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

ANTICIPATORY BAIL APPLICATION NO.2215 OF 2016

PRADEEP GANPATRAJ MEHTA

..APPLICANT

Vs

THE STATE OF MAHARASHTRA

..RESPONDENT

Mr. A.H. Ponda a/w Mr. Yashpal Thakur i/b Pravina Thakker for applicant.
Ms. J.S. Lohokare, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 26th July 2018.

P.C.:

1] This is an application under section 438 of Cr. P.C for pre-arrest bail. The applicant is apprehending arrest in CR No.I-157 of 2016 registered with Arnala Police Station, District Palghar under sections 465, 467, 471 read with 34 of the Indian Penal Code and under sections 53 and 54 of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act).

By an Order dated 4th January 2017, the applicant was granted interim relief

2] Heard the learned counsel for the applicant and the learned APP for the State. Perused the record of investigation and also affidavit filed

by the Investigating Officer Shri Rakesh Pagare dated 30th June 2017, placing on record the progress of the investigation.

3] The first information report is lodged by Smt. Smita D. Bhoir, Incharge Assistant Commissioner, A-Division of Vasai-Virar City Municipal Corporation, Virar (West). It is stated that, by a letter dated 1.9.2016 the Deputy Director, Town Planning Department, Vasai Virar Municipal Corporation informed the office of the informant that, on Survey No.417 Hissa Nos.1 and 2 lying and situated at village Bolinj, Taluka Vasai illegal construction has been constructed by the concerned in violation of commencement certificate and it is found that the construction which is carried out by the concerned was on the basis of forged and/or fabricated commencement certificate issued by the said Corporation and/or CIDCO. The first informant thereafter conducted preliminary enquiry into the matter and thereafter lodged the present crime.

The prosecution case in brief is that, the applicant is the partner of M/s Adinath Infra Ltd and had taken a piece and parcel of land bearing Survey No.417 Hissa Nos.1 and 2 for development. The CIDCO Authority by its permission bearing No. CIDCO/VVSR/RDP/BP-3699/W/5227 dated 13.10.2009 had issued a commencement certificate in favour of the

applicant for constructing a building of ground plus seven storied having 100 residential and 8 commercial premises therein. That the permission for construction of two residential bungalows having ground plus one story was also granted. It is alleged that, the applicant in connivance with other accused person forged the said commencement certificate bearing No.CIDCO/VVSR/RDP/BP-3699/W/5227 dated 13.10.2009 and constructed additional ground plus four storied building having 16 residential and 11 commercial premises and sold the said tenaments to the needy persons. The said building is known as 'Swami Samarth Apartment'. It is further stated that, the co-accused Mr. Jayesh Vartak of M/s Square Enterprises in connivance with the applicant has committed the said crime. In the premise the first information report is lodged.

4] Mr. Ponda, the learned counsel appearing for the applicant submitted that, the applicant being a partner of Adinath Infra has constructed a building in pursuance of original commencement certificate dated 7.11.2007 bearing No.CIDCO/VVSR/CC/BP-3699/W/4486 and revised commencement certificate dated 7.11.2011 bearing No.4487 as per permission granted by the CIDCO. He submitted that, there was a piece of land adjoining to the property developed by the applicant which was

reserved for Common Facility Centre (CFC) and as per Development Control Rules, a dispensary was to be constructed thereon. That by forging the commencement certificate issued for the purpose of development of the said C.F.C., the co-accused Mr. Deepak Mhatre and Jayesh Vartak constructed a building thereon and applicant has nothing to do with the said independent transaction between Mr. Deepak Mhatre and Mr. Jayesh Vartak. He submitted that, after construction of the building comprising of ground plus seven storied by the applicant, the applicant obtained occupation certificate in the name of Adinath Infra and has also formed a Society of the occupants thereon as contemplated under the provisions of Maharashtra Co-Operative Societies Act. He further submitted that, as a matter of fact, the applicant by accepting Rs.15.00 lakhs has transferred the rights in favour of Mr. Deepak Mhatre, pertaining to the adjoining piece and parcel of land which was reserved for C.F.C whereon the dispensary was to be constructed. He submitted that, there is sufficient correspondence on record to draw an inference that the said Mr. Deepak Mhatre had agreed to purchase the said piece of land from the applicant. He however fairly admitted that there is no duly signed agreement on record by the parties interse which can be termed as legally admissible document. He submitted

that, the police did not arrest Mr. Deepak Mhatre till date and therefore the custody of the applicant is not necessary in the investigation of the present crime, as it is based on documents. In support of his contention, he relied upon two decisions of the Delhi High Court namely (i) Binoy Jacob Vs. Central Bureau of Investigation, reported in 1993 Cr. L.J. 1293 and (ii) R. Vasudevan Vs. CBI, New Delhi Order dated 14.1.2010 in Bail Application No.2381 of 2009. He therefore prayed that, the applicant may be granted pre-arrest bail.

5] The learned APP vehemently opposed the application and pointed out the investigation carried out by the Investigating Agency till date and submitted that, prima facie the involvement of the applicant in the present crime is apparent and therefore application may be dismissed in limine.

6] A perusal of the record would indicate that, the applicant gave development rights of the said C.F.C plot to one Mr. Deepak Mhatre by alleged agreement dated 9.11.2012 for consideration of Rs.15.00 lakhs and also 30% share in the constructed area. The said agreement is an unregistered notarised agreement without proper signatures thereon. The fact on record therefore remains that the applicant has accepted Rs.15.00

lakhs from Mr. Deepak Mhatre without complying with necessary legal formalities even to remotely infer the fact that, the rights pertaining to the said C.F.C plot were in fact transferred in favour of Mr. Deepak Mhatre, thereby allowing the applicant to adopt a plea that after transfer of the said C.F.C plot, he has nothing to do with it.

7] The Investigating Officer in his affidavit dated 30th June 2017 in para-4 has categorically stated that, during the investigation it is revealed that, two illegal buildings namely 'Arohi's Swamy Samrth Avenue '(ground plus five storied) and 'Swamy Samarth Apartment' (ground plus four storied) were constructed by the co-accused Mr. Jayesh Vartak along with the applicant on the basis of forged commencement certificate dated 13.11.2009 bearing No.CIDCO/VVSR/RDP/BP-3699/W/5227 dated 13.10.2009 allegedly issued by CIDCO. The investigation reveals that, the Municipal Corporation has confirmed that the said document is bogus/forged document. It is further disclosed in the investigation that, the C.F.C area was in fact earmarked for construction of a dispensary being a common facility centre, however, the applicant by accepting valuable consideration with 30% share in the constructed area from Mr. Deepak Mhatre and co-accused Jayesh Vartak permitted the said accused to

construct the said buildings namely 'Arohi's Swamy Samrth Avenue ' and 'Swamy Samarth Apartment' on the said plot.

8] It is to be noted here that, the land beneath the said buildings is still standing in the name of applicant in the revenue record. The registered sale agreement entered into between M/s Arohi Enterprises and one of the flat purchaser in the Arohi's Swamy Samrth Avenue clearly indicates that the owner through its partner, applicant, has executed the agreement for development dated 15.3.2014 granting development rights in respect of F.S.I of C.F.C area admeasuring about 771.56 sq.meters to co-accused Jayesh Vartak, partner of M/s Arohi Enterprises.

There is no document on record to even remotely infer that the applicant in fact has transferred his rights pertaining to the adjoining piece and parcel of land in favour of Mr. Deepak Mhatre by a concluded agreement.

9] The investigation further discloses that, while executing the Development Agreement dated 9.11.2012, the applicant and Mr. Deepak Mhatre were present before the Notary at the time of notarizing the said Development Agreement and therefore the contention of the applicant that his signature has been forged by Mr. Deepak Mhatre, prima facie has no

substance in it. The record of investigation clearly indicates that, the applicant along with other accused persons is involved in the offence of construction of two illegal and unauthorised buildings on the basis of forged commencement certificate and had cheated many gullible needy persons by selling the tenaments therein. The applicant is one of the beneficiary, as he has received Rs.15.00 lakhs from Mr. Deepak Mhatre along with his share in the said buildings as noted earlier.

10] It is to be noted here that, in Public Interest Litigation No.85 of 2015 while taking serious note of the illegal constructions on the basis of forged and fabricated development permissions 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 applicant is a result thereof.

It is to be noted here that, by use of bogus or forged commencement certificate the applicant and co-accused have constructed residential buildings and have cheated the gullible flat-purchasers by selling the premises. The modus operandi adopted by the applicant undoubtedly falls within the purview of the definition of economic crime.

11] As noted earlier, the record of investigation clearly indicates the complicity of the applicant in the present crime as apparent and therefore thorough interrogation by the police to unearth the entire truth behind the crime is necessary.

12] After taking into consideration the record of investigation, serious allegations against the applicant and the gravity of offence, this Court is of the view that the applicant does not deserve to be protected by pre-arrest bail.

13] Application is accordingly rejected.

(A.S.GADKARI, J.)