

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

ANTICIPATORY BAIL APPLICATION NO.299 OF 2024

Vandana Prabhakar Bhosale	 Applicant
versus	
State of Maharashtra	 Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.314 OF 2024
WITH
INTERIM APPLICATION NO.794 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.314 OF 2024
WITH
ANTICIPATORY BAIL APPLICATION NO.300 OF 2024
WITH
INTERIM APPLICATION NO.797 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.300 OF 2024
WITH
ANTICIPATORY BAIL APPLICATION NO.337 OF 2024**

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- Mr. Aabad Ponda, Senior Advocate a/w Minal S. Chandnani a/w Bhavesh Sawant i/b. Jaiwant S. Chandnani Associates, Advocate for Applicant in ABA/300/24.
- Ms. Minal S. Chandnani a/w Bhavesh Sawant i/b. Jaiwant S. Chandnani Associates, Advocate for Applicant in ABA/299/24.
- Mr. Rahul S. Kadam, Advocate for Applicant in ABA/314/24.
- Mr. V. P. Kakade i/b. Mrunal Jadhav, Advocate for Applicant in ABA/337/24.
- Mr. Suhas S. Deokar, Advocate for Intervenor in IA/794/24 & IA/797/24.
- Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.

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**CORAM : SARANG V. KOTWAL, J.
DATE : 07th MARCH, 2024**

P.C. :

1. All these four Anticipatory Bail Applications are decided by this common order because they arise out of the same registered offence involving the same facts and common arguments.
2. The Applicants are seeking anticipatory bail in connection with C.R.No.347/2023, dated 22/11/2023, registered with Vishrantwadi Police Station, Pune City, under sections 420, 467, 468, 471, 120-B r/w 34 of the Indian Penal Code.
3. Heard Mr. Aabad Ponda, learned Senior Counsel, Ms. Minal S. Chandnani, Mr. Rahul S. Kadam and Mr. V. P. Kakade learned counsel for the Applicants, Mr. Suhas S. Deokar, learned counsel for Intervenor and Ms. Mahalakshmi Ganapathy, learned APP for the State.
4. The Applicants Prabhakar Bhosale and Vandana Bhosale are the partners of M/s. Sankalp Constructions. The

Applicant Shivaji More was the Chairman of Lokshahir Annabhau Sathe Magasvargiya Sahakari Gruharachana Sanstha (hereinafter referred to as 'the society'). The Applicant Subodh Jadhav is the power of attorney holder of one T. P. Alexander, who in turn was the power of attorney holder of M/s. Trinity Town Development and Finance Pvt. Ltd. (for short Trinity Town), who was the owner of the land on which, the construction was carried out. The intervenor is the first informant Suresh Shelar, who is the present Chairman of the society.

5. The FIR mentions that the informant was working as a chairman of the society since August 2019. The society was formed in the year 2000 and at that time, the Applicant Shivaji More was the Chairman of the society. It was formed for the purpose of getting affordable houses from the scheme for the backward classes started by the Social Welfare Department of the Government of Maharashtra. In the year 2002, the society entered into an agreement for sale in respect of plot Nos.7 to 11 and plot Nos.19 to 37, out of the 39 plots on survey No.82/2/2

at Dhanori. The total land for those agreements was admeasuring 71 ARE. According to the informant, the period for the agreement of sale was till the land owner could get the grant from the government. On 22/04/2002, the society entered into an agreement for development with M/s Sankalp Constructions. It was decided to build 225 flats which were to be sold to the members of the society for Rs.2,50,000/- each. The possession was to be given within 18 months to each of the members. The accused Shivaji, Prabhakar and Subodh entered into agreements with the members of the society. The developer i.e. Sankalp Constructions started constructions of 13 buildings, for which they sought finance from different finance companies for the benefit of the members of the society. By the year 2006, all the buildings were constructed. By that time some of the members of the society were given possession of their flats. But some of the members were not given the possession. The developer was not cooperating. There are allegations that the Applicant Prabhakar had sold some of the flats allotted to certain members of the society, to third parties, inspite of there being transactions with those members. The FIR mentions those flats, their original

owners i.e. the members of the society and the third parties i.e. the subsequent purchasers. This is the first part of the major allegations.

6. The second allegation is about the entry in the revenue record. In December 2005, the Social Welfare Department of Government of Maharashtra sanctioned Rs.15,89,000/- as the grant in this connection. For that purpose, the revenue records needed to show the name of the Social Welfare Department in the 7/12 extracts in the column for 'the other rights'. Accordingly, mutation entry No.17633 was carried out. The Applicant Prabhakar objected to that mutation entry. In that behalf, the proceedings were going on before the Circle Officer, Kalas. It is alleged that, on 31/08/2009, the Applicant Prabhakar submitted a letter dated 10/08/2009 purportedly issued by the Special District Social Welfare Officer addressed to one Arun Bhalerao, Secretary of Bhimshakti Sanghatana, Maharashtra State, Pune. According to the first informant, based on that letter, the Circle Officer reversed the mutation entry. The informant made enquiries and came to know that the said

Special Officer had not issued any such letter. Thus according to the first informant, it was a forged letter based on which, an order was obtained from the Circle Officer. On these allegations, the FIR is lodged.

7. Learned Senior Counsel Mr. Ponda made the following submissions :

He submitted that the allegations about transferring the flats of the society members to third parties was in respect of about 72 flats, out of which, the Applicant Prabhakar and his construction company has settled with 69 flat owners society members. He submitted that the Applicant Prabhakar had either refunded their amounts or had given possession of the flats to those members. As far as the remaining three society members are concerned, in respect of those also the matters were settled and they do not have any grievance against the Applicant or Sankalp Constructions. He therefore submitted that the allegations in that behalf do not survive any more and there is no offence committed in respect of those allegation.

8. Mr. Ponda further submitted that the only other allegation which needs consideration is about forgery of the letter dated 10/08/2009. He submitted that after the mutation entry was made, the Applicant had objected to that mutation entry. It was objected much earlier to the date of the concerned letter. He submitted that the said letter was addressed to Arun Bhalerao and not to the present Applicant. The said Arun was the joint Applicant in the proceeding before the Circle Officer and the letter was not tendered by the present Applicant. He submitted that the main contention of the Applicant in those proceedings was that the mutation entry would not have been effected based merely on the agreement for sale, as the sale deed was not actually executed. He submitted that the order passed by the Circle Officer was passed independent of the letter dated 10/08/2009. The said letter dated 10/08/2009 was not only addressed to Arun, but the copies were marked to various authorities and not to the present Applicant Prabhakar. He submitted that the Applicant Prabhakar has no concern with the forgery of that particular letter.

9. Mr. Ponda further submitted that in any case, there is not a whisper of any specific allegation against the accused Vandana. She was a partner of M/s Sankalp Constructions, but all the allegations in the FIR are directed specifically towards only Prabhakar, who was the other partner of the said firm.
10. Learned counsel Mr. Kadam appearing for the Applicant Shivaji More submitted that except for mentioning that the Applicant Shivaji was the Chairman at the relevant time, there are no allegations against him and no role is attributed to him. In any case, his arrest for custodial interrogation is not necessary.
11. Learned counsel Mr. Kakade, appearing for Applicant Subodh submitted that as per his instructions and as per the documents annexed to his application, he was the power of attorney holder of M/s. Sankalp Constructions. Though, the learned APP on instructions of the Investigating Officer states that he was also the power of attorney holder on behalf of T. P. Alexandar, who in turn was the power of attorney holder of the

original owner of Trinity Town. Mr. Kakade submitted that there are no allegations against the present Applicant Subodh. He was 20 years of age at that time and he was made a power of attorney holder because he was available at the site and it was only an arrangement made for convenience. He has not derived any benefit in the entire transaction.

12. Learned counsel for the Intervenor opposed these submissions and made the following submissions:

The Government of Maharashtra was to provide subsidy for various schemes started or initiated for the backward classes. The society was formed in the year 2000. An agreement for sale was executed between the original owner and the society in the year 2002. By the same agreement, rights were given to Sankalp Constructions to develop the property. In the year 2003, a supplementary agreement was executed to extend the period of execution of deed of conveyance. Till today, the deed of conveyance is not executed. In the year 2004, the number of members was increased from 79 to 135. The Social Welfare Department of the Government was willing to grant

subsidy, but their condition was that their names should be included in the column of 'the other rights' in the revenue record. He further submitted that the original owners Trinity Town and Sankalp Constructions filed a collusive suit. It was filed by Trinity against Sankalp Developer for permanent injunction. In that collusive suit, they obtained a consent decree and thereafter on 24/01/2007, a separate development agreement was executed between Trinity Town and Sankalp Constructions. The society was kept out of that agreement. This shows fraudulent conduct on the part of the Applicant Prabhakar. He further referred to the forgery of the aforementioned letter and use of that letter in the proceedings before the Circle Officer. He submitted that after the favourable order was obtained from Circle Officer, for setting aside the entry mentioning the rights of the Social Welfare Department, at the instance of Sankalp Constructions, their names were entered into the revenue record. The society has objected to their names and those proceedings are still going on. He submitted that in those proceedings which are pending before the SDO, the Applicant Prabhakar has made wrong submissions and has filed

false affidavit and therefore, the society is not granted stay in its favour. All this conduct shows involvement of the Applicant Prabhakar in the entire transactions. He submitted that the Applicant Prabhakar's conduct will have to be taken into consideration in this case as well.

13. Learned APP made submissions based on the investigation papers and on the instructions given by the Investigating Officer. She made the following submissions:

The concerned Special District Officer of the Welfare Department has given a statement that the letter dated 10/08/2009 was neither issued nor signed by him. She further submitted that the investigation has revealed that the outward number of that letter matches with the outward register entry describing the letter addressed to said Arun. She accepted the submissions of Mr. Ponda that none of the society members has registered his grievance before the Investigating Officer in respect of the allotment, possession or resale of their flat. She submitted that the investigating agency does not have any serious material specially against the Applicant Vandana, Shivaji

and Subodh. As of today, the investigating agency does not have any material to show that any of the members has remained unsatisfied. She further submitted that the case against the Applicant Prabhakar be considered.

14. Learned APP further submitted that one Ragini Danane has given statement against the Applicant Prabhakar in that behalf. To that, Mr. Ponda answered that the Applicant Prabhakar's firm has settled the matter with Ragini as well. That statement made by Mr. Ponda is recorded. He has made that statement on the instructions with responsibility.

15. Learned APP submitted that one Archana Kamble has some objection in this behalf. Mr. Ponda on instructions submitted that the Applicant Prabhakar's firm has refunded Rs.4 lakhs to her as well and she has given her acceptance letter. Apart from these two, nobody has made any grievance before the investigating agency.

16. Mr. Ponda submitted that if any of the society members has any objection; that, at the highest would amount to a civil dispute. The conduct of the Applicant Prabhakar shows that since he has refunded the money, there was no intention to commit the offence of cheating or misappropriation.

17. I have considered these submissions. As submitted by Mr. Ponda, there are two major allegations against the accused. At the outset, it can be observed that since the investigating agency does not have serious objection against the Applicants Vandana, Shivaji and Subodh, their applications can be allowed.

18. As far as Prabhakar is concerned, there are allegations that he was instrumental in selling the flats to third parties, which were actually allotted to some of the society members. In that behalf, Mr. Ponda submitted that none of society members has any objection or grievance. Learned APP on instructions has accepted the fact that not a single society member came forward to register his grievance about any such transaction except Ragini and Archana mentioned hereinabove. Thus, at this stage,

there is nothing to show that any society member has grievance that the flats were sold to the third party, in spite of taking money from such society members and without taking any permission from them. Neither the third parties have any objection in that behalf. Even Archana and Ragini had not lodged their complaint during all these years. Therefore, for consideration of this anticipatory bail application, these allegations will have no impact.

19. The only other allegation which needs consideration is about the alleged use of the forged letter dated 10/08/2009. The concerned officer who was the Special District Officer in the year 2009 to 2010 has stated that the said letter was not issued from his office and that the letter does not bear his signature. In that behalf, the investigation was carried out. The outward No.1237 is mentioned on that letter. The investigating agency has verified the register and has found the entry and the outward No.1237 describing the letter was issued to Arun and there are names of others who were given the copies. These were Tahasildar - Dhanori, Gav Kamgar Talathi and Manager of

Sankalp Constructions. Thus, at this stage, there is some record which connects that letter with the outward number. This of course requires further investigation. However, it is to be noted that it was addressed to Arun. One of the addressee was the Manager of Sankalp Constructions. It was issued in the name of Arun. This letter is specifically referred to by the Circle Officer in his order. The said order dated 26/10/2009 issued by the Circle Officer Kalas, mentions that he had heard the arguments and had perused the documents produced before him, which would include the said letter dated 10/08/2009. But he has further observed that the entries could not be taken in respect of the development agreement and the agreement for sale in the rights column and on that basis the mutation entry No.17633 was set aside.

20. The said letter was dated 10/08/2009. The Circle Officer's order which was passed on 26/10/2009, was not subsequently challenged and has attained finality. Thus, all these instances are more than 14 years old. The important consideration is that the said order was not challenged any time

thereafter. Therefore, even taking into consideration the arguments advanced on behalf of the first informant, the major two allegations against the Applicant Prabhakar would show that the society members who had purchased those flats have not made any complaints. The second allegation about forgery of that letter, is quite old and there is reasonable doubt created about who had actually committed that forgery and whether the forgery is committed at all. In this view of the matter, the custodial interrogation of the Applicant after all these years, in this particular case, is not necessary. He can be protected u/s 438 of Cr.P.C. He, of course, will have to cooperate with the investigation.

21. It is made clear that all these observations are made only for deciding these anticipatory bail applications. Civil rights of all the parties are specifically left open to be decided by the competent forum at the appropriate stage.

22. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.347/2023, dated 22/11/2023, registered with Vishrantwadi Police Station, Pune City, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) each, with one or two sureties each, in the like amount.
- (ii) The Applicants shall attend the concerned Police Station as and when called and shall cooperate with the investigation.
- (iii) The applications stand disposed of accordingly.
- (iv) With disposal of these applications, the Interim Applications are also disposed of.

(SARANG V. KOTWAL, J.)