

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

CRIMINAL BAIL APPLICATION NO. 118 OF 2019

Deepak Jagdish Mhatre	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mr. Harshad Butala I/by Mr. Harshad Sathe for the Applicant.
Mr. R.M. Pethe, APP for the Respondent-State.
Ms. Rohini S. Doke, Arnala Coastal Police Station is present.

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**CORAM : PRAKASH D. NAIK, J.
DATED : 21st FEBRUARY, 2019**

P.C.

The Applicant is arrested on 05.12.2018 in connection with C.R. No. I-157 of 2016 registered with Arnala Sagari Police Station for the offences under Section 420, 465, 467, 471 r/w 34 of Indian Penal Code and Section 53 and 54 of M.R.T.P Act.

2. The brief facts of the prosecution case are as under :
 - a. The complainant is working with Vasai-Virar Municipal Corporation. It is alleged that additional construction was carried out against the sanctioned plan on a land in Bolinj bearing survey No. 417, Hissa no. 1 and 2. CIDCO had authorized development vide permission

dated 13.10.2009 to M/S. Adinath Infra through its partner, Mr. Pradeep Mehta permitting construction to ground-floor plus 7 floors building with 100 residential flats and 8 commercial flats having total area of 4220.8 Sq. mt. M/S Square Enterprises through its partner Mr. Jayesh Eknath Vartak and the permission holder M/S. Adinath Infra through its partner Mr. Pradeep Mehta had forged the permission granted by authorities and sold the flats to public causing wrongful gain to the accused and wrongful loss to public.

b. The accused Nos. 1 and 2 and others forged and fabricated commencement certificate to sell flats and shops to prospective purchasers. It is alleged that the accused have constructed building of 7 floors consisting 100 flats and 8 shops. They constructed 7 floors building having carpet area 5171.7 Sq. mt. Instead of 4220.8 Sq. mt. They have constructed a building of 4 floors containing 16 flats and 11 shops having area 7711.56 Sq. mt. Instead of permitting area of 91.11 Sq. mt. And 87.23 Sq. mt. The investigation proceeded and consequently charge sheet is filed.

c. The Applicant had preferred an application for bail

before the Sessions Court at Vasai. The said application was rejected by order dated 29.12.2018.

3. The learned Advocate for the Applicant submitted that the investigation is completed and the charge-sheet is filed. The entire case relates to documents. The Applicant is in custody from the date of arrest. Further custody is not necessary. The Applicant is neither the proprietor nor partner of M/S Square Enterprises who have constructed the building on the plot of land and he has not received any consideration in respect of sale of flats from any purchasers. It is submitted that M/S. Adinath Infra through their partner has filed Civil Suit bearing Special Civil Suit No. 33 of 2017 in the Court of Civil Judge, Senior Division at Vasai. In the plaint, it is stated that the Applicant has not executed conveyance of plot in favour of plaintiff. Nothing is to be recovered from the Applicant as the relevant documents are recovered from the co-accused. It is further submitted that the other accused who played a prime role viz. Mr. Jayesh Eknath Vartak and Mr. Pradeep Ganpatraj Mehta are directed to be released on bail by the Additional Sessions Judge, Vasai.

4. Learned APP opposed the prayer for bail. It is submitted that purchaser of flats and shops were deceived by the accused. The Applicant had purchased the CFC plot from co-accused Mr. Pradeep Mehta and entered into development agreement with accused Mr. Jayesh Eknath Vartak by accepting 42% share in the constructed building having 4 floors with 16 flats and 11 shops. The Applicant had a knowledge that the construction was carried out on the basis of forged construction permission. The Applicant is not entitled for parity as the role played by the co-accused who were granted bail can be distinguished.

5. The Applicant is in custody from 05.12.2018. Investigation is completed and charge-sheet is filed. The Applicant is not partner or proprietor of M/S Square Enterprises. The co-accused Mr. Jayesh Eknath Vartak and Pradeep Mehta were granted bail by the Sessions Court, Vasai. The allegation against co-accused Mr. Jayesh Eknath Vartak is that in collusion with other accused, commencement certificate was forged and fabricated and construction was carried out beyond the permission. He has been granted bail by the Sessions Court by order dated 10.07.2018, on the ground that the investigating officer

has recovered documents connected with the crime. Although it is alleged that the said accused was involved in fabrication of documents and there is evidence to substantiate the said fact, substantial part of investigation is completed. The said accused have undergone custodial interrogation and the case is based on bulk documentary evidence. It is also observed that the case would require much time for its hearing. While granting bail to the other accused Mr. Pradeep Mehta vide order dated 21.07.2018, it was observed that although there is evidence to believe the involvement of the accused, he has undergone custodial interrogation and on condition that he shall deposit the amount.

6. Considering the aforesaid circumstances further custody of the Applicant is not necessary and hence bail can be granted to the Applicant.

:: ORDER ::

- (i) Criminal Bail Application No. 118 of 2019
is allowed;
- (ii) Applicant is directed to be released on bail
in connection with C.R. No. I-157 of 2016

registered with Arnala Sagari Police Station, on furnishing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

- (iii) The applicant shall report to the Investigating Officer of the concerned Police Station once in a month on first Saturday of every month between 11 a.m. and 1 p.m. till further order;
- (iv) Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)