

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.847 OF 2020

Mohd. Jafar Mashooque Ali Ansari	Applicant
versus	
The State of Maharashtra	Respondent

WITH
INTERIM APPLICATION NO.224 OF 2021

Shahid Ahmad Gulam Gaus	Intervenor
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In the matter between :

Mohd. Jafar Mashooque Ali Ansari	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Subhash Jha with Mr.Siddharth Jha and Harekrishna Mishra i/by
Law Global for applicant.

Mr.Ajit M. Savagave for intervenor.

Mrs.M.R.Tidke, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 9th February 2021

PC :

1. This is an application for anticipatory bail in CR No.554 of 2020 registered with Shanti Nagar Police Station, Bhiwandi, District Thane for offences under Sections 386, 387 r/w 34 of Indian Penal Code. The FIR was registered on 6th October 2020

2. The complainant alleges that the complainant is in construction business. Development agreement was entered

between applicant and others in respect to plot No.542/A, Bhiwandi. The complainant submitted proposal for construction of building to Bhiwandi-Nizampur Municipal Corporation. He did not get permission for construction from Corporation. In March-2016 the complainant commenced footing work. One Akbar Gafoor Khan met him and told him to buy cement from him at cheaper rate than market value. He purchased cement. Latter on he found that Akbar had sold him cement at higher rate. He stopped buying cement from him. Akbar threatened him that he would inform journalist Arvind Jaiswar to send application to Corporation to stop his work. In February-2019 Jaiswar made application to Corporation against complainant's construction. He demanded one lakh rupees. Rs.50,000/- were given to Jaiswar. Son of Akbar threatened complainant. From October-2019 Akbar and applicant made complaints against construction of complainant. His work was stopped by Corporation. They demanded money. Applicant filed Writ Petition in High Court against construction. Complainant gave Rs.5,00,000/- to them. In November-2019 he gave Rs.2,50,000/- to the son of Akbar. In December-2019, Rs.2,50,000/- was given to applicant.

3. Learned counsel for applicant submitted that entire complaint is false and frivolous. The complainant is involved in illegal construction. Complaints were filed against unauthorized construction of complainant. Several complaints are annexed to application. Orders were passed by Corporation. FIR was lodged by Bhiwandi Municipal Corporation. Assistant Commissioner/Ward Officer lodged FIR No.II/164/18 under Sections 18, 52 of MRTP Act on 8th May 2018.. Learned counsel pointed out complaint lodged by

him to the Municipal Corporation dated 22nd January 2019. The applicant had also preferred Writ Petition before this Court seeking directions against Bhiwandi-Nizampur City Municipal Corporation and its Officers to demolish unauthorized construction i.e. ground + seven floors admeasuring 7,000 sq.ft constructed by demolishing Municipal House No.540/0 and 542/A situated at Gulzar Nagar, Near Noorani Masjid, Gaibi Nagar, Bhiwandi. During the course of hearing of the said petition, the Municipal Corporation stated that they have already followed due process of law and are taking steps to demolish the structure. The petition was disposed of vide order dated 20th January 2020 after accepting the said statement. During the course of investigation two accused were arrested and they were granted bail. It is submitted that the FIR has been lodged as a counter blast to the complaint of applicant lodged against illegal construction conducted by the complainant.

4. Learned APP submitted that there is sufficient evidence against applicant in the present crime. The co-accused and the applicant have connived with each other and were involved in extorting huge amount. The complainant had parted amount to the applicant. This is fortified by the statement of friend of complainant who has clearly stated that amount was handed over to the applicant. Other accused was involved in similar offences and all of them were engaged in extortion activities by lodging frivolous complaints.

5. Learned advocate for intervenor submitted that there is sufficient evidence against the applicant. Offence u/s 387 is made out. The complainant was made to part with amount. The said fact is supported by statement of witnesses. It is further submitted that

status-quo order passed in a suit preferred by original land owner, was in operation and it was suppressed. The co-accused has several antecedents of similar nature.

6. On perusal of the documents it is apparent that prior to registration of the FIR, the applicant has initiated complaints against unauthorized construction carried out by the complainant. The applicant had also preferred writ petition before this Court wherein the Municipal Corporation had assured that due process of law will be followed. Two persons were arrested and subsequently bail was granted to them. Learned counsel for applicant has pointed out that construction activity conducted by the complainant is in violation of provisions of law. The applicant had made several representations to Bhivandi-Nizampur City Municipal Corporation about illegal construction and several orders were passed by the Corporation. The applicant had made complaints to Police against the persons who had intimidated him. It is submitted that there is mushroom growth of illegal construction and the applicant being vigilant citizen has initiated action against such illegal construction. Considering the fact that applicant had indeed initiated the complaint against construction and the complainant, the FIR appears to have been lodged after initiating such complaint. The FIR itself indicate that permission for construction was not granted. In the circumstances, the applicant need not be subjected to custodial interrogation. Hence, I pass following order :

ORDER

- (i) Anticipatory Bail Application is allowed and disposed of;
- (ii) In the event of arrest of applicant in connection with CR

No.554 of 2020 registered with Shanti Nagar Police Station, Bhiwandi, the applicant be released on bail on his executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall report the Investigating Officer on 16th, 17th and 18th February 2021 between 11 am and 1 pm and thereafter as and when called for.

(iv) The Interim Application is disposed of.

7. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

MST