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

ANTICIPATORY BAIL APPLICATION NO.1488 OF 2022

Vijaykumar Devraj Mehta	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Mihir Gheewala with Ms. Garima Agrawal and Mr. Abhinash Pradhan i/by Wadia Ghandy & Co. for the applicant.

Mr. Amit A. Palkar, APP for the respondent/State.

Mr. Vishwanath Patil with Mr. Ajinkya Yadav for original complainant/intervener/MHADA.

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Date: 2023.07.13
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CORAM : AMIT BORKAR, J.

DATED : JULY 13, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.156 of 2022 registered with Chandannagar Police Station for offences punishable under sections 409, 419, 420, 464, 467, 468, 471 read with section 120-B of the Indian Penal Code, 1860, the applicant is seeking relief under section 438 of the Criminal Procedure Code, 1973.

2. The informant Maharashtra Housing and Area Development Authority (hereafter, MHADA, for short) lodged a complaint with respondent police station alleging that plot bearing Survey No.37/1/1 at Maujegaon Kharadi, Taluka Haveli, District Pune

aggregating 12778.37 sq. mtrs. was allotted in favour of 220 plot holders by a lease deed. The plot holders registered Vishwakarma Vidi Kamgar Cooperative Society over the said plot. The managing committee of the cooperative society entered into development agreement with M/s Amba Land Mark Pvt. Ltd. of which the applicant is a director. According to the complainant, M/s Amba Land Mark Pvt. Ltd. entered into joint venture agreement with Austin Realty without taking permission from MHADA. The joint venture of M/s Amba Land Mark Pvt. Ltd. and Austin Realty used MHADA's name and logo with an intention to dispose of MHADA's property in favour of third parties and, therefore, have cheated MHADA by committing breach of trust.

3. The applicant, therefore, approached the Sessions Judge under section 438 of the Criminal Procedure Code, 1973, which has been rejected by order dated 3rd June 2022. Learned Sessions Judge rejected the application principally on the ground that the applicant has committed acts which are contrary to lease agreement executed by MHADA in favour of Vishwakarma Vidi Kamgar Cooperative Society.

4. I have heard learned advocate for the applicant, learned advocate for MHADA and learned APP for the State. According to the complainant, clause (k) of the lease agreement dated 5th May 2008, restrains Vishwakarma Vidi Kamgar Cooperative Society including their successor in title from assigning or subletting or otherwise transferring right in property or possession without permission of MHADA. According to him, MHADA granted permission to Vishwakarma Vidi Kamgar Cooperative Society on

3rd February 2012 to develop the plot through Amba Land Mark Pvt. Ltd. by imposing condition that the development shall be within permissible FSI of 2.5, and in case of use of excess FSI separate permission for use of FSI would be necessary.

5. On prima facie perusal of the development agreement executed by Vishwakarma Vidi Kamgar Cooperative Society in favour of the applicant, it appears that the applicant's company was conferred right to mortgage the property and to enter into development agreement. Prima facie, it appears that lease agreement dated 5th May 2008 was between MHADA and Vishwakarma Vidi Kamgar Cooperative Society. MHADA has no agreement or privity of contract with the applicant hence the remedies available to MHADA may be possible against the Vishwakarma Vidi Kamgar Cooperative Society. The remedy for breach of contract entered into by the MHADA with Vishwakarma Vidi Kamgar Cooperative Society, at this stage, appears to be against the Vishwakarma Vidi Kamgar Cooperative Society.

6. In so far as the allegation of using MHADA's logo or MHADA's name at the site of construction is concerned, prima facie it is the matter of investigation to unearth the intention behind using such logo or MHADA's name. Prima facie, it appears that as of today there are no subsisting agreement executed by applicant's company in favour of third parties except allegations of acceptance of money by one Pankaj Samal. As of now there is no material on record to indicate acceptance of money by applicant directly from purchasers or investors.

7. Moreover, this Court by order dated 8th June 2022 protected the applicant. It is nobody's case that the applicant has not cooperated with the investigation.

8. On overall view of the matter, I am satisfied that the custodial interrogation of the applicant is not necessary. Hence, following order:

a) In the event of arrest of the applicant in connection with C.R. No.156 of 2022 registered with Chandannagar Police Station for offences punishable under sections 409, 419, 420, 464, 467, 468, 471 read with section 120-B of the Indian Penal Code, 1860, he be released on bail on furnishing PR Bond in the sum of Rs.50,000/-, along with one or two sureties in the like amount;

b) The applicant shall present before the investigating officer on 14th, 17th and 19th July 2023 between 11:00 a.m. to 02:00 p.m. and, thereafter, as and when called by the investigating officer;

c) The applicant 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 applicant 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 applicant shall, at the time of execution of the

bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;

f) The applicant shall not leave Indian without permission from the trial Court.

9. The anticipatory bail application stands disposed of in above terms.

(AMIT BORKAR, J.)