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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2460 OF 2021

PARSHURAM LAXMAN KADAM AND ANRAPPLICANTS

V/s.

THE STATE OF MAHARASHTRARESPONDENT

AND

ANTICIPATORY BAIL APPLICATION NO. 2463 OF 2021

SURENDRA RAJARAM DESAIAPPLICANT

V/s.

THE STATE OF MAHARASHTRARESPONDENT

Mr. Niranjan Mundargi i/b Mr. Kunal D. Ambulkar advocate for the Applicant in ABA No. 2460/2021

Mr. Ashok Mundargi, Senior Advocate a/w Mr. Hrishikesh Mundargi i/b Ms. Sartaj Shaikh a/w Binal Shah a/w Ajay Basutkar for the applicant in ABA 2463/2021

Mr. Sandeep V. Wasnik for the intervenor in ABA 2460/2021

Mr. A. R. Kapadnis APP for the State in both matters

Mr. Abhijeet Abhang, PI, Charkop Police Station in ABA 2460/2021

CORAM : NITIN W. SAMBRE, J.

DATE: 13th OCTOBER, 2021.

P.C.:

1] Heard. Applicants are seeking pre-arrest bail in C.R. No.

486/2021 registered with Charkop Police Station for offence punishable under Sections 406, 420 and 403 r/w 34 of the Indian Penal Code.

2] As far as applicants in ABA 2460/2021 are concerned, they are office bearers of the cooperative housing society whereas in ABA No. 2463/2021, applicant is consultant who claimed to have submitted feasibility report in relation to project in question.

3] Prosecution case in brief is as under.

4] Complainant alleged that the land which is subject matter of the offence was given on permanent lease of 90 years to the Cloth Market and Shop Board of which complainant claimed to be president. It appears that without consent of the president of the said society, office bearers have entered into development agreement. In absence of conveyance deed and without permission from the aforesaid board/authority and also the government, resulted into registration of the offence in question.

5] Submissions of Mr. Niranjana Mundargi, learned counsel for the applicant board members and learned senior counsel Mr. Ashok Mundargi for the applicant, project consultant are, project has not taken off for want of appropriate permissions. Specific recitals to that effect are mentioned in the development agreement dated 22/01/2019. He would claim that even the cheque for Rs. 50 Lakhs issued in favour of society of which the applicants are office bearers is not encashed and will not be encashed unless board/competent authority approves the project. It is the contention of the applicants that in similar set of facts, earlier an offence was registered in which closure summary is submitted. Learned counsel for the applicants relied on the contents of the closure summary submitted in C.R. No. 373/2017 registered with Charkop Police Station for offence punishable under Sections 409, 420 and 120(B) of the Indian Penal Code.

6] My attention is invited to the order passed by the Sessions Court whereby pre-arrest bail is granted to developer pursuant to

consent extended by the Investigating Officer.

7] Learned APP informs that applications are liable to be rejected as the applicants have practiced fraud on the public exchequer/State government as they have no title to the property so as to enter into development agreement. It is also claimed that custodial interrogation of the applicants is required as there is likely to be underhand dealings which can be looked into only in custodial interrogations.

8] Learned counsel Mr. Wasnik for intervenor tried to support the case of the prosecution on the ground that there is sufficient material on record to infer prima facie involvement of the applicants.

9] Considered rival submissions.

10] Offence in question is based on development agreement copy of which is produced on record at Exhibit 'H' dated 22/01/2019. Recitals in the said agreement prima facie demonstrate the responsibilities of the applicants to secure clearances/permissions

including the one from the board to whom the permanent lease of the land was granted by the Government. I am informed that grant of such permission is an issue which is subjudiced before the board. Unless such permissions are cleared including from the State Government, statement made by Mr. Mundaragi that project will not be given effect is accepted as an undertaking to this Court.

11] In the aforesaid background, it is premature to infer that applicants have taken recourse to the development of the land in question which is owned by the board. Apart from above, the court is sensitive to the fact that a categorical statement on instructions is made before the court that no consideration whatsoever is received by society of which applicants are office bearers.

12] As far as the role attributed to the applicant-consultant is concerned, this case appears to be better placed than the developer as he has hardly any role to play in the matter but for giving feasibility report.

13] It is worth to take note of the fact that in the matter of grant of bail to the developer, Investigating Officer on similar set of facts has extended consent for grant of pre-arrest bail.

14] In the aforesaid background, in my opinion, case for grant of protection is made out. Hence, following order.

(i) In the event of arrest of applicants in C.R. No. 486/2021 registered with Charkop Police Station for offence punishable under Sections 406, 420 and 403 r/w 34 of the Indian Penal Code, they be released on bail on furnishing P.R. bond in the sum of Rs. 25,000/- each with one or more sureties in the like amount.

(ii) Applicants shall neither influence prosecution witnesses in any manner nor tamper with evidence.

(iii) Applicants shall attend the Investigating Officer on 21/10/2021, 26/10/2021 and 29/10/2021 between 10.00 a.m. to 12.00 noon and thereafter, as and when directed.

15] Applications stand disposed of.

[NITIN W. SAMBRE, J.]