

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

ANTICIPATORY BAIL APPLICATION NO. 975 OF 2020

1. Pankaj Jivraj Khajanchi
2. Nadim Tamboli
3. Manish Joshi
4. Balkrishna Devare Applicants
Versus
The State of Maharashtra Respondent

Mr. Pradeep Thorat a/w. Aniesh Jadhav for Applicants.
Smt. Veera Shinde, APP for State/Respondent.
Mr. Pratik B. Rahade, for Intervenor.

CORAM : SARANG V. KOTWAL, J.
DATE : 21st SEPTEMBER, 2021

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No. 121 of 2020 registered at New Panvel Police Station, Navi Mumbai, on 20/08/2020, under sections 3, 11 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 (for short 'MOFA').

2. Heard Shri. Pradeep Thorat, learned counsel for the

applicants, Smt. Veera Shinde, learned APP for the State and Shri. Pratik Rahade, learned counsel for the Intervenor.

3. The First Information Report (for short 'F.I.R.') is lodged by one Dinesh Gaware. He has stated that, in October 2017, he got information about a project of construction which was being developed by M/s. Grow Plus Infra Developers. It is alleged in the F.I.R. that, all the applicants are partners of the firm. The informant went to the site of the project. He liked the project. There were 327 flats for sale. The project was to be completed on 31/12/2018. The informant booked his flat in December 2017. It is mentioned in the F.I.R. that the builder showed him the Occupancy Certificate (for short 'O.C.') and other documents. The informant was given possession of the flat in February 2018. He started residing there. It is his case that, the builder had charged Rs.250/- per square feet for O.C. According to him, that amount was not kept in a separate account, which he was duty bound to maintain. The first informant came to know from other members in the society that the O.C. shown to them was not valid. The informant discussed this issue with other members. They made

further inquiries and they came to know that the O.C. was given by the Gram Panchyat, but the Gram Panchayat did not have authority to give that O.C. The society members decided to meet the builder, but he did not meet them. On 01/09/2019 it was informed by the builder that a General meeting of the society was to be held on 15/09/2019. He also informed the flat owners that the society was registered on 04/07/2019. The general meeting was held on 15/09/2019. It is his case that, after registration of the society the land was required to be conveyed in its favour within 120 days, but it was not done. The F.I.R. itself mentions that, according to the first informant, the procedure adopted for registration of the society was not correct and, therefore, the informant and others filed proceedings before the Deputy Registrar of Co-Operative Societies, at Konkan Bhavan, CBD, Belapur. The proceedings are still pending. On these allegations the F.I.R. was lodged.

4. Learned counsel for the applicants invited my attention to the application made by the applicant No.1 and his firm on 17/02/2012 to the Collector for permission to convert the land to

non agricultural status. The permission was granted on 30/01/2013. He submitted that, Sanad was granted in respect of the same land by the Collector vide his order dated 30/10/2020. In that Sanad, it was observed that the builder had constructed his project by following conditions of permission. Shri. Thorat submitted that the Collector had passed his orders under Maharashtra Land Revenue (Conversion of Use of Land and Non Agriculture Assessment) Rules, 1969. He submitted that the applicant No.1 and his firm has followed all the procedure. They were, in fact, given O.C. by the Gram Panchayat, Umroli on 22/11/2017. Subsequently, the same Gram Panchayat vide another letter dated 12/12/2018 explained that the O.C. was given inadvertently and it was cancelled. He submitted that the applicants have absolutely no malafide role to play in obtaining any of these permissions. He submitted that the builder is willing to convey the property in the name of society, but today it is not possible because the informant himself along with others has filed proceedings under the Co-Operative Societies Act. He submitted that, there was absolutely no dishonest intention on the part of the

applicant No.1. He submitted that, applicant Nos.2 to 4 are not even concerned with the firm which had undertaken the construction project.

5. Learned counsel for the Intervenor submitted that the Sanad issued by the Collector himself mentions that, it was incumbent on the builder to obtain O.C. According to the learned counsel for the Intervenor, since 2013 the competent authority is Navi Mumbai Airport Influence Notified Area, who could have given all these permissions and, therefore, the builder cannot take up a stand that the permissions obtained by him were valid.

6. Learned APP submitted that the competent authority would be Navi Mumbai Airport Influence Notified Area (NAINA), therefore, the builder is required to obtain O.C. from that authority.

7. I have considered these submissions. Basically I am considering whether the applicant No.1 had any dishonest intention in obtaining all these permissions and whether his custodial interrogation is necessary. So far as applicant Nos.2 to 4 are concerned, learned counsel for the applicants submitted that,

they are not the partners of the said firm. Said submission is not seriously challenged by the other side. Therefore, in any case, they deserve protection of anticipatory bail order. So far as, applicant No.1 is concerned, all these permissions mentioned herein above show that a responsible officer, in particular, the Collector had given them these permissions, therefore, I do not see any dishonest intention on his part. The Gram Panchayat had given O.C. They themselves realized after one year that they were not empowered to give O.C., but for that purpose the applicant No.1 cannot be held responsible.

8. So far as the question of conveying the property to the society is concerned, Shri. Thorat submitted that, because of the litigation initiated by the informant and other members themselves, it is not possible to complete the conveyance. This submission has substance. In this view of the matter, custodial interrogation of the applicant No.1 also is not necessary in this case. It is, ofcourse, incumbent upon him to obtain all the necessary permissions. Shri. Thorat submits that the applicant No.1 will take all necessary steps in accordance with law. In view

of this discussion, the applicants have made out a case for protection of anticipatory bail order.

9. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No. 121 of 2020 registered at New Panvel Police Station, Navi Mumbai, the applicants are directed to be released on bail on their furnishing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- (ii) The Applicants shall attend the concerned Police Station as and when called and shall cooperate with the investigation.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)