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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.990 OF 2020**

Rupesh Kamlakar Mhatre

...Applicant

vs.

State of Maharashtra

...Respondent

Mr. Ashutosh R. Gole for the Applicant.

Mr. A. R. Kapadnis APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 6TH APRIL 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. The Officer is present.
3. This Court has already granted interim protection to the Applicant as per order dated 17th December 2020. As per subsequent order dated 29th January 2021, submission is recorded that the Applicant will file an Application for regularization and submission on behalf of the learned APP is also recorded that the Investigating Officer will verify the same.
4. On 18th March 2023, it was submitted that the said proposal is rejected by the Corporation as per letter dated 24th September 2022.
5. Today, as per instructions it is submitted that the Applicant has

submitted fresh proposal. Learned Advocate for the Applicant is ready to go on with the matter, inspite of outcome of that proposal.

6. Two submissions are made. One is there can **not** be prosecution for the offence under MRTP Act, without previous sanction. It is requirement of section 142 of the MRTP Act. In this case, if we read the averments in the FIR no sanction is obtained,. The second submission is that the corporation official is having no right to file police complaint for the offence punishable under section 420 of IPC. The ingredients of that offence are not made out.

7. The Division Bench of this Court has dealt with issue about launching of the prosecution without sanction as contemplated under section 142 of the MRTP Act in various judgments. Few of them are as follows :

(a) *Mahesh Shivram Puthran Vs. Commissioner of Police, Thane*¹

(b) *Sow. Devakibai Vs. State of Maharashtra and Anr.*²

(c) *Bharti Airtel Limited Vs. State of Maharashtra and Anr.*³

(d) *Bharti Airtel Limited Vs. State of Maharashtra and Anr.*⁴

1 2011 SCC Online Bom 389

2 2014 SCC Online Bom 1314

3 2016 SCC Online Bom 14348

4 Criminal Appeal No.247 of 2013 dt. 8/10/2013 (Bombay High Court)

8. Learned APP tried to differentiate the facts involved in those matters and present facts. After reading the above orders, it is clear that the view taken by the Division Bench in case of *Mahesh Puthran* (supra) is followed in subsequent orders. The sanction is required even for institution of the prosecution. This has been interpreted in paragraph 16 of *Mahesh Puthran* (supra).

9. According to learned Advocate for the Applicant, filing of the FIR also amounts to institution of the prosecution. It is true that in *Mahesh Puthran* (supra), the FIR was lodged by the police officer and not the official of the Corporation or the Planning Authority. However, when the Division Bench of this Court has dealt with case of *Bharti Airtel Ltd.* reported in (2016) SCC Online Bom 14348, the police complaint with Narpoli police station was filed by the officer working with Palghar Municipal Council and Bhivandi Municipal Council. In view of the above facts, it can very well be said that the view taken in *Mahesh Puthran* (supra) is applicable in a FIR lodged by the official of the Corporation.

10. There is another aspect due to which learned APP tried to differentiate the facts. According to him, in those cases there was no

grievance of offence under section 420 of the IPC. To rebut this contention learned Advocate for the Applicant submitted that in fact, the present Applicant has entered into various agreements with flat and shop purchasers wherein he has made it clear that there is no permission from any of the Government Authorities. One of such agreement is executed with one Rekha Dilip Joshi is tendered. It is taken on record and marked as Annexure "X". Clause 8(a) at page 5 of the agreement mentions that it was intimated to the flat purchasers that no Government approval is obtained.

11. Learned APP submitted that there are statements recorded of the flat purchasers that they were not aware about absence of permission. However, in view of the clause in above said agreement said contention cannot be accepted. It is true that statements can be recorded during investigation and it can be argued that particular offence mentioned in the FIR is properly invoked. However, in view of the stand taken by the Applicant as evidenced in the agreement, I think the Applicant has made out case for confirmation of the interim protection. In view of the above the following order is passed :

O R D E R

(a) Interim protection granted by this Court on 17th December 2020, is confirmed on the same conditions.

(b) Let the Applicant to cooperate with police as and when required.

12. Application is disposed of.

13. These are my prima facie observations and the trial Court shall be influenced by that observations.

14. All parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]