

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

ANTICIPATORY BAIL APPLICATION NO.2304 OF 2018

Govind Jivan Gawad

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Naiknavare a/w. Mr.Nilesh Shirke i/b. Mr.Satish Goud,
Advocate for the Applicant.

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

Mr.P.B. Bankar, PSI, Virar Police Station, District–Palghar,
present.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 10, 2018.

P.C. :

This is an application for anticipatory bail in connection with C.R.No. I-654 of 2016, registered with Virar Police Station, District – Palghar, for the offences punishable under Sections 420, 465, 467, 468, 471, 474 read with 34 of Indian Penal Code (“IPC”, for short), and Sections 53 and 54 of Monopolistic and Restrictive Trade Practices Act, 1969, (“MRTP Act”, for short). FIR was lodged on 18th November, 2016.

2 The case of the prosecution is that the applicants and others are the owners of the disputed plot bearing Survey no.228, Hissa No.1 situated at Virar. The accused were permitted to construct one building of ground plus two floors containing 26 flats having carpet area 2491.67 sq. meters. Accordingly, commencement certificate was issued by Municipal Corporation. Applicant and accused had acted in connivance with each other. In furtherance of their common intention, accused had forged and fabricated commencement certificate disclosing that they are permitted to construct total carpet area of 6954.31 square meters. Accordingly, they have constructed the building illegally. They have sold the flats to prospective purchasers on the basis of forged and fabricated commencement certificate. The said fact came to the notice of Municipal Corporation and hence FIR was lodged on 18th November, 2016.

3 The case of the applicant is that after obtaining all requisite permissions and commencement by requisite authorities, the flats were sold to the purchases and they are occupying the said premises. It is further submitted that the brother of the applicant is one of the partner of the firm namely G.M. Builders and Developers. They had executed an agreement with one Sunil Laxman Tambe on 9th November, 2008, which is

annexed to the application and he was supposed to obtain the requisite permissions with regards to commencement and permission to construct etc. It is submitted that the said said documents were obtained by him in the year 2006, and, subsequently the construction was carried out. FIR was lodged after a period of eight years. It is further stated that the brother of the applicant is the partner of the said firm. He was arrested on 9th August, 2018, and, granted bail by the Sessions Court, Vasai on 20th August, 2018. It is further submitted that the other accused Sunil Tambe, was also arrested and granted bail. The applicant is senior citizen and suffering from ailments. He is willing to cooperate with the investigation. It is also submitted that the applicant was not absconding and was available at his residence.

4 Learned APP submitted that the forged documents were procured by the accused and on the basis of false and fabricated documents, the construction was carried out. He also sold the flats to the purchasers. It is further submitted that the applicant in connivance of co-accused had committed the offence. It is further submitted that the co-accused was absconding and was not available after registration of the FIR. It is further

submitted that the custodial interrogation of the applicant is necessary considering the nature of crime committed by him. The applications had preferred by applicant for anticipatory bail which were rejected by the Sessions Court, which shows that he was not available for investigation.

5 Having heard both the sides. I have perused the documents on record. Apparently, the documents were procured in the year 2008. The applicant and his brother have been arrested. They relied upon the agreement executed in 2008 with co-accused Sunil Tambe, who was supposed to procure the documents, requisite permissions etc., is granted bail. On the basis of the said documents, the construction activities were carried out. The applicant is one of the partner. The other partners of his brother was arrested and he has been granted bail by the Sessions Court. It is also pertinent to note that as against the arrested accused, the investigation is completed and charge - sheet is already filed. While granting bail to the brother of the applicant, the Sessions Court has observed that the said applicant was in custody from the date of arrest and subsequently he was remanded to judicial custody. The Court has also observed that the brother of the applicant was the local resident of Virar and he

is ready to abide by the conditions imposed by the Court. As all material investigation is completed and charge - sheet is filed, no purpose would be served by keeping the applicant behind the bar as trial may take a reasonable time. It is necessary to note that the role attributed to the applicant and his brother, who were arrested and in custody for period of about one week, is identical. He was interrogated while in custody and the charge - sheet has been filed against him. As stated above, the Court had observed that the investigation is completed and no purpose would be served by keeping the brother of the applicant in jail. The FIR has been lodged after a period of about eight years from the date of incident. The co-accused Sunil Tambe is also granted bail, after his arrest. Although the applicant is seeking anticipatory bail, considering the aforesaid circumstances, I do not find that there is necessity of custodial interrogation of the applicant. In the circumstances, case for grant of anticipatory bail is made out.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application No.2304 of 2018,
 is allowed;

- (ii) In the event of arrest of the applicant in connection with C.R.No. I-654 of 2016, registered with Virar Police Station, District-Palghar, he be released on bail 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 investigating officer of Virar Police Station, District-Palghar, once in a week on Friday between 11:00 a.m. to 1:00, till filing of the charge-sheet;
- (iv) Anticipatory Bail Application No.2304 of 2018, stands disposed of;

(PRAKASH D. NAIK, J.)