

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2076 OF 2018

Tejas Mahendra Shah, Age 42 years,  
Occ.Profession, Office at 103,  
Shyam Kamal, C-Building, Agrawal Market,  
Vile Parle (East), Mumbai-400 057.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Ashok Mundargi, Senior Advocate with Mr.Rajesh Sharma I/by  
Rajesh S. Sharma & Associates for applicant.  
Mr.Y.M.Nakhwa, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 12<sup>th</sup> October 2018

PC :

1. This is an application for anticipatory bail in CR No.459 of 2018 registered with Bandra Police Station for offences under Sections 465, 468, 471 and 420 of Indian Penal Code. The FIR was lodged on 21<sup>st</sup> August 2018.

2. The applicant preferred an application for anticipatory bail before Sessions Court which was rejected by order dated 4<sup>th</sup> October 2018. The prosecution case is that the first informant is a Sub-Engineer working with Municipal Corporation of Greater Mumbai ('MCGM') in the Building Proposal Department. On 26<sup>th</sup> August 2011, the applicant, who is an architect and proprietor of M/s.Square Consultant submitted application to MCGM for sanction of plans for reconstruction of society building situated at CTS

No.822/2, Village Ambivali, Sahakar Nagar, Andheri (West), Mumbai and based on the submission of documents, the MCGM had sanctioned the building plans of the building. Full commencement certificate of ground + 16 upper floors having height of 57.42 meters was granted on 12<sup>th</sup> January 2015. Subsequently the construction of building was completed in the year 2016. Thereafter the applicant had submitted revised plans for concession report in June-2016. The concerned officer had scrutinized the proposal and noticed certain discrepancies in the proposal. The discrepancies which were noted indicated that the applicant had submitted no objection certificate ('NOC') dated 3<sup>rd</sup> June 2014 issued by Airports Authority of India, Western Region having height of 71.82 meters before obtaining commencement certificate. The accused had submitted no objection certificate having height of 58.15 meters in place of earlier no objection certificate till 3<sup>rd</sup> June 2018. Subsequently it was also noticed that there were hand written changes in the commencement certificate. Thus, it is alleged that the accused had submitted forged NOC of changed height by making changes in the documents viz NOC and commencement certificate. The MCGM had submitted a report to the officer for cancellation of license of the accused. It is further alleged that the NOC dated 4<sup>th</sup> March 2013 issued by Airports Authority of India to MCGM on 29<sup>th</sup> April 2013 for building situated at CTS No.1283, F.P.No.125, TPS No.2, Vile Parle, Mumbai and based on the submission of documents, the MCGM had granted the full commencement certificate dated 25<sup>th</sup> November 2013 on ground and 1<sup>st</sup> to 10<sup>th</sup> floors having height of 32.65 meters for residential building on 29<sup>th</sup> September 2013. The MCGM had received the letter from Airports Authority of India relating to file No.CHE/WS/609/K/337 that confirmation of two NOCs for one

plot. The accused had submitted NOC dated 4<sup>th</sup> March 2013 having height of 40.35 meters instead of NOC dated 12<sup>th</sup> July 2013 issued by Airports Authority of India having height of 38.80 meters for CTS No.1283, F.P.No.125, TPS No.2, Vile Parle, Mumbai. For the said action of the accused, report is submitted to the concerned officers for cancellation of license of the applicant-accused. The FIR was registered for the aforesaid offences.

3. Learned counsel for applicant submitted that the applicant is not involved in commission of alleged crime. He has not committed the forgery of documents. There is no necessity for the applicant to fabricate the said documents. The hand written portion reflected on the said document is not of the applicant. It is not the case of prosecution that the writing appearing on the said document is personally made by applicant. It is submitted that the applicant is being made scapegoat for the acts committed by somebody else. It is submitted that genuine documents were forwarded by applicant and it is absurd to think that subsequently alleged forged documents were tendered at the instance of applicant. It is submitted that the process of forwarding the documents and getting permission had began in 2011 and subsequently in 2016. The FIR was registered belatedly in 2018. Apart from that, the applicant had repeatedly appeared before the investigating officer and tendered his explanation with regards to the alleged infirmities noticed by the complainant. It is further submitted that the submissions of the applicant were recorded in detail by the investigating officer which reflects the explanation tendered by the applicant and therefore custodial interrogation of the applicant is not necessary. It is submitted that the circumstances would show that there was no

reason for the applicant to fabricate the said documents. Apparently somebody had played mischief in creating false documents by mechanical process for which the applicant cannot be held responsible. It is submitted that he is not concerned with the other project and it is being looked after by one Mr.Solanki and all the required procedure was conducted by him. The applicant is a qualified engineer and having worked as consulting architect and licensed surveyor in the name and style of M/s.Square Consultant and is conducting the affairs since last 15 to 17 years and having reputation in the society. He has been falsely implicated in the case. There is no cogent evidence to establish that the applicant is the perpetrator of the fabricated documents. The entire matter relates to documents and custodial interrogation of the applicant is not necessary. In any case, he has co-operated with the investigation and therefore he need not be subjected to police custody. The offences are registered under Sections 465, 468, 471 and 420 of IPC and there is no evidence to justify the requisite ingredients to constitute the said offences. It is therefore prayed that the application be allowed.

4. Per contra, learned APP has vehemently opposed the grant of anticipatory bail to the applicant. It is submitted that the applicant is involved in submitting false and fabricated documents. The infirmities are apparent on the documents. The applicant is conducting the affairs of M/s.Square Consultant. Primarily certain permissions were sought by the applicant. The documents were also forwarded by him. The discrepancies are noted in respect to two proposals. Apparently there is forgery in the documents and fair investigation is required to be conducted in that regard. The custody

of the applicant would be required as the custodial interrogation would reveal as to how and in what manner the documents are fabricated and the source from whom the applicant got the same.

5. Having heard both sides, I have gone through the documents on record. The prosecution has alleged fabrication of vital documents. The offence is serious. The documents are in the nature of commencement certificate and the NOC issued by Airports Authority of India with regards to the height of building which was to be reconstructed. According to the first informant, the license of the applicant has been cancelled by appropriate authority on account of his involvement. The documents collected by the investigating officer indicate that initially the applicant had submitted NOC of Airports Authority of India for getting sanction of commencement certificate and he had obtained such certificate on the basis of NOC issued by Civil Aviation Department for permissible height. When the permissible height above the sea level was 55.15 meters, there appears correction in the commencement certificate. Thus, the prosecution has levelled serious allegations. The involvement of other persons cannot be ruled out. This is not the stage to evaluate the entire evidence and scan the entire evidence. Prima facie, the documents are false and fabricated and considering the nature of accusations levelled in the FIR and in view of material collected till date by the investigating officer, case for grant of anticipatory bail is not made out. Hence, Criminal Anticipatory Bail Application No.2076 of 2018 is rejected.

(PRAKASH D. NAIK, J.)