

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

ANTICIPATORY BAIL APPLICATION NO. 2389 OF 2021

Mayuresh Jayprakash Raut ..Applicant

v/s.

The State of Maharashtra . ..Respondents

**with
INTERIM APPLICATION NO. 2405 OF 2021
in
ANTICIPATORY BAIL APPLICATION NO. 2389 OF 2021**

Mr. Terence Roman Hendriques ..Applicant

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Subodh Desai i/b. Kartik S. Garg for the Applicant.

Smt. A.A.Takalakar, APP for the State.

Mr. Rizwan Merchant a/w. Shweta Rathod i/b. Sandeep Dubey for the Intervenor in IA/2405/2021.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 15th MARCH, 2022.**

P.C.

1. The Applicant herein has filed this Application under Section 438 of Cr.P.C. seeking pre-arrest bail, in Crime No. 744 of 2021 registered with Tulinj Police Station, Mira Bhayander, Vasai-Virar

for offences under Section 420, 465, 467, 468, 471 r/w. 34 of the Indian Penal Code and Section 52, 53 and 54 of the Maharashtra Regional And Town Planning Act, 1966.

2. Shri Desai, learned Counsel for the Applicant submits that the Applicant had executed a Power of Attorney in favour of Vijay Chindarkar in respect of redevelopment of a building in the property under Survey No.13 Hissa No.17 of Village Tulinj. He contends that the Power of Attorney, and one Chandrashekhar Maurya constructed a building unauthorizedly by fabricating the plans and other documents, and sold the flats to several purchasers. He submits that pursuant to the FIR lodged by the Applicant, crime was registered against the Power of Attorney -Vijay Chindarkar and Chandrashekhar Maurya. Upon completion of investigation of the said crime, chargesheet has been filed against them.

3. Shri Desai, learned Counsel for the Applicant contends that after a period of six years, the FIR has been lodged against the Applicant based on the same set of facts viz. illegal and unauthorized construction in the property in Survey No.13 Hissa No.17. He submits that nothing prevented the Investigating

Agency in applying for further investigation and arraying the Applicant as accused in the same crime.

4. Learned Counsel for the Applicant submits that the Applicant is being victimized in view of the complaint lodged by him against two police officers from Anti Extortion Cell. He has referred to complaints dated 17.3.2021 and 20.02.2022 lodged by him against the said Officers. He submits that since no action was taken by the Police against the said police Officers, this Court by Order dated 17.11.2021 and 17.2.2022 had directed the learned APP to file an affidavit of the Investigating Officer in respect of Crime No. 784 of 2013. Shri Desai, learned Counsel for the Applicant states that the Applicant is not involved in commission of the said crime and that his presence is not required for custodial interrogation.

5. Mrs. Takalkar, learned APP, states that the land is a Tribal land and that the Applicant herein had fabricated the 7 x 12 extract. She further submits that the Power of Attorney executed in favour of Vijay Chindarkar clearly states that the Applicant was in possession of the land and that the Applicant had obtained sanction plan and development permissions issued by CIDCO. She further submits

that the Applicant is the master mind in the said conspiracy and that he had lodged complaint against said Vijay Chindarkar and Chandrashekhar Maurya to establish his innocence. She submits that even after lodging of the FIR, the Applicant has entered into agreement with certain purchasers and received money in respect of the same. She has referred to the statements of Hiren Parekh and Sujit Vishwakarma to substantiate her contention that the Applicant herein is directly involved in construction of the said building and sale of the apartments in the said building. She submits that the nature of the offence committed by the Applicant does not justify granting of pre-arrest bail.

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

7. The FIR against the Applicant was lodged by the Assistant Commissioner of Vasai Virar Municipal Corporation for constructing unauthorized building in Survey No.32 Hissa No.17 of Village Tulinj, and forging and fabricating documents such as Commencement Certificate, Sanction etc. The complaint was based on information divulged by Terence Roman Henry who had

also filed a PIL pointing out that large number of unauthorized and illegal constructions were being constructed within the limits of Vasai Virar Municipal Corporation. In order dated 5.8.2021, the Division Bench of this Court (Coram : Dipankar Datta, C.J. and G.S.Kulkarni, J.) had observed thus :

“ 2. It is quite alarming that a Corporation which established as recently as in the year 2011, already has such exponentially large number of illegal structures. Learned Counsel for the Municipal Corporation has, however, fairly stated that such structures are already identified and information in regard to the same is placed on record in the proceedings of *Suo Moto PIL No.1 of 2020*. She also states that the term of the Municipal Corporation expired in June 2020 and now the Corporation is being managed by an Administrator, who is the Commissioner of the Municipal Corporation.

3. We would expect the Administrator/ Commissioner to proceed in accordance with law and take appropriate action in regard to such unauthorized structures. Needless to observe it would be permissible for the Administrator to obtain leave of this Court in the event the order of the Full Bench passed in *Suo Moto Writ Petition (St.) No. 93432 of 2020 (Writ Petition Urgent No.2 of 2020)* is in any manner affecting the action to be taken for demolition of the illegal structures.”

8. The building constructed in Survey No.31/17 is one of such illegal and unauthorized structure. The FIR lodged by Pradeep Avadekar, the Assistant Commissioner of Vasai Virar Municipal Corporation, reveals that the Applicant had constructed the said unauthorized building and he had sold several apartments /rooms in the building on the basis of the forged Commencement Certificate.

9. The material on record prima facie indicates that the building constructed in survey No.32 Hissa No.17 is illegal and unauthorized. The Applicant does not dispute this fact, but contends that the said building was constructed by his Power of Attorney holder _ Vijay Chindarkar. A perusal of the Power of Attorney which was executed by the Applicant in favour of Vijay Digambar Chindarkar, states that the Applicant was absolutely seized and possessed of the property under Survey No.32 subdivision 17 and the construction as per the sanctioned plan and development permission issued by the City & Industrial Development Corporation (CIDCO) Vasai vide No. CIDCO/VVSR/CC/BP-4516/E/1213 dated 13.10.2009, more particularly described in the schedule. The Power of Attorney clearly stipulates that the building in the property u/sec. 32/17 was being constructed by the

Applicant, and that the Applicant had only authorized said Vijay Chindarkar, to execute the sale deeds and to get the sale deeds registered before the Sub-Registrar in his name and on his behalf. The Power of Attorney thus prima facie indicates that the building was constructed by the Applicant and that Vijay Chindarkar was only authorized to sell the apartments to the purchasers.

10. The records indicate that having constructed unauthorized building, the Applicant lodged a complaint against the Power of Attorney-Vijay Chindarkar and one Chandrashekhar Maurya, accusing them of carrying out unauthorized construction in the said property in excess of the authority conferred. The Applicant claimed that said Chandrashekhar Maurya had told him that he had obtained the permission but had not shown to him the relevant documents. The Applicant claimed that he later realized that the building was unauthorized and the permissions were allegedly forged and fabricated. He further claimed that Chandrashekhar Maury had constructed total 55 flats and 8 shops (galas) but did not give him 8 rooms and 4 shops as per the agreement and did not allot the premises to some of the original tenants. Pursuant to the FIR lodged by the Applicant, crime was registered against said

Chandrashekhar Maurya and Vijay Chindarkar, and chargesheet has been filed against them.

11. Shri Desai, learned Counsel for the Applicant concedes that there is no agreement between the Applicant and said Chandrashekhar Maurya. There is no material on record to indicate that Chandrashekhar Maurya had agreed to obtain necessary permissions from the concerned authorities or that he was authorized to construct the building. On the contrary, as noted above, the Power of Attorney executed by the Applicant in favour of Vijay Chindarkar reveals that the building was to be constructed by the Applicant. Vijay Chindarkar was only authorized to execute and register the sale deed. He was not authorized to obtain the relevant sanction plans, Commencement Certificate and other development permissions. The Applicant was to construct the building and as such it was his obligation to get the sanctioned plan and other permissions/certificates from the Appropriate Authority. The records indicate that the Applicant has constructed the building without sanctioned plans/permissions and has implicated Vijay Chindarkar and Chandrashekhar Maurya to avoid criminal action.

12. It is also on record that even after lodging of the FIR against

said Chandrashekhar Maurya and Vijay Chindarkar, the Applicant has in fact entered into agreement for sale dated 14.06.2016 with Ramesh Prajapati, Agreement for Sale dated 3.5.2016 in favour of Hiren Parekh, Agreement for Sale of flat No. B-403 dated 27.02.2015 in favour of Vikram Kamlakant Shinde. He has accepted from these persons a total sum of Rs.34,30,000/-. It is also to be noted that 7 x 12 extract shows that the land wherein the building is constructed is a tribal land. The 7 x 12 extract annexed to these Agreements are apparently fabricated as it does not bear the endorsement in the other rights column that the said land is a tribal land. This fact also prima facie suggests that the Applicant has constructed the building in tribal lands and had sold the flats by fabricating the survey records.

13. The statement of Hiren Parekh prima facie reveals that the Applicant had told him to purchase a flat in the said building and had also assured to arrange for funds. He has stated that he had availed loan of Rs.16,90,000/- and that the same was deposited with M/s. Pratibha Enterprises, a proprietary concern of the Applicant. The statement of Hiren Parekh further reveals that the Applicant had sold the said flat No.B-403 to Rani Vishwakarma for Rs.9 lakhs

by creating a false agreement in his name.

14. The statement of Sujit Vishwakarma also prima facie reveals that the Applicant and his wife had told him that Room No.405 and 403 were available for sale and that they had agreed to purchase both the flats. His statement indicates that they had transferred total amount of Rs.8 lakhs in the account of Madhuri, Manish and Nilesh. He has stated that the Applicant herein had told him that his wife Madhuri was looking after the sale of the said apartment/rooms. He has further stated that the wife of the Applicant had given her the Agreement for sale in respect of room No.403 which indicates that the room was sold by Hiren Parekh in favour of his wife Rani Vishwakarma.

15. The material on record indicates that the Applicant is involved in constructing the building and that he has created several forged documents, Agreements etc and received Rs.1,79,00,000/- from several purchasers who were made to believe that the building is legal and authorized.

16. The records further reveal that another crime was registered

against the Applicant for constructing unauthorized four storeyed building named Smriti Bhavan under Survey No.121, part of village Tulinj. A complaint in this regard was lodged by one Akshay Ashok Mokhar, pursuant to which Crime No. 681 of 2021 was registered against the Applicant and others at Tulinj Police Station for constructing unauthorized building on the basis of forged Commencement Certificate and other relevant sanctions.

17. Learned Counsel for the Applicant submits that by order dated 8.7.2021 the Applicant has been released on bail in the said crime. A perusal of the said order reveals that the Applicant had sought bail in the said crime on the ground that he had appointed a Architect to carry out the work of development and that the said Architect had obtained necessary permission and prepared all documents. The Applicant had submitted that he had come to know about the fraud committed by the Architect only at the time of execution of the Agreement.

18. The learned Judge had observed that the offence of illegal construction was in respect of the building allegedly constructed by the Applicant as a Developer. However, even before the FIR was lodged against the Applicant, he had attempted to lodge report

against the Architect who had allegedly obtained necessary permission for construction. The learned Judge accepted the contention of the Applicant that he had executed only two agreements for sale and that he had stopped entering into further transaction when he had learnt about the forged Commencement Certificate and unauthorized construction carried out by the Applicant. Considering this conduct, the Court allowed the application for pre-arrest bail. Learned APP states that the Application for Cancellation of Bail has been filed and the same is pending.

19. The FIR in Crime No. 681 of 2021 as well as in order dated 8.7.2021 prima facie reveals that the Applicant is involved not only in constructing the subject building, but he had also constructed another unauthorized building wherein he had blamed his Architect for creating false documents and constructing unauthorized structure. The modus operandi appears to be the same. To construct illegal and unauthorized building and then to avoid criminal action by feigning innocence and lodging complaint against others including his Architect and Power of Attorney and then making them scape goats.

20. The nature of the accusations and the conduct of the Applicant would not justify pre-arrest bail. Considering all the above facts and circumstances, in my considered view, the Application has no merits. The Application is dismissed.

21. The other Interim Applications stand disposed of in view of this application.

22. The Applicant was on interim protection since 17.11.2021. Interim protection shall continue for a period of two weeks from the date of uploading of this order.

PRASANNA P
SALGAONKAR
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signed by
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(ANUJA PRABHUDESSAI, J.)