**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

933 ANTICIPATORY BAIL APPLICATION NO. 841 OF 2020

SHARAD S/O. MACHHINDRA JAGDALE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicants : Mr. R.R. Karpe.
APP for Respondent : Ms. R.P. Gour.
Advocate for assist to APP : Mr. Sk. Mazhar A. Jahagirdar.

CORAM : MANGESH S. PATIL, J.
DATED : 03.02.2021

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure, as the applicants are apprehending their arrest in connection with Crime No. I - 102/2020 registered with Shrirampur City Police Station, Tq. Shrirampur, Dist. Ahmednagar for the offences punishable under Sections 406, 417, 420 read with 34 of Indian Penal Code.

2. In substance, the allegations as can be understood from the papers of the investigation are to the effect that the informant was occupying a piece of land vested in the Irrigation Department of the Government. He had erected a shed and was carrying out fabrication business there. Like him there were several other persons who had also erected their respective sheds over some portion of that land.

The applicants put a proposal to the Municipal Council with a view to develop that piece of land, to construct shops on that piece of land and to allot them to the existing shop holders. Accordingly, the Municipal Council took the land on long lease of thirty years from the Irrigation department. It was handed over to the applicants to carry out the construction. Accordingly, the shops were constructed after the existing shop holders vacated the respective pieces of land in their possession.

3. It is now being alleged by the informant that while vacating the land he was promised allotment of a shop in the complex to be erected. He was made to part with money. The applicants recovered some money from him but failed to hand over him a shop. It is thus alleged that they have misappropriated his money and have also cheated him.

4. The learned Advocate Mr. Karpe for the applicants submits that there is enormous delay in filing the FIR. Though, the informant states that he was made to vacate the premises way back in the year 2013, the FIR has been lodged in the year 2020.

5. The learned Advocate would further submit that the applicants

were not at all liable to make any allotment. They were only responsible and had undertaken to carry out the construction of the shopping complex. Consequently, they were not responsible for rehabilitation of either the informant or any other shop holder. The applicants have never received any money from the informant and thus they have not committed any offence as is being alleged.

6. The learned Advocate would submit that the applicants would be put to disrepute if they are allowed to be arrested without assurance of bail. They are ready to co-operate the Investigating Officer. Going by the allegations, nothing is to be recovered from them. Their custodial interrogation is not necessary. The ad interim relief granted to them may be confirmed.

7. The learned APP assisted by the learned Advocate for the original informant strongly oppose the application. They submit that it is a systematic misappropriation and cheating. The informant was one of the occupants carrying on his business of fabrication. He was made to vacate it by the applicants who promised him to allot a shop in the shopping complex to be constructed. Both of them also opened a joint account and there is record to show that the informant had deposited Rs. 5,000/- on two occasions in that joint account. The

applicants are the best persons to interrogate as to for what purpose they had received this money from the informant. The APP would further point out that there are statements of several shop owners to corroborate the allegations being levelled by the informant as far as the assurance given by the applicants to the existing shop holders of allotment of new shops in the shopping complex to be constructed. They have further stated as to how the applicants had put them in possession of their respective shops in the new shopping complex. They have also stated about having deposited money for such allotment in the joint account of the applicants and thereafter, they were allotted the shops.

8. The learned APP would further submit that the applicants were given the property for erecting a shopping complex. After such erection of the shopping complex, they had submitted a list of persons to whom the shops were allotted by them and to whom subsequently, the Chief Officer of the Municipal Council had given licences. She would point out that in that list shop No. 9 from 'D' Block, serial No. 54 mentions the name of the informant. However, in fact it was not allotted to him. Instead the applicants allotted it to one Shaktiraj Prakash Sing whose statement has also been recorded under Section 161 of Cr.P.C. and who also deposited the money in the joint account

of the applicants. All these circumstances are clearly indicative of the fact that the applicants have indulged in the crime.

9. I have carefully gone through the papers. It is quite apparent that the informant was occupying a portion of the land. Like him there were several such shop holders. A proposal was put up by the applicants with the Municipal Council pursuant to which the latter took the entire land on a long lease from the Irrigation Department with whom it has been vesting. The applicants were thereafter, handed over the land to carry out a construction of the new shopping complex.

10. Irrespective of the understanding between the Municipal Council and the applicants, the fact remains that there is ample material to *prima facie* demonstrate that not only to the informant but to several such other persons, the applicants had promised allotment of shops and on that basis had got the land vacated. They all were made to deposit money in the joint account of the applicants. There is a counter foil of the deposit slips showing that at least on two occasions the informant had deposited Rs. 5,000/- each in that joint account. There are statements of several other shop owners to the same effect. Having once promised allotment of the shop, the

applicants seems to have failed to keep the promise in spite of having received the money from the informant.

11. In the list forwarded to the Municipal Council purportedly by the applicants, name of the informant appears to be one of the allottees, against shop No. 9 from 'D' block. However, it is also apparent that it is not him but one Shakti Prakash Sing who was allotted that shop by none other than the applicants themselves.

12. Taking into account all the aforementioned facts and circumstances, *prima facie* it appears that the applicants have committed the misappropriation and have also cheated the informant.

13. Considering the nature of allegations the question of delay in lodging the FIR is irrelevant.

14. Going by the *modus operandi*, custodial interrogation of the applicants is highly imperative.

15. The application is rejected.

16. The learned Advocate for the applicants submits that the

applicants have been enjoying ad interim anticipatory bail and it may be continued for four weeks to enable the applicants to approach the Supreme Court.

17. Considering all the aforementioned facts and circumstances and the gravity of the crime, I am not inclined to grant any further concession to the applicants. The request is rejected.

(MANGESH S. PATIL, J.)

S.P.C.