

bdp

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

CRIMINAL BAIL APPLICATION NO. 2746 OF 2018

Javed Anwar Shaikh	... Applicant
V/s.	
State of Maharashtra	... Respondent

.....
Mr. Sanjeev P. Kadam i/b Mr. P.P. Raut for the applicant.
Mr. A.R. Kapadnis, APP for the Respondent-State.
.....

CORAM : PRAKASH D. NAIK, J.

DATE : 5th FEBRUARY, 2019.

P.C.:

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

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 investigation proceeded, statements of witnesses were recorded, documents were collected. On completing investigation, charge-sheet was filed.

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

5. Learned Advocate for the applicant submitted that co-accused Vinod Gopal Mukadam and Sagar Vijay Mukadam were granted bail by this Court vide order dated 13th August 2018 in connection with C.R. No. I-90 of 2018 and C.R. No.I-103 of 2018. Accused Chirag Gadda is also granted by this Court vide order dated 30th November 2018. It is submitted that the investigation is completed, the matter relates to documents. Further, custody of the applicant is not necessary. The permission/ NOC is not in the name of the applicant and the same were issued in the name of Gopal Ladku Mukadam. The joint venture development agreement was executed between Gopal Mukadam and others on one side and M/s. Sairam Enterprises. The construction was conducted in respect of 127863 sq. mts. Only. In the agreement, it is specifically mentioned that the all the permission were already obtained by Gopal Mukadam. The said development agreement is part and parcel of sale agreement between M/s. Sairam Enterprises and purchaser. For selling tenement reliance was placed on permission of Gram Panchayat. In similar cases arising out of development agreement, accused were granted bail by Sessions Court. The fabricated documents were found in office of Maitri Group and not from applicant.

6. 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.

7. On completing investigation, voluminous charge-sheet is filed. The applicant is in custody from 24th February 2018. The prosecution filed affidavit in reply in connected bail application viz. Bail Application No. 2665 of 2018. 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. Considering the aforesaid circumstances, further detention of the applicant is not necessary and hence bail can be granted to the applicant.

8. Hence, I pass the following order:-

:: ORDER ::

- (i) Bail Application No.2746 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, District-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, District–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.)