HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 646 OF 2019

WITH

CRIMINAL APPLICATION NO. 613 OF 2019

Balasaheb Gopal Nawale … Applicant
Versus
The State of Maharashtra … Respondent

Mr. N. P. Dalvi I/b Ms. Amruta D. Devkat, Advocate for the Applicant
Smt. A. A. Takalkar, APP for the State/Respondent.
Mr. Sujit B. Shelar, Advocate for Intervener in Appp 613/19.
Mr. Haresh Kalsekar, API, Kharghar Police Station.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 10th July, 2019.

P. C. :-

1. The applicant is seeking anticipatory bail in connection with CR No. 41/19 registered with Kharghar Police Station, Navi Mumbai under Sections 420, 406, 504 and 506 of the IPC.

2. The FIR is lodged by one Jagmeet Singh Chadda. He has stated in his FIR that he wanted to purchase a flat at Kharghar. He came in contact with the present applicant in the year 2015. The applicant represented to him that he was developing a piece of land at Sector

34A and he had all the requisite permissions. He represented that the title report, permissions for construction issued by Grampanchayat and permissions of CIDCO were in order. Believing him, the first informant decided to purchase a flat at room no. 203 in 'B' wing admeasuring 470 sq. ft. He paid Rs. 19,50,000/-. The agreement for sale was entered into on 30th November 2015 and he also occupied that flat after it was constructed. The flat was part of Nisarga Society at Kharghar, Navi Mumbai.

3. After that the applicant represented to him that he was developing property no. 1589, Sector-37 at Kharghar by name Vishal Heights. He further represented that he had obtained all the necessary permissions from the CIDCO and other departments. The first informant decided to purchase another room No. F/217 admeasuring 370 sq.ft built-up area, on second floor. The applicant and informant entered into an agreement dated 23rd December 2015. The agreement was notarised. He had paid Rs. 12,00,000/- for the same. The first informant was to get the possession of that room in December 2018.

4. In January 2018, the CIDCO declared that Vishal Heights was illegal and therefore whatever construction was carried out was demolished. Thereafter, the first informant's society at sector 34A i.e.

Nisarga society received a notice on 28th May 2018 that even that building was illegal. The notice was issued by CIDCO. The notice mentioned that the building was required to be demolished. Thereafter, the first informant contacted the applicant and sought clarification. The applicant told him that he had already filed a court case at Panvel and the informant did not need to worry. However, the first informant on further inquiries came to know that the building indeed was illegal. He demanded his money back from the applicant. The money was not returned, instead the informant was abused and threatened. On the basis of these allegations, the FIR is lodged.

5. Mr. Dalvi submitted that the applicant himself is a victim in the fraud played by the original owner Mr. Joshi in respect of the building constructed at sector 34A. He submitted that all the permissions were addressed in the name of the original owner Mr. Joshi. According to Mr.Dalvi, the applicant had constructed the building as promised and therefore no offence was committed by him. He submitted that the building was occupied by the first informant and others and no grievance was raised by them on any prior occasion. He further submitted that the suit is filed by the original owner Mr. Joshi against the CIDCO vide regular civil suit no. 176/13 in the court of Civil Judge

Junior Division, Panvel. That suit is still pending and main dispute is yet to be decided. He further submitted that the applicant had already applied for the regularization of the building and he was confident about getting suitable order in that behalf. He submitted that even if no order is passed for regularisation provision, the building is deemed to be regularised and therefore no loss would be caused to the first informant.

6. As against these submissions, learned APP as well as learned counsel for the intervener invited my attention to the agreement for sale entered into between the first informant and the applicant. That agreement was in respect of the building constructed at sector-34A, Kharghar. The recital of the agreement mentioned that the original owner Mr. Baliram Joshi had granted power of attorney to the applicant vide an instrument in respect of irrevocable power of attorney dated 10th February 2012. It was registered with Sub-Registrar, Panvel. The permissions were granted after execution of this power of attorney. Therefore, present applicant was directly and solely responsible for such permissions.

7. The learned APP as well as learned counsel for the intervener invited my attention to the permissions dated 11th November 2013

issued under purported signature of Town Planning Officer. Such permission was in respect of development permission on that particular plot of sector 34A. This permission was annexed to the agreement. There is another document dated 11th February 2013, which is in respect of assessment order. The learned APP submitted that the investigation has revealed that these documents are forged documents. The unique code number mentioned on those documents is not correct and even the signature of Town Planning officer is forged.

8. Considering the investigation carried out so far, it is more than clear that the permissions annexed to the agreement between the first informant and the applicant are all forged documents. After 2012 i.e. after execution of power of attorney of the original owner, it was the responsibility of the applicant to obtain all the permissions. Thus, there is force in the submission that permissions annexed to the application are forged by the present applicant himself. Therefore, at this stage, a strong case is made against the present applicant that he forged all the documents and cheated the persons who entered into agreements for purchase of flats in those buildings. Considering the serious nature of the offence and since forgery of documents and signatures is revealed;

no case of anticipatory bail is made out. Custodial interrogation of the applicant is necessary. Application is rejected. Intervener's application is also disposed of.

(SARANG V. KOTWAL, J.)