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

CRIMINAL BAIL APPLICATION NO. 2665 OF 2018

Ganesh Jagannath Kharat

... Applicant

V/s.

State of Maharashtra

... Respondent

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Mr. Manoj S. Mohite i/b Mr. Rohan Hogle for the Applicant.

Mr A.R. Kapadnis, APP for the Respondent-State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 5th FEBRUARY, 2019.

P.C.:

The applicant is arrested in connection with C.R. No. I-106 of 2018 on 1st March 2018. The First Information Report (hereinafter referred to as 'FIR' for short) was registered with Narpoli Police Station, Bhiwandi, Dist. Thane, on 24th February 2018 for offences punishable under Sections 406, 420, 465, 467, 468 and 471 read with 34 Indian Penal Code (hereinafter referred to as 'IPC' for short) and Section 48(7)(8) of Maharashtra Land Revenue Code.

2. The prosecution case is that the complainant was ordered by Sub-Divisional Officer, Bhiwandi to inspect the damage caused to mangroves near the creek by carrying out construction and to initiate action. Complaints were also received regarding constructions on the lands at village Kalher and Kasheli. The complainant noticed that on land of survey no. 114/part 2-0-0 construction was in progress of about ninety buildings. On enquiry, it was learnt that the N.A. permission was not issued by the concerned office, there were no N.A. orders with regards to land survey no.114 and the orders were prepared by land owner Gopal Mukadam and gave the land for construction to M/s. Sairam Enterprises of which Javed Shaikh (applicant) and Ganesh Kharat were proprietors. The project namely Maitri Park was developed. The tenements were sold to purchasers. There was breach of provisions of Maharashtra Land Revenue Code.

3. The applicant preferred an application for bail before the Sessions Court, Thane, which was rejected by order dated 23rd May 2018.

4. Learned Advocate for the applicant submits that the investigation is completed and the charge-sheet is filed. The accused Dattatray Bhagat, Bhalchandra Pawse, Mahesh Redekar and

Moreswar Patil are builders and they have been granted bail by the Sessions Court in connection with the similar FIR. Vinod Mukadam and Sagar Mukadam were sons of the landlord Gopal Mukadam were arrested and they were granted bail by this Court vide order dated 13th August 2018 in C.R.No.I-90 of 2018, C.R. No. I-103 of 2018 and C.R. No.I-104 of 2018. The search was conducted at the office of the Maitri Group where alleged forged documents such as N.A. permission dated 12th August 2010, commencement certificate dated 6th March 2011 and the layout plan of the concerned properties were seized, these were allegedly forged documents. The applicant had executed development agreement and irrevocable power of attorney dated 14th June 2016 with land owners. The original land owners have submitted all the requisite documents such as plans, development permission, 7/12 extract, etc. to the office of Gram Panchayat in furtherance to which the Panchayat passed resolution on 26th August 2010, wherein the development rights were bequeathed upon land owners. The applicant was given 713 sq. mts. to carry out construction. The prosecution is relying upon development agreement dated 2nd March 2016 and it is alleged that the same was executed between land owner and M/s. Sairam Enterprises through the applicant being proprietor. The said

agreement is dated 14th June 2016 and not 2nd May 2016. The applicant is not concerned with accused no.1. The applicant and accused no.1 Javed Shaikh are shown to be proprietors of M/s. Sairam Enterprises. The accused no.1 was developing a different plot. Development agreement executed by him was dated 29th April 2017, which is different from the agreement executed between the applicant and the land owner. There is no evidence to show that the applicant is involved in fabricating the documents. He is not concerned with Maitri Group from where the alleged fabricated documents were seized.

5. Learned APP submitted that the applicant is involved in the crime. The construction was carried out on the basis of false documents. The flats were sold to purchasers inspite of knowledge that there were no requisite permissions. The development agreement was executed on the basis of false N.A. order. It is the responsibility of the developer to obtain all necessary permissions. The applicant has played vital role in carrying out illegal construction. Learned APP also relied upon the affidavit in reply filed alongwith the several documents. He submitted that fabricated documents were recovered from the office of Maitri Group. In the

affidavit, it is stated that Vinod Mukadam and Vishal Mukadam in furtherance of power of attorney given to them by their brothers entered into development agreement with concerned builders and Sagar Mukadam had presented the documents before the Registrar of Assurance for registration of concerned tenements. It is further mentioned that record indicates that during the search conducted by the investigating agency on 23rd February 2018, at the office of Maitri Group, various documents such as N.A. permission, commencement certificate and layout plan which were fabricated were recovered. Learned APP submitted that Vinod Mukadam and Sagar Mukadam were granted bail on the ground that they were not concerned with the premises from where the documents were recovered.

6. I have perused the documents annexed to the application. On completing investigation, voluminous charge-sheet is filed. The applicant is in custody from 24th February 2018. The prosecution filed affidavit in reply. The development agreement was executed with Gopal Mukadam and others. By order dated 13th August 2018, Vinod Gopal Mukadam and Sagar Vijay Mukadam granted bail by this Court. Learned APP submitted that the said accused were

granted bail on the ground that during the search conducted by investigating agency on 23rd February 2018 at the office of Maitri Group, various documents such as N.A. permission granted by Collector of Thane dated 12th August 2010, commencement certificate issued by MMRDA dated 6th March 2011 and layout plan of the property were seized from the said office. The said accused were not responsible in manufacturing or fabricating the said documents and it is the accused from Maitri Group of Builders who were instrumental in it. There is nothing to show that the applicant has fabricated the said documents or that they were recovered from his possession. The development agreement indicate that requisite permissions were obtained by the co-accused. The bail was granted to the accused in similar cases which arises out of agreement executed with Gopal Mukadam and others. The affidavit in reply did not indicate that the application show as to how the applicant is concerned with fabrication of the documents or that they are concerned with Maitri Group. Some accused in similar cases were granted bail by Sessions Court. The matter relates to documents. Investigation is completed and charge-sheet is filed. Hence, the case for grant of bail is made out.

7. Hence, I pass the following order:-

:: ORDER ::

- i. Bail Application No.2665 of 2018, is allowed;
- ii. Applicant is directed to be released on bail in connection with C.R. No. I-106 of 2018, registered with Narpoli Police Station, Bhiwandi, Dist. Thane, on his furnishing P.R. Bond in the sum of Rs.50,000/-, with one or more sureties in the like amount;
- iii. Applicant is directed to attend the Narpoli Police Station, Bhiwandi, Dist. Thane, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further orders;
- iv. Applicant shall not tamper with the evidence;
- v. Applicant shall attend the trial Court on every date of hearing regularly, unless exempted by the Court.
- vi. Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)