

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

ANTICIPATORY BAIL APPLICATION NO. 3367 OF 2022

Sitaram Sudama Gupta	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Niranjan Mundargi i/by Mr. Rushikesh Mohite - Advocate for the Applicant

Mr. S. R. Agarkar - APP for the Respondent-State

Dr. U. P. Warunjikar i/by Ms. Rishi Sheth – Advocate for Respondent No. 2.

API Vinayak Panmand - Economic Offence Wing MBVV

CORAM : S. M. MODAK, J.

DATE : 17th JULY, 2023

P. C. :-

1. Heard learned Advocate Shri Mundargi for the Applicant, learned Advocate Dr. Warunjikar for the first informant and learned APP for the Respondent-State.

2. The offence at C.R. No.196 of 2022 is registered with Achole Police Station on 27/04/2022 and now investigation is taken over by Economic Offences Wing. There is one more F.I.R. registered at C.R. No. 195 of 2022 on 26/04/2022 at the same Police Station. It is under Sections 420 read with 34 of the Indian Penal Code and

under Sections 52, 53, 54 of the Maharashtra Regional and Town Planning Act. It is on the complaint of in-charge Assistant Commissioner of Prabhag Samiti (D) of Vasai-Virar Municipal Corporation. Preliminary objection taken by Mr. Mundargi is that if there is earlier F.I.R., there cannot be second F.I.R. in respect of same allegation of unauthorized construction. Whereas learned APP and Dr. Warunjikar submitted that present F.I.R. is filed by a co-owner of the land and predominantly it pertains to the cheating, forging the documents. In the present F.I.R. provisions of the Maharashtra Regional and Town Planning Act are not invoked.

3. When asked learned APP submitted that in C.R. No. 195 of 2022, the present Applicant is not named and after taking instructions, he submitted that they do not want to arrest the present Applicant in the said F.I.R.. So also after taking instructions, he submitted that in the present F.I.R. they are not going to invoke provisions of the Maharashtra Regional and Town Planning Act.

4. On the basis of the contention raised by Mr. Mundargi, I have gone through the allegation in both the F.I.R.s. The present F.I.R. i.e. C.R. No. 196 of 2022 is concerned with the transactions of the sale of the plot of land which is private land and the first

informant-Piyush Patel is one of the co-owner. Though there is reference of the un-authorized constructions, these provisions are not invoked. Whereas in C.R. No. 195 of 2022 there is reference of various plots of lands, it includes the private lands as well as Government lands. The said F.I.R. no where concerned with the sale of the plots of the land by cheating and by forging documents. So contention of Mr. Mundargi cannot be accepted.

5. Whereas contentions are raised that is to say :-

- (a) The present Applicant is not concerned with any of the transactions,
- (b) As on today, the land stands in the name of the original owners of the 7/12 extract,
- (c) There are no materials to show the involvement of the present Applicant.

6. When learned APP and Dr. Warunjikar has shown me the relevant documents, I am of the prima-facie opinion that there are materials showing the involvement of the present Applicant. The first informant has alleged that his four fathers were using the land for salt pan. However due to passage of time, they could not use it and it was lying idle. Due to which certain persons so called land

grabbers have taken benefit of the situation. The present Applicant has tried to sale the lands from bearing survey nos. 22/1, 23/1, 26/1, 27/1, 28/1, 29/1 and 30 ad-measuring 396 guntas. So also there are other members from the Patel family also.

7. Lands were shown to be purchased by one Vijay Salvi. Though he is accused, he is not traceable. The present Applicant and arrested accused Arun Gupta divided lands in the plots and sold it to several persons.

8. Learned APP pointed out to me some of the agreements which are unregistered. It is true that some of them are executed by arrested accused – Accused No. 4 but materials show that the present Applicant is also involved in those transactions either of the witness or in different capacities. Even the present Applicant and co-accused assaulted the first informant in the year 2008 and there is offence of rioting registered with Nalasopara Police Station. By taking the disadvantage of the situation, they have carried out unauthorized construction by way of buildings or chawls.

9. Learned APP has shown to me few of the statements. Those witnesses have stated that the present Applicant is local corporator and he misused his position. Even there is

correspondence made by the Revenue officers telling that the trees standing on those lands were cut, it is from the Government land.

10 So considering the above, the contention of the Applicant that he is no where concerned with the alleged offence cannot be accepted. There may be civil dispute going on in between Vijay Salvi and Arun Gupta, however considering the allegations, it reveals that criminal antecedents are there and accused persons have taken disadvantage of the situation.

11. There is a statement given by this Applicant before Achole Police Station on 22/02/2022. Dr. Warunjikar invited my attention to the answers given by the Applicant in the said statement. There is contention raised that arrested accused during his custodial interrogation has tried to pass on responsibility to this Applicant. Whereas Applicant has done the same thing. So what I find is that custodial interrogation of the Applicant is justified. No case for anticipatory bail is made out.

12. There is interim protection granted by this Court on 22/02/2023, which was granted on the basis of the statement made on that date. However considering the materials pointed out today, no case for confirmation is made out. Hence protection granted on

that date is vacated. Application is dismissed.

13. There is request made to protect the Applicant for two weeks. It may be true that earlier there is interim protection granted, however considering the reasons quoted in the order, I am not in favour of granting interim protection any more. Request is rejected.

[S. M. MODAK, J.]