

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3429 OF 2023

Dipesh Manohar Matre

...Applicant

vs.

The State of Maharashtra and Ors.

...Respondents

Mr. Ganesh Gole a/w. Mr. Aarif and Mr. Shivkumar Mishra, for the Applicant.

Ms. Anamika Malhotra, APP, for the Respondent/State.

Mr. Nitin Phalphale, API, Manikpur police station.

CORAM : N. J. JAMADAR, J.

DATE : DECEMBER 13, 2023

P.C.:

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

2. This application is preferred seeking pre-arrest bail in connection with C.R. No.323 of 2023 registered at Manikpur police station for the offences punishable under sections 120-B, 420, 465, 467, 468, 471, 472, 474 and 475 read with 34 of Indian penal Code, 1860; sections 52, 53 and 54 of the Maharashtra Regional & Town Planning Act, 1966 and sections 3 and 13 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sales, Management and Transfer) Act, 1963.

3. The applicant is the owner of the property bearing Survey No. 1, Hissa No. 6, Shri Swami Samarth Apartment, Umelman situated within the limits of Vasai-Virar Municipal Corporation. In the wake of allegations that many buildings within the limits of the municipal corporation were erected on the basis of forged and fabricated approvals, the first informant- Incharge Assistant Commissioner, Vasai-Virar Corporation conducted inquiry in respect of buildings which were newly developed, within the limits of the Municipal Corporation. It transpired that on the applicant's subject property a building named Swami Samarth Apartment was constructed on the basis of false and fabricated commencement certificate and building plan. Those documents were purported to have been issued by the Municipal Corporation and Dy. Director, Town Planning Vasai-Virar Municipal Corporation. It further transpired that the purchasers were put in possession of those flats and the applicant had executed instruments in their favour. Hence, the report.

4. Mr. Gole, learned counsel for the applicant, submitted that the co-accused Sandip Landge is shown as the developer. In fact, the applicant had executed Development Agreement with Amol Patil, in the year 2021. Inviting attention of the Court to clause 3 of the said Development Agreement, Mr. Gole would urge that it was the

responsibility of the developer to obtain requisite permission from the planning authority and execute the work in accordance with the governing rules. Mr. Gole further submitted that once the applicant become aware of the illegal construction, he had addressed a communication to the authorities including the jurisdictional police to initiate appropriate action. Mr. Gole made an endeavour to submit that the applicant was not the beneficiary of alleged fraud.

5. The learned APP resisted the application for pre-arrest bail. It was submitted that the investigation has revealed complicity of the applicant. Attention of the Court was invited to a registered Development Agreement executed by and between the applicant and Mr. Sandip Landge, Power of Attorney executed by the applicant in favour of the co-accused Sandip Landge and copy of the Agreement for Sale in favour of one of the purchasers, which the applicant also executed in the capacity of owner/consenting party.

6. Mr. Gole attempted to salvage the position by submitting that the only agreement to which the applicant is a party is a Sale Agreement executed by Amol Patil in favour of the applicant in respect of flat No. 307 in the said building.

7. Prima facie, there is material to indicate that the building plan and the commencement certificate are forged. On the strength of the forged building plan and commencement certificate, a multi-story building has been constructed and purchasers have been induced to part with life savings to purchase flats in the said building. It is not a case of mere breach of Building Control Regulations. Forgery of the documents purported to have been issued by public authorities has serious ramifications.

8. The endeavour on the part of the applicant to show that he had entrusted the development to one Amol Patil, does not merit acceptance. The learned APP was justified in advancing the submission that construction has been completed by 2020 and development agreement between the applicant and Amol Patil is shown to have been executed in the year 2021. Moreover, there is material to show that the applicant had executed a registered Development Agreement in favour of co-accused Sandip Landgle. The endeavour of the applicant to wriggle out of the situation by submitting that he was not the beneficiary of the alleged fraud is belied by the agreement which the applicant has executed in the capacity of owner/ consenting party in favour of the purchaser.

9. A very strong prima facie case has been made out against the applicant. In the circumstances, the custodial interrogation of the applicant is indispensable for effective and complete investigation. It is not a case where discretion to release the accused can be exercised without prejudice to the interest of fair and effective investigation. Thus, I am not inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)