai (West),
Tal.Vasai, District Palghar.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Shailesh Kantharia for applicant.
Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd October 2018

PC :

1. The applicant has preferred this application for seeking relief u/s 438 of Code of Criminal Procedure, 1973. The FIR has been registered with Nalasopara Police Station vide CR No.I-93 of 2018 for offences under Sections 420, 465, 467, 468, 471 r/w 34 of Indian Penal Code and under Sections 52, 53 and 54 of Maharashtra Regional and Town Planning Act.

2. The prosecution case is that the complainant is working with Divisional Office, Nalasopara as Assistant Commissioner since 15th November 2017. Complaint was received from Nalasopara Police Station with regards to the investigation and inquiry relating to unauthorized constructions on Survey No.32(B), Hissa No.2 and Survey No.36, Hissa No.3. Upon investigation it was found that illegal construction was carried out on the said property. The report

was submitted to the police. The property belongs to accused no.1 Anil Raut and that he had given the said property for development to M/s.Patil Developers. It is alleged that M/s.Patil and Developers further gave development rights to M/s.Omkar Enterprises, M/s.Ashtavinayak Constructions, M/s.Real Builders and Developers, M/s.Karari Builders. The Vasai-Virar Municipal Corporation had issued notice to accused no.1 under the provisions of Maharashtra Regional and Town Planning Act (MRTP Act) with regards to illegal constructions on Survey No.32(B), Hissa No.2. On inspection conducted on 4th October 2017, it was noticed that the accused have carried out illegal construction on the said property. It was observed that on Survey No.32(B), Hissa No.2, permission dated 18th October 2009 was issued for building no.3, ground+one restaurant. However, the accused no.1 along with M/s.Yagni Enterprises, partners Tushar Gajanan Patil (accused no.2) and Pradip Naik (accused no.3) committed forgery of the permission and constructed G+4 construction on the said plot and sold the said tenements to the purchasers. Since 2011 to 2016, the accused had acted in connivance with each other and forged the permissions and carried out illegal constructions on the aforesaid property. Hence, the FIR was registered as stated hereinabove.

3. The applicant preferred an application for anticipatory bail before the Sessions Court which has been rejected vide order dated 16th July 2018 on the ground that there is no apprehension of arrest to the applicant.

4. Learned advocate for the applicant submitted that the learned Sessions Judge has wrongly rejected the application for anticipatory

bail on the ground that there is no apprehension of arrest as the charge sheet is filed. It is submitted that there was an apprehension of arrest. Even if the applicant appears before the Trial Court in view of filing of charge sheet, there was every likelihood that he would be taken into custody. It is further submitted that the learned Sessions Judge has not decided the application on merits, although it is observed that the applicant has committed serious offence. It is submitted that the investigation is over and charge sheet has been filed against the accused and no fruitful purpose would be served by keeping the applicant in custody. It is further submitted that the entire case relates to the documentary evidence and custodial interrogation of the applicant is not necessary. It is therefore prayed that the applicant be granted anticipatory bail.

5. Learned APP submitted that the applicant is involved in forgery of documents. The co-accused were arrested and the charge sheet has been filed against the arrested accused. The applicant is involved in serious crime. The applicant in connivance with other accused is involved in the offence of forgery of permission for construction. It is therefore prayed that the application be rejected.

6. The prosecution case is that the accused Anil Raut had executed development agreement with co-accused in respect of land on which alleged illegal construction is carried out. It is apparent that the said accused was the financial beneficiary of the proceeds of the crime. The accused no.1 was arrested on 4th May 2018 and he was produced before the Courts for remand. He was remanded to magisterial custody. The learned Magistrate while granting bail to the accused Anil Raut vide order dated 16th May 2018 has observed

that the alleged forged commencement certificate is not recovered by the investigating officer. The officer has not placed on record the efforts taken by him for searching and securing the forged commencement certificate. The said certificate is the vital piece of evidence. However, without placing on record the efforts made by him for recovery of the said document, the charge sheet was filed hurriedly on 11th May 2018 i.e. within six days of grant of magisterial custody of the accused for the reasons best known to him. The Court further observed that the investigating conducted by the police was shabby. The offences of serious nature whereby 75 tenements were constructed illegally and sold to the gullible purchasers. It also appears that co-accused were to be arrested and forged documents were yet to be recovered. It was further observed that it is routine practice that without recovery of the forged documents, the prime accused are produced with the charge sheet before the Court under the garb of completion of investigation. Similar observations were made by the learned Magistrate in order dated 28th August 2018 while granting bail to Rakesh Raj Bahadur Singh. Thus apparently the charge sheet was filed against the persons who were arrested by the police. As per the prosecution case, there is serious allegation against the applicant having acted in connivance with the other accused in forgery of the commencement certificate. Apparently charge sheet has not been filed against the present applicant. From the orders passed by the learned Magistrate granting bail, it appears that the vital document was not recovered by the police. In the circumstances no case for grant of anticipatory bail is made out by the applicant and hence this application is required to be rejected.

7. Hence, I pass following order :

ORDER

Criminal Anticipatory Bail Application No.1979 of 2018 is rejected and stands disposed off.

(PRAKASH D. NAIK, J.)

MST