

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

ANTICIPATORY BAIL APPLICATION NO. 962 OF 2023

Prateek Hanuman Prasad Dhanuka ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Ashutosh R. Gole - Advocate for the Applicant

Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 24th APRIL, 2023

P. C. :-

1. Heard learned Advocate Shri Ashutosh Gole for the Applicant and learned APP.

2. The F.I.R. is lodged with the Achole Police Station on 14/03/2023 bearing C.R. No. 159 of 2023 under Sections 52, 53 and 54 of the Maharashtra Regional Town Planning Act. This F.I.R. is not lodged by the Police Officer but by the Head Clerk Shri Nitin Patil from Vasai-Virar Municipal Corporation. The Present Applicant is sole accused.

3. The sum and substance of the allegation is that the Applicant is running one Dhanuka Ayurvedic Centre and Jivo Smart Kirana Store in front of his Room No. 02 in Krushna Kanhaiya Co-

operative Housing Society Limited, Evershine city, Vasai (East). He is running the said business in a tin shed ad-measuring 25 X 20 sq. ft.. He was given a notice under the provisions of the MRTP Act and inspection was done. Instead of complying with the notice, the Applicant continued the said business and accordingly the F.I.R. is lodged.

4. According to learned APP for filing of an F.I.R. by Corporation Official, sanction under Section 142 of the MRTP Act is not required. He is fully conscious of the observations made by the Division bench in case of ***Mahesh Shivram Puthran Vs. Commissioner of Police, Thane, District Thane and Others***¹ in fact he only got an opportunity to appear before the Division bench in that matter. In that case the complaint was filed by the Police officer and not by the officials of the Corporation.

5. Learned Advocate Shri Gole also relied upon the observations in case of ***Bharti Airtel Limited Vs. State of Maharashtra and Anr.***². It is true that in that matter the complaint was lodged by officer working with Palghar and Bhivandi Municipal Council. (It means not by the Police officer). However Division Bench was pleased to

1 2011 SCC Online Bom 389

2 2016 SCC Online Bom 14348

consider the observations made by the earlier Division Bench in the case of *Mahesh Shivram Puthran (Supra)*, para no. 7.

6. According to the learned APP Shri Dedhia even though earlier observations are referred, there is no findings in case of *Bharti Airtel Limited (supra)* that the sanction will be required even though F.I.R. is filed by the Corporation officials. Let this issue be agitated before another Division bench in some other matter.

7. So without going into issue whether the sanction is required or not, I am inclined to grant anticipatory bail for different reason. Considering the allegations, I do not think that custodial interrogation is required.

8. Learned Advocate Shri Gole relied upon one allotment letter issued by Star Evershine Civil Works Private Limited, in favour of the first purchasers Mrs. Mala Ojha and Mrs. Rani Ojha on 17/11/1997. By the said letter garden area in front of the flat was reserved for the said allottees. These two Ozas have sold it to vendor of the Applicant. There is also copy of the NOC dated 15/07/2022 issued by the Society in favour of the present Applicant and one Girish Dhanuka. It mentions that Society is not having objection if the flat in question is used for commercial purpose. It is also

mentions about Patra shed in respect of which notice is given by the Corporation.

9. Learned APP submitted that let the Applicant be produce those documents alongwith agreement on which he relies before the police. It is true that this Court has not made any observations about claim of the Applicant towards shed that is to say whether the builder has got right to issue allotment letter and whether the shed is authorized construction or not. Let Competent Court to decide that issue. However certainly custodial interrogation is not required. With these observations, I am inclined to pass the following order:-

ORDER

- (i) Anticipatory bail application is allowed.
- (ii) In case of arrest in connection with C.R. No. 159 of 2023 registered with Achole Police Station for the offence punishable under Sections 52, 53 and 54 of the Maharashtra Regional Town Planning Act, the Applicant be released on furnishing Personal Bond and Surety Bond in sum of Rs. 25,000/-.
- (iii) Applicant is directed to give attendance to the Achole Police Station on Monday from 10.00 a.m. to 12.00 noon and he is at liberty to produce those documents as referred above. The attendance be given till filing of the

charge-sheet

10. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

11. Anticipatory bail application is disposed of in the aforesaid terms.

[S. M. MODAK, J.]