

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.492 OF 2019

Indra Kumar Kisanlal Agarawal	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Viresh Purwant for applicant.
Mrs.A.A.Takalkar, APP, for State.
Mr.S.S.Shinde, WPSI, Rabale Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 1st March 2019

PC :

1. The applicant is seeking anticipatory bail in CR No.I-601 of 2018 registered with Rabale Police Station for offences under Sections 420, 465, 467, 468, 471 of Indian Penal Code.

2. The prosecution case is that in 2015 the complainant visited Sakalkar Apartment situated at Rabale. It was a new project of the applicant. The construction was going on and the third floor of the building was completed. The complainant approached the applicant for purchasing the flat. The complainant was informed that there was a development agreement between the land owner and builder and as per agreement, they had agreed for 50% share each. The accused also represented that building was authorized and includes FSI. The complainant decided to purchase flat no.1 on the ground floor and availed of loan of Rs.41 lakhs. The agreement was executed. After purchasing the flat the complainant realized that the builder had permission for eight residential units, six commercial

units and one unit for society office from Navi Mumbai Municipal Corporation. However, the accused illegally constructed four flats on every floor and instead of constructing society office, the applicant constructed 13 additional residential units. The accused did not construct the building as per development agreement and did not follow the terms and conditions of the agreement. The builder constructed 3rd floor without permission of Municipal Corporation.

3. The applicant preferred an application for anticipatory bail before Sessions Court, which was rejected by order dated 13th February 2019.

4. Learned counsel for applicant submits that custodial interrogation of applicant is not necessary. The complainant has suppressed material facts. The builder had obtained permission from Navi Mumbai Municipal Corporation vide commencement certificate dated 19th December 2011. The applicant had submitted application for additional FSI on 31st May 2012. He had moved an application to Town Planning Office on 16th December 2013 for proposed amendment to approved plans to his architect. The applicant had lodged written complaint to Rabale Police Station for forceful occupation, alteration etc on 4th May 2013. The land owner created obstructions in completing the project. The applicant is ailing and suffering from chronic heart disease.

5. Learned APP submitted that the offence is of serious nature. The statements of various witnesses were recorded which show the tacit played by the applicant. The construction was carried out on the basis of false and fabricated map by forwarding it to the sub-

registrar for registration. The entire third floor is unauthorized. On the basis of false and fabricated map, flats were sold to purchasers. Without obtaining the occupation certificate, the flats and shops were given to the purchasers. No attempts were made to obtain occupation certificate.

6. I have perused the documents on record. There is violation of rules of construction and without permission the applicant constructed 1+3 floors. It is alleged that the applicant has created forged documents and used the same as genuine. The applicant constructed flats without getting permission. In place of eight residential nits, he had constructed thirteen units and in place of six commercial units he had constructed eleven such units and in place of one unit of society office, two rooms were constructed by him. On the basis of false documents the applicant collected huge amount from the complainant.

7. Considering the aforesaid circumstances no case for grant of anticipatory bail is made out. Hence, I pass following order :

ORDER

(i) Criminal Anticipatory Bail Application No.492 of 2019 is rejected.

(PRAKASH D. NAIK, J.)

MST