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

ANTICIPATORY BAIL APPLICATION NO.1051 OF 2018

Nazish Iqbal Sayed . **..Applicant**

Vs

The State of Maharashtra **..Respondents**

Mr. S.P. Kadam I/b Sunil Lahane a/w Pramoid Londe for the Applicant.
Ms. Rutuja Ambekar, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 16th April 2019.

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-103 of 2016 dated 9.5.2016 registered with Nallasopara Police Station, District- Palghar under sections 420, 465, 468, 471 of the Indian Penal Code and sections 53 and 54 of the Maharashtra Regional And Town Planning Act (MRTP Act).

2] Heard the learned counsel for the applicant and the learned APP. Perused the record of investigation and the affidavit dated 21.8.2018 filed by the Investigating Officer Shri Raju S Narawade.

3] By an Order dated 8th August 2018, the applicant was granted interim relief, as the learned APP was intending to file a brief affidavit-in-reply, placing on record the complicity of the applicant in the present crime. Thus the interim relief was granted on that count alone and not on merits.

4] The first information report is loddged by Shri Ashok Gurav, Assistant Commission, Vasai-Virar Municipal Corporation. It is alleged that, on Survey No.411, Hissa No.A/1, A/2 lying and situate at village Ghas, illegal buildings were constructed by the concerned persons by using forged and fabricated documents. It is the allegation against the accused persons that, the principal accused Mohammad Faizal Shaikh, proprietor of M/s Sai Star Enterprises in connivance with other accused persons, by using bogus N.A. permission allegedly issued by the Collector Officer, Thane and by using forged and fabricated Commencement Certificate allegedly issued by CIDCO Authority, constructed residential building having ground plus four floors. It is alleged that, various other documents which are required for construction of the building are either bogus and/or forged and fabricated. It is further alleged that, after constructing the said building on the basis of the forged documents, the accused persons sold the residential premises to

gullible flat purchasers and committed act of cheating.

5] Mr. Kadam, the learned counsel for the applicant submitted that, in pursuance of Order dated 8th August 2018, the applicant has attended the Investigating Officer on several occasions. He submitted that, the documents on record indicate that, it is brother of the applicant namely Mohammad Faizal Shaikh, is the proprietor of M/s Sai Star Enterprises and the said firm has constructed the building on the aforesaid plot. That it is the co-accused Mr. Deepak Kadu who is associated with the said firm and is in fact instrumental in constructing the building. He submitted that, in the absence of his brother, the applicant on certain occasions accepted the amounts from the flat purchasers and apart from that has no direct role to play in the present crime. That the applicant has independent business enterprise and has nothing to do with the firm of his brother. He therefore prayed that, the applicant may be protected by pre-arrest bail by allowing the present application.

6] At the outset, it is to be noted here that, as far as the presence and/or attendance of the applicant before the Investigating Officer on several occasions under the Orders of Court is concerned, a useful reference can be made to the decision of the Supreme Court in the case of *State Rep.*

by *The C.B.I vs Anil Sharma* reported in (1997) 7 SCC 187, wherein the Honourable Supreme Court has held that, the custodial interrogation is qualitatively more elicitation- oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that, he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

Therefore, the contention that, the applicant complied with the condition of attendance before the Investigating Officer is of no avail to him.

7] It appears from the affidavit filed by the Investigating Officer that, the applicant has accepted certain amounts from the gullible flat purchasers. The record of investigation indicates that, the applicant was associated with his brother in his firm namely M/s Sai Star Enterprises. Though it is contended that, the applicant has independent monetary transactions with his brother, the record of investigation prima facie does

not support the said contention.

8] It is a fact on record that, in the jurisdiction of Vasai-Virar Municipal Corporation several illegal constructions have been carried out by the builders/developers by using bogus and fabricated documents of the concerned Departments and/or Authorities. The Division Bench of this Court in a Public Interest Litigation has taken judicial notice of the same. The Investigating Officer in his affidavit dated 21/8/2018 has stated that, the applicant is a habitual offender and one more offence is also registered against him bearing CR No.4 of 2017 with Bandra Crime Branch, Unit-IX for offences punishable under sections 420, 406, 465, 468, 471, 34 of the Indian Penal Code.

9] The record indicates that, the co-accused has transferred a sum of Rs.71,78,000/- in the account of the applicant and as per prosecution the said amount is proceeds of the present crime. Prima facie, it appears that, there is sufficient material available on record to reasonably believe that, the applicant in connivance with other accused persons used forged and/or fabricated documents such as Commencement Certificate, N.A. Order and other related documents pertaining to the construction of the building in question. There is sufficient material available on record to show the clear

complicity of the applicant in the present crime.

10] In view of the above and after taking into consideration the gravity of offence and the serious allegations against the applicant, this Court is of the opinion that, the applicant does not deserve to be protected by the pre-arrest bail.

11] Application is accordingly rejected.

(A.S.GADKARI, J.)