

SA Pathan

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

ANTICIPATORY BAIL APPLICATION NO.444 OF 2023

Dharmesh Vallabhbhai Bhalani ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO.445 OF 2023**

Ashok P. Vasani ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Niranjan Mundargi with Ms. Keral Mehta, Ms. Mundita Pawar & Ms. Sumedha Dhopate i/by Shree & Co., for the Applicant in ABA No.444 of 2023.

Dr. Abhinav Chandrachud with Mr. Sujay Gawade & Ms. Sumedha Dhopate i/by Shree & Co., for the Applicant in ABA No.445 of 2023.

Mr. P. H. Gaikwad, APP for the State-Respondent.

Mr. D. B. Kale, PSI, Rasayani police station, Navi Mumbai.

CORAM : AMIT BORKAR, J.

DATED : JUNE 12, 2023

P.C.:

1. Both the applicants have filed application under Section 438 of the Code of Criminal Procedure (for short 'Cr.P.C.') seeking pre-arrest bail in connection with C.R.No.167 of 2022 registered with Rasayani police station, District Raigad for the offence punishable under Section 420 r/w 34 of the Indian Penal Code (for short

‘IPC’).

2. The applicant in ABA No.444 of 2023 is an Architect whereas the applicant in ABA No.445 of 2023 is a Developer.

3. The informant who is Advocate by profession, booked flat with the developer. On 19 December 2020, the flat No.104 was conveyed in favour for sale consideration of Rs.13 lakhs. According to informant amount of Rs.1 lakh was paid towards occupancy certificate and thereafter, additional amount of Rs.2,50,000/- was paid to the developer. Despite, excess payment for occupancy certificate, was not issued. According to informant on information collected by him, it revealed that the required permission by public work department (PWD) is not taken. The premises is not constructed as per D.C. rules and therefore, cheated the informant.

4. The Applicants, therefore filed application before learned Sessions Judge under Section 438 Cr.P.C., which has been rejected by order dated 6 February 2023. Aggrieved thereby, the present applications are filed.

5. Learned Advocates of both applicants submit that dishonest intention since inception is the necessary ingredients of Section 423 of IPC.

6. Considering entire material on record, as of today there is nothing to indicate that applicants had dishonest intention since inception. According to them, even otherwise it is for the appropriate authority to consider whether to grant occupancy certificate or not and to consider the illegality of the construction.

Delay in furnishing occupancy certificate is not an offence.

7. Per contra, learned APP submitted, to ascertain whether the construction is affected by flood-line requires further investigation. It is also necessary to ascertain whether the construction is in accordance with the sanctioned plan. He, therefore, submitted that custodial interrogation of applicants is necessary.

8. The informant was heard on the last date. Today he is not present.

9. On perusal of the case papers and the material on record, it appears that the Collector, in exercise powers under Section 17 of the Maharashtra Regional Town and Planning Act, 1966, issued by Irrigation Department on 9 June 2020, indicates that the construction is not affected by flood. However, according to the said department, detailed inquiry as regards the same is necessary.

10. Apart from the absence of occupancy certificate, at this stage no other illegality has been attributed as of today. There is no material on record to indicate that the construction is totally illegal. There is no material on record to indicate that applicants had dishonest intention on the day of transaction. Therefore, applicants are entitled to relief under Section 438 of Cr.P.C., hence, following order:

a) In the event of arrest of applicant Dharmesh Vallabhbbhai Bhalani and Ashok P. Vasani in connection with C.R. No.167 of 2022 registered with Rasayani police station, District Raigad for

the offence punishable under Section 420 r/w 34 of IPC, shall be released on bail on furnishing PR. bond of Rs.50,000/- each, along with one or two sureties in the like amount.

b) The applicants shall remain present before the concerned police station on 19th, 21st and 23rd June, 2023 between 11:00 am to 2:00 pm thereafter, as and when called by the investigating officer.

c) The applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

d) The applicants shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

e) The applicants shall, at the time of execution of the bond, furnish their address and mobile numbers to the investigating officer, and the Court concerned, and shall not change the residence till the final disposal of the case.

11. The Anticipatory Bail Applications stands disposed of.

(AMIT BORKAR, J.)