

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

ANTICIPATORY BAIL APPLICATION NO. 942 OF 2021

Dinesh Murji Barvadia

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Abhinav Chandrachud i/b. Ramesh Tripathi for the Applicant.
Mrs. A.A.Takalkar, APP for the State.

**CORAM : ANUJA PRABHUDESSAI,J.
DATED : 24th MARCH, 2022.**

P.C.

1. This is an application under Section 438 Cr.P.C. filed by the aforesaid Applicant seeking pre-arrest bail in C.R.No. 164 of 2020 registered with Belapur Police Station for the offences under Section 420, 465, 467, 468, 471 r/w, 34 of the Indian Penal Code.

2. The aforesaid crime was registered pursuant to the FIR lodged by Dattatraya Chaure, Estate Officer, CIDCO. The Estate Officer had lodged the FIR alleging that the Applicant and one Arun Hariram Bhoir had forged letters dated 03.06.2019 and 26.03.2019 relating to the allotment of Plot No.117/1 which was allegedly allotted by CIDCO in favour of Bhoir under 12.5% Scheme.

3. Mr.Abhinav Chandrachud, learned Counsel for the Applicant

states that CIDCO had allotted subject plot No.117/1 in favour of said Arun Hariram Bhoir and late Bamubhai Bhoir under Allotment letter dated 3.11.2009. Subsequently, a lease agreement dated 16.06.2009 and Supplementary Lease dated 21.5.2014 were executed between CIDCO and Bamubhai Bhoir in respect of the said plot.

4. Shri Chandrachud, learned Counsel for the Applicant states that the Applicant had agreed to purchase the said plot and had made payment to Bhoir Family and had also paid the transfer charges. He submits that a Tripartite Agreement was executed between Bhoir, the Applicant and CIDCO on 5.11.2018 by giving biometric information and subsequent thereto, a Deed of Assignment was executed by Bhoir in favour of the Applicant and an amount of Rs,49,00,000/- has been paid to said Bhoir. Learned Counsel for the Applicant states that the aforesaid documents amply prove that CIDCO had allotted the plot in favour of Bhoir, and subsequently by virtue of Tripartite Agreement and Assignment Agreement, the plot has been assigned in favour of the Applicant. He submits that it was only after the Applicant had constructed the building, that the Estate Officer issued letter to the Town Planning Authority and this was in view of the complaint lodged by the Applicant against him, which was prior in point of time. Learned Counsel for the Applicant further submits that the co-accused Bhoir has been released on bail and considering the nature of accusation against

the Applicant, the Applicant is also entitled for bail.

5. Mrs. Takalkar, learned APP, states that though the FIR was initially lodged for forging letters dated 3.6.2019 and 26.06.2019, the subsequent investigation has revealed that the allotment letters have been forged. She has stated that the Plot No.117/1 was not allotted to Bhoir Family and that Bhoir Family were allotted Plot Nos.38, 39, 275 and 72. She submits that the subsequent documents such as lease Agreement and supplementary Deed, are also forged. She submits that the statement of the witnesses, who had allegedly signed the said documents have been recorded and they have denied their signatures on the said documents. She states that all the documents including the possession letter and the allotment letters are forged and fabricated. Having realized that the documents have been forged and fabricated, by letter dated 26.11.2018, CIDCO called upon the Applicant and the co-accused Bhoir to submit the relevant documents. They were notified that failure to produce the said documents would result in cancellation of the Tripartite Agreement. She submits that the Applicant as well as the co-accused failed to produce the said documents and subsequently the Tripartite Agreement came to be canceled by letter dated 16.5.2019.

6. Learned APP further submits that vide letter dated 26.12.2018 CIDCO had informed the Addl. Town Planning Officer to stay

construction on Plot No117/1 and vide letter dated 25.4.2019 CIDCO had informed the Town Planning Authority to cancel the permission given for construction on the said plot. Even after cancellation of the Tripartite Agreement and letter to Town Planning Department, the Applicant and the co-accused forged two letters dated 3.6.2019 and 26.6.2019, wherein it was alleged that upon inquiries all documents were found to be genuine and that the construction permission should not be canceled. She states that the material on record prima facie proves that the Applicant is involved in commission of the said offence.

7. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

8. The records prima facie indicate that the co-accused Bhoir had been allotted four plots under 12.5% scheme, viz. Plot No.38 admeasuring 130 sq. meter, Plot No.39 admeasuring 130 sq. meter, Plot No.275 admeasuring 119 sq. meter at Vashi Node and Plot No.72 admeasuring 40 sq. meters in Sector 1 Sanpada Node. The co-accused Bhoir was not allotted any plot under Plot No. 117, Sector 11, Koparkhairane under 12.5% scheme. However, he has assigned rights in the said plot in favour of the Applicant on the basis of allotment letter dated 3.11.2008, Agreement to Lease dated 16.6.2009 and supplementary deed dated 21.5.2014. It is claimed that these documents

viz. Letter of allotment and Agreement of Lease are forged and fabricated. In this regard it is pertinent to note that the letter of Allotment is allegedly signed by Mr. Manik Mundhe, the then the Land & Survey Officer, and the Lease Agreement is signed by one A.T. Deshmukh, the Assistant Land & Survey Officer, CIDCO, and by one S.P.Tambe as a witness. The statement of said Manik Mundhe reveals that the said letter does not bear his signature and that the said signature is forged. Similarly, the records reveal that no officer by name A.T.Deshmukh was posted as Assistant Land & Survey Officer, CIDCO. Arun Laxman Deshmukh, who served in CIDCO has denied his signature on the lease agreement. The material on record prima facie indicates that on 16.6.2009, S.P.Tambe was not incharge of Koparkhairne Node, rather he was incharge of Nerul, Shirvani, Sanpada and Jui Nagar Node. Shri S.P.Tambe has denied his signature on the said Agreement. Similarly, H.C.Madhvi has also denied his signature on supplementary deed dated 21.5.2014. The aforesaid material on record prima facie indicates that the aforesaid documents are forged and fabricated.

9. On the basis of forged Allotment letter and Lease Agreement, CIDCO had entered into Tripartite Agreement with Bhoir and the Applicant. Suspecting that the Tripartite Agreement was executed on the basis of forged documents, vide letter dated 26.12.2018, CIDCO

called upon the Applicant and the co-accused Bhoir to submit the original Allotment letter, Lease Agreement and Original Allotment of Plot No.117/1. The Applicant and the co-accused were informed that on failure to produce the original documents, the allotment would stand canceled. Letter dated 16.5.2019 reveals that the Applicant had failed to produce the original documents and as such CIDCO had canceled the said Agreement.

10. Though it is sought to be contended that the Applicant had not received the letter dated 26.12.2018, complaint dated 18.12.2019 addressed by the Applicant to the Sr. Police Inspector of CBD Belapur Police Station, and letter dated 20.12.2019 addressed to the Managing Director of CIDCO reveal that the Applicant had in fact received the said letter from the office of CIDCO. Hence the Applicant cannot be heard to say that he was not aware of the said letter or of cancellation of the Agreement. It is also to be noted that after cancellation of the Tripartite Agreement CIDCO had addressed two letters to the Town Planning Authority, Navi Mumbai, first to stop the construction and thereafter to cancel the permission given for construction on the said plot. Even after issuance of these two letters, a letter was addressed in the name of CIDCO to the Town Planning Authority stating that all the documents are genuine and a request was made not to cancel the construction permission. Prima facie, these two letters are also forged and

fabricated.

11. The records prima facie indicate that the Applicant was involved in the matters since beginning. The Applicant had paid token amount to Bhoir even before execution of Tripartite Agreement. He had even paid transfer charges on behalf of Bhoir. Though the plot No.117/1 is not in existence, on the basis of the forged documents, the Applicant had commenced construction in open plot between Plot No.117 and 118.

12. The aforesaid material, prima facie reveals that the Applicant is involved in forging and fabricating documents and commencing construction by making false representation before Public Authorities on the basis of those documents. Considering the seriousness of the offence, the crime needs to be thoroughly investigated. Custodial interrogation is necessary to bring out all material information in respect of the documents which are alleged to be forged and fabricated, and to ascertain involvement of the CIDCO Officers / Public Authorities. It is also stated that the Applicant is also involved in similar crime being Crime No.71 of 2016 registered at CBD, Belapur Police Station for offence under Section 420, 465, 467 r/w. 34 of IPC.

13. The nature of the accusation against the Applicant, the material in support thereof, as well as the criminal antecedents would not justify

grant of pre-arrest bail.

14. Under the circumstances, the Application is dismissed.

PRASANNA P
SALGAONKAR

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by PRASANNA
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(ANUJA PRABHUDESSAI, J.)