

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

ANTICIPATORY BAIL APPLICATION NO.2581 OF 2022

Nitin Ashok Ubale and Anr. ..Applicants

vs.

The State of Maharashtra ..Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.2344 OF 2022

Nitin Ashok Ubale ..Applicant

vs.

The State of Maharashtra ..Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.2341 OF 2022

Afsar Ali Ansari ..Applicant

vs.

The State of Maharashtra ..Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.2337 OF 2022

Afsar Ali Ansari ..Applicant

vs.

The State of Maharashtra ..Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.2335 OF 2022

Nitin Ashok Ubale ..Applicant

vs.

The State of Maharashtra ..Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.2582 OF 2022

Nitin Ashok Ubale and Anr. ..Applicants

vs.

The State of Maharashtra ..Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.2583 OF 2022

Nitin Ashok Ubale and Anr. ..Applicants

vs.

The State of Maharashtra ..Respondent

Adv. Ashwin Thool a/w Adv. Jaymangal Dhanraj, Adv. Ayush Singh, Adv. Sakshi Chavan, Adv. Sarthak B. for Applicants.

Mr. S. V. Gavand, APP for the State.

PSI Saiprasad R. Pawar, Virar Police Station is present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 5, 2023

P.C. :

1. Heard learned counsel for the applicants and learned APP for the State.

2. These applications for pre-arrest bail are disposed of by a common order. These applications are filed by the applicants - Nitin Ashok Ubale and Afsar Ali Ansari. The reason why the applications are being disposed by a common order. The offence is in respect of the plot in question where 5 buildings are constructed on the basis of forged permissions. There are 5 C.Rs. bearing numbers 318 of 2021, 284 of 2021, 280 of 2021, 283 of 2021 and 285 of

2021 of the Virar Police Station which came to be registered for the offence punishable under sections 420, 465, 467 and 471 of the Indian Penal Code, 1860 ("IPC", for short) and sections 52, 53 and 54 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act", for short). Subsequently sections 120B of IPC and sections 3 and 4 of Maharashtra Protection of Interest of Depositors Act, 1999 came to be added in the said C.Rs. Some of the anticipatory bail applications are filed jointly by them and some are filed individually.

3. On several occasions, the applicants attended the Investigating Officer and co-operated. The alleged offence is regarding unauthorised buildings which have been erected without any commencement certificates and occupation certificates. It is alleged that the commencement certificates and occupation certificates on the basis of which the buildings are constructed are said to be forged. The applicants' complicity in forging these permissions is the subject matter of investigation.

4. So far as the applicants are concerned, the

development rights of the said properties were transferred to them by one Mr. Akash Harsha Gharat on 05/01/2012. Thereafter, the applicants further transferred the development rights in favour of another developer on 04/04/2012. They were in receipt of some consideration by virtue of the said transfer. It is not the case that the buildings in question were constructed by the applicants. The buildings were constructed pursuant to the transfer of development rights by the applicants. The buildings have been constructed by some other developers.

5. My attention is invited to the order dated 12/09/2022 passed by this Court in Anticipatory Bail Application No. 2170 of 2022 whereby the applicant therein 'Akash Harsha Gharat' has been granted pre-arrest bail. The applicants herein are similarly situated as 'Akash Harsha Gharat'. As indicated earlier, the applicants had secured development rights from Akash Harsha Gharat. Later on the applicants transferred the development rights to another developer. The relevant portion of the order passed in 'Akash Harsha Gharat' reads thus:-

"3 Perusal of the complaint and the documents placed on record by the learned counsel applicant would reveal that the original owner of the subject land transferred it in favour of the applicant, but subsequently through various development agreements, the project changed hands and in fact, the construction was carried out by one Nitin Ubale. The applicant is not the one who has disposed off the tenements in the Mahalaxmi Apartments.

4 In any case, when the learned APP is asked that if two buildings come up in the jurisdiction of Virar Municipal Corporation, which according to the Corporation, are unauthorized, and despite the fact that electricity as well as water connection are made available to the said buildings, what steps have been taken by the Corporation either to erase the building, when they were declared to be unauthorized and if there is failure on part of the Planning Authorities to take the steps, why none of the officials, in whose jurisdiction such buildings are constructed are made accountable, the learned APP or the Investigating Officer is not in a position to offer any reply.

5 The Addl. Sessions Judge, Vasai had rejected the Anticipatory Bail Application, by recording the finding that unauthorized construction is a serious malady that is affecting many cities and it has created a hazardous situation to the lives of the occupants. The learned Judge has failed to consider that it is right under the nose of the various Officers, who take hefty salaries from the Corporation, the buildings have come up but they are not bothered about the land being exposed to such constructions, to the benefit of various developers and builders and the ultimate sufferer is the poor person who invest his money in the hope that he will, have his own dream home in this sky scrapers which he is unaware, are unauthorized. The entire system has to deal with this malady and merely the applicant who is accused of entering into the transaction with the owner of the land will not offer any solution. His custodial interrogation in my considered opinion, is unwarranted as all the subsequent agreements are

on record, and it can be discerned that it is not the applicant who has carried out the constructions as far as ascertaining as to who has created the disputed document, his specimen signatures and thumb impressions can be collected and a strenuous exercise shall be carried out by the Investigating Officer to nab the real persons who are guilty of forging this document.

6 In the wake of the above, the interim protection granted by this Court is made absolute. Needless to state that the applicant shall continue to render his co-operation in the investigation."

6. Though, the order records that the construction was carried out by Nitin Ubale, however, during the course of hearing it is pointed out that the construction was not carried out by the applicant – Nitin Ubale as he had already transferred development rights in the property. There is nothing on record to indicate that the construction was carried out by the applicant – Nitin Ubale. In this view of the matter, even the applicants deserve to be granted facility of pre-arrest bail on the ground of parity. Hence, the following order.

ORDER

(a) In the event of arrest of the applicants in connection with C.R. Nos. 318 of 2021, 284 of 2021, 280 of 2021, 283 of 2021 and

285 of 2021 registered with the Virar Police Station, the applicants - Nitin Ashok Ubale and Afsar Ali Ansari be released on bail on their furnishing P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

(b) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence;

(c) The applicants, in any case, shall report to the Investigating Officer of the concerned Police Station once in month, i.e. on first Monday of that month between 11.00 a.m. and 1.00 p.m;

(d) The applicants shall co-operate with the Investigating Officer.

7. The applications are disposed of.

(M. S. KARNIK, J.)