IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.486 OF 2018
(Rajkumar Hanumanprasad Saboo Vs. State of Maharashtra thr. PSO PS Lakadganj, Nagpur)
CRIMINAL APPLICATION (ABA) NO.487 OF 2018
(Suhasini w/o Lalitkumar Lohai Vs. State of Maharashtra thr. PSO PS Lakadganj, Nagpur)
CRIMINAL APPLICATION (ABA) NO.488 OF 2018
(Lalitkumar s/o Late Nandkishore Lohia Vs. State of Maharashtra thr. PSO PS Lakadganj, Nagpur)
CRIMINAL APPLICATION (ABA) NO.489 OF 2018
(Saket s/o Lalitkumar Lohia and another Vs. State of Maharashtra thr. PSO PS Lakadganj, Nagpur)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	*Court's or Judge's orders.*

Shri Shyam Dewani, Advocate for Applicant.
Shri N.B. Jawade, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE OF RESERVING THE ORDER: 27.07.2018
DATE OF PRONOUNCING THE ORDER: 31.07.2018

These applications under section 438 of the Criminal Procedure Code (Code) are moved by the applicants who are apprehending arrest in Crime 131/2017 registered with the Lakadganj Police Station Nagpur for offence punishable under sections 420, 467, 468 and 471 read with section 34 of the Indian Penal Code.

2] The complainant Laxmikant Deviduttji Murarka has moved an application seeking permission to assist the prosecution. The said application is allowed.

3] The substratum of the prosecution case is that the original commencement certificate – building permit signed by the Town Planner is permit 16-A/BP/Nagpur/TP/NMC/10 dated 30.04.2012. A forged and/or fraudulent document is created and the building permit is shown as 116-A/BP/Nagpur/TP/NMC/10 dated 30.03.2012. The underlying object, presumably is to claim some benefits under the income tax law by representing that the commencement certificate – building permit in respect of apartment scheme "Garden Enclave" which is a project of the "Suhasini Realty" of which Smt. Suhasini Lohia, applicant in Criminal Application (ABA) 487/2018 is the owner, was issued in the financial year 2012-2013.

4] The applicants assert, and there is no demur, that although the project is situated within the jurisdiction of the Ganeshpeth Police Station, a disgruntled purchaser of an apartment Mr. Laxmikant Murarka lodged complaint dated 11.12.2015 with the Lakadganj Police Station. The gist of the complaint is that benefits under the income tax act were availed by creating a forged or fabricated document to show that the commencement certificate – building permit was issued on 30.03.2012. Be it noted, that it is not disputed that the commencement certificate dated 30.04.2012 is duly issued. The complaint lodged by Mr. Laxmikant Murarka, which is the basis of the investigation, is that the date 30.04.2012 is fraudulently shown as 30.03.2012 to claim income tax benefit.

5] A few uncontroverted facts may now be noted. The offence is allegedly committed on 30.04.2012 or thereabout. It is not disputed by the prosecution, in response to the Court query, that neither the Income Tax Department nor the Nagpur Municipal Corporation lodged a complaint. The complaint is lodged by Mr. Laximkant Murarka on 11.12.2016. The applicants assert, which assertion is not disputed, that he is disgruntled apartment purchaser, and is the President of the Society who put forth several grievances leading to a meeting dated 26.04.2015. The further assertion of the applicant is that although the disputes were amicably resolved in the said meeting, Mr. Laxmikant Murarka lodged the police complaint at Lakadganj Police Station on 11.12.2016. No attempt is made by the prosecution to answer the serious allegation that the offence was registered and investigation undertaken by the Lakadganj Police Station without jurisdiction since the apartment scheme is situated within the territorial jurisdiction of Ganeshpeth Police Station.

6] The applicants aver that land admeasuring 4 acres bearing City Survey number 336, Sheet number 234 and 260 situated at Model Mill Road, were an ancestral property which fell to the share of Smt. Suhasini Lohia and her two sons Saket Lohia and Suved Lohia.

7] Saket Lohia is a resident of United States of

America and is a “Green Card” holder who has not visited India since last more than 10 years. Saket transferred his 33.33% share in favour of Smt. Suhasini Lohia and Suved Lohia transferred 8.33% share in favour of Smt. Suhasini Lohia, who thus became owner of 75% share in the land. The applicants assert that both Saket and Suved executed and registered development agreements in favour of Smt. Suhasini Lohia on 29.12.2006.

8] Smt. Suhasini Lohia, who is the proprietor of Suhasini Realty decided to develop the said property and appointed a Manager, in whose favour a power of attorney was executed. One Mr. Samir Agrawal, who is also an accused and is granted regular bail by this Court, was the power of attorney holder at the relevant time and after he left the employment one Mr. Mohd. Hussain Khan was appointed as attorney holder to look after the project sometime in the year 2015. Mr. Mohd. Hussain Khan is granted anticipatory bail by the Sessions Court.

9] The applicant in Criminal Application (ABA) 486/2016 Rajkumar Saboo is an employee of Kores (India) Limited which is owned by Mr. S.K. Thirani, the father of Smt. Suhasini Lohia. Mr. Rajkumar Saboo asserts that Kores (India) Limited entered into an agreement to manage and market the project. Mr. Rajkumar Saboo asserts that since the Chairman of the company Mr. S.K. Thirani is the father of Smt. Suhasini Lohia, on the directions of the Chairman he (Mr. Rajkumar Saboo) was executing the instructions issued. Mr. Saboo asserts that he was neither personally concerned nor involved in the affairs of Suhasini Realty nor did he play any active role in the submission of plans or obtaining occupancy certificate. Perusal of the affidavit-in-reply in Criminal Application (ABA) 486/2018 reveals that there is no attempt to explain the role played by Mr. Saboo. It appears that an identical reply is filed in all the four applications and non-application of mind is glaring and writ large. Illustratively, while in paragraph 3 it is stated that Mr. Saboo is working with Kores (India) Limited as Executive Director and the said company prepared the advertising campaign and documents related to marketing, a statement is made in paragraph 7 that the forgeries and manipulations are committed to benefit the firm of the present applicant.

10] This Court has perused the case diary. The only material against Mr. Saboo which is pressed in service by the prosecution appears to be a statement of the co-accused Mr. Samir Agrawal who states that Mr. Saboo narrated a conversation between Mr. Lalitkumar Lohia, Mr. Saboo and Mr. S.K. Thirani with the Architect during the course of which the Architect assured that he would do the needful to obtain occupancy certificate dated 31.03.2012 if sufficient amount is made available. According to the co-accused Samir Agrawal, Mr. Saboo told him that he is sending an amount of Rs.10 lacs which should be handed over to the

Architect. The co-accused Samir Agrawal then states that he received the amount of Rs.10 lacs and handed over the said amount to the Architect. It is disturbing to note that although a prominent role, and indeed the most serious role in the episode, is attributed to the Architect, the Investigating Agency has not found it necessary to arrest the Architect and interrogate him in custody although it is conceded during the course of submission that the said Architect, who is arrayed as an accused, is not protected by any judicial order.

11] The applicant in Criminal Application (ABA) 487/2018 is Smt. Suhasini Lohia. She asserts that she was not personally visiting Nagpur and the affairs of the firm were being looked after by her father and the Manager.

12] The affidavit-in-reply, again makes no attempt to controvert the assertion that Smt. Suhashini Lohia was not personally looking after the affairs of the firm and the execution of the project and the only submission is that her custodial interrogation is necessary as she and her firm are the sole beneficiaries of the forgery. Interestingly, while in the affidavit-in-reply in Criminal Application 487/2018 it is stated that Smt. Suhasini Lohia and her firm are the sole beneficiaries, in the affidavit-in-reply in Criminal Application (ABA) 486/2018, it is stated that Mr. Saboo who irrefutably is an employee of Kores (India) Limited, which company was managing and marketing the project, is the beneficiary.

13] The applicant in Criminal Application (ABA) 488/2018 is Mr. Lalitkumar Lohia, who is the husband of Smt. Suhashini Lohia. He asserts, which assertion is not controverted, that he was associated with the project as a consultant only in the year 2014-2015 when the construction was completed and occupation certificate received. Few apartments were unsold. Mr. Lalitkumar Lohia asserts that he is falsely implicated and as on the date of the alleged offence he was not concerned with the project in any capacity. Again, the affidavit-in-reply exhibits total non-application of mind and indeed a casual, cavalier and irresponsible attitude. It is obvious that the affidavit-in-reply is a "copy paste" exercise as would be evident from paragraph 11 which read thus:

> ***11. In view of the submissions made above and the prima facie material collected during the course of investigation enquiry and investigation, the custodial interrogation of the present applicant is imperative as she and her firm are the sole beneficiaries of all the forgery which is committed. Therefore interim protection granted to her is liable to be revoked and the application filed by her being devoid of merits is liable to be rejected.***

14] The affidavit-in-reply in Criminal Application (ABA) 488/2018 preferred by Mr. Lalitkumar Lohia appears to be copy and reproduction of the affidavit-in-reply which is filed in the application moved by Smt. Suhasini Lohia and again no attempt is made to explain why Mr. Lalitkumar Lohia is implicated in the crime. During the course of the submission, the learned A.P.P. again invites my attention to the confessional statement of the co-accused Mr. Samir Agrawal, to which a reference is made supra. Inadmissibility of the statement apart, what is claimed by the co-accused is that the conversation is narrated to him by Mr. Saboo. I have perused the case diary, and I am satisfied that there is absolutely no material to even *prima facie* link Mr. Lalitkumar Lohia with the alleged crime.

15] The applicants in Criminal Application (ABA) 489/2018 are the two sons of Smt. Suhasini Lohia, Mr. Saket Lohia and Mr. Suved Lohia. Saket Lohia asserts that he is a “Green Card” holder and is a non-resident Indian who is residing in United States of America since 1997 and has not visited India in the last 10 years. Mr. Saket Lohita asserts that he transferred his entire share in the land on which the project “Garden Enclave” is executed, in favour of his mother Smt. Suhasini Lohia and that he is not connected with the affairs of the firm or with the execution of the project in any manner. Applicant 2 Mr. Suved Lohia contends that he transferred 8.33% share in land in favour of Smt. Suhasini Lohia and he along with applicant 1 Saket Lohia executed agreement of development in favour of Smt. Suhasini Lohia on 29.12.2006. The applicants assert that they have been roped in unnecessarily and without an iota of material to implicate them in the alleged crime. Perusal of the affidavit-in-reply reveals that the Investigating Officer has made no attempt to answer the averments in the application. No attempt is made to point out any material against the applicants to even *prima facie* link the applicants to the alleged crime. Again the affidavit-in-reply is a “copy paste” version of the affidavit-in-reply which is filed to oppose grant of anticipatory bail to Smt. Suhasini Lohia as would be evident from paragraph 11 which read thus:

> ***11. In view of the submissions made above and the prima facie material collected during the course of investigation enquiry and investigation, the custodial interrogation of the present applicants is imperative as she and her firm are the sole beneficiaries of all the forgery which is committed. Therefore interim protection granted to her is liable to be revoked and the application filed by her being devoid of merits is liable to be rejected.***

16] This Court is conscious of the settled legal position that ordinarily minute evaluation of material on record and decisive observations on the merits or demerits of the prosecution case must be avoided while deciding the application for grant of anticipatory bail. However, since reasons must be stated to indicate why the discretion is exercised in a particular manner, some *prima facie* observations would be in order. The offence is allegedly committed in 2012, allegedly in order to secure benefits under the income tax law. No material is placed on record, and indeed it is not even the case of the prosecution to suggest that any benefit under the income tax law was wrongfully obtained. Concededly, no grievance is made by the income tax authority that any benefits are obtained by predating the commencement certificate, which is admittedly issued on 30.04.2012, to 30.03.2012. The complaint lodged by Mr. Laxmikant Murarka on 11.12.2016 is entertained by Lakadganj Police Station which has conducted the investigation and there is no rebuttal to the assertion of the applicant that the offence, if any, was committed within the jurisdiction of the Ganeshpeth Police Station. It is more than obvious that persons who are absolutely unconnected with the project have been roped in. False implication, and at any rate, over implication, is crystal clear. Illustratively, Mr. Saket Lohia who has not visited India since last 10 years is roped in and there is no explanation offered for his implication in the offence. Similarly, Mr. Suved Lohia is implicated without an iota of material to link him with the alleged crime. Mr. Lalitkumar Lohia, who concededly joined as a consultant only in 2015 is implicated on the basis of a statement by the co-accused that some conversation to which Mr. Lalitkumar Lohia was party was narrated to him by the co-accused Mr. Saboo. Mr. Saboo, who is only an employee of Kores (India) Limited which was marketing the project, is roped in since he allegedly arranged and send the amount of Rs.10 lacs for the co-accused Samir Agrawal to pay to the Architect for doing the needful. While the Investigating Officer is vehement in the assertion that custodial interrogation of the applicants is necessary, and that too even of the applicants who are absolutely unconnected with the project, no attempt is made to take into custody the Architect, whose name surfaced in the investigation prominently. The affidavit-in-reply in these four applications are copy and paste jobs and the non-application of mind is suggestive of slipshod, if not unfair, investigation. The co-accused Mr. Samir Agrawal who was managing the project at the relevant time is released on regular bail by this Court. This Court has noted in the order releasing Mr. Samir Agrawal that *prima facie* the prosecution has not demonstrated that the complainant Mr. Murarka was cheated. It may be added, that having perused the case diary and the affidavit-in-reply, there appears to be no material to suggest that by the alleged predating of the commencement certificate Smt. Suhasini Lohia or her firm was benefited in any manner. No case for custodial interrogation of the applicant is made out. The prosecution case is predicated on documentary evidence which is in possession of the Investigating Agency. The conscious of this Court is satisfied that this is a fit case for exercising discretion in favour of the applicant.

17] All the four applications are allowed and it is directed that in the event of arrest in Crime 131/2017 the applicants be released on executing personal bond of

Rs.15,000/- each with a solvent surety of the like amount subject to the condition that the applicant, except Mr. Saket Lohia who is a “Green Card” holder and is a resident of United States of America, should join the investigation as and when called upon to do so by the Investigating Officer. Needless to say, the applicants shall not tamper with the evidence nor shall the applicants make any attempt to directly or indirectly influence the witnesses.

18] Some of the facts which have emerged during the hearing are disturbing, and more so, since the affidavits-in-reply filed by the Investigating Officer reveal total non-application of mind and a casual and irresponsible, if not unfair, approach. That the Investigating Officer has filed on record “copy paste” affidavits in all the four applications must be deprecated as an affront to the majesty of process of law. Why the offence was registered and investigation conducted by Lakadganj Police Station without jurisdiction is left unanswered. No explanation was forth coming, even during the course of the arguments, why and on what basis are Saket Lohia and Suved Lohia implicated. The material which is placed in service to seek custodial interrogation prominently reveals the role of the Architect. However, while the custodial interrogation of the applicant is vehemently put forth as a justification for opposing grant of anticipatory bail no effort is made to custodially interrogate the Architect.

19] This Court has no intention of interfering with the investigation or fettering the discretion of the Investigating Officer. It is ultimately for the Investigating Officer to decide whether any person implicated in the crime needs to be arrested or not. However, this Court cannot be a silent spectator when it is clear as a day light that there is more than meets the eye and an attempt is made to falsely implicate or over implicate persons who *prima facie* have nothing to do with the alleged crime.

20] The Commissioner of Police, Nagpur is directed to look into the investigation papers and to satisfy himself that the investigation is fair and is conducted by the Police Station which has the requisite jurisdiction. This shall be done in two weeks. The Commissioner of Police, Nagpur to file a report in the Registry of this Court within three weeks from today. With these observations and directions, the criminal applications are allowed.

JUDGE

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