

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

ANTICIPATORY BAIL APPLICATION NO.829 OF 2023

Ramdarsh Nanhu Pal

.... Applicant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Satish R. Mishra, Advocate for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 24th JANUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.69/2023, dated 02/02/2023, registered with Achole Police Station, Mira-Bhayandar, Vasai-Virar, under sections 420 r/w 34 of the Indian Penal Code and 52, 53 and 54 of Maharashtra Regional Town Planning Act, 1966.

2. Heard Mr. Satish R. Mishra, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the State.

3. The FIR is lodged by one Vishakha Motghare, Assistant Commissioner working with Vasai Virar Municipal Corporation. She has lodged this FIR about illegal and unauthorized construction carried out within the limits of the said municipal corporation.
4. The FIR mentions 25 unauthorized constructions. The Applicant is concerned with the construction in respect of Shubham/Ashtavinayak Welfare Society. All those persons who were responsible for those constructions were given notices for demolishing the unauthorized construction in the year 2021 and 2022. However, even after the period mentioned in the notice was over, the construction was not demolished. The FIR mentions that as per the development plan, the survey No.22 to 34 within the limits of the corporation were reserved for reservation 450 STP (Sewage Treatment Plant) and reservation 451 for dumping ground in Achole. The Applicant was described as owner/developer of Shubham/Ashtavinayak Welfare Society.

It is the case in the FIR that the Applicant was aware that the construction was illegal and yet he sold the rooms in this unauthorized construction to various people. The FIR mentions the illegalities committed in respect of the other 23 buildings as well.

5. Learned counsel for the Applicant submitted that in the year 2008, one offence vide C.R.No.1/2008 was registered at Nalasopara Police Station, against the present Applicant in respect of the construction on the same plot and therefore, the present offence registered vide C.R.No.69/2023 of Achole Police Station is in the nature of second FIR and is not maintainable. He further stated that the allegations against the present Applicant are that he had constructed a building in the area of 20 mtrs x 15 mtrs and it is not possible to construct a building of ground floor plus four floors in that small area. He further submitted that the plot was purchased by the Applicant from one Arun Gupta. Therefore, if the plot was under reservation, the said Arun Gupta should not have sold it to the Applicant.

The Applicant himself is a victim. He further stated that Arun Gupta is granted anticipatory bail by the Court of Session and therefore on parity, the Applicant also deserves to be protected.

6. Learned APP on the other hand submitted that the earlier offence registered vide C.R.No.1/2008 at Nalasopara police station was in respect of a different construction. It was constructed on survey No.30, 22 and 23. It was demolished and thereafter the building which is the subject matter of the present FIR was constructed on survey Nos.23 and 24. Therefore, the subject matters are totally different. The present FIR is not in the nature of the second FIR. She submitted that the rooms in the illegally constructed building are sold to about 45 persons and their statements are recorded. All of them were kept in the dark about the fact that the building was unauthorized, as it was constructed on a reserved piece of land. She submitted that the offence is serious. There are many such unauthorized constructions carried out in that area. This needs to be curbed. Learned APP produced statement of one of the purchasers

Mourya who had purchased a room in that building. She has stated that the Applicant had sold a room to her in the year 2010 and at that time, he had not informed her that the building was constructed on a reserved land and hence she was cheated.

7. I have considered these submissions. The Applicant had purchased that property from aforementioned Arun Gupta. However, subsequently, the Applicant has constructed on that land not once but on two occasions. Therefore, the Applicant is responsible for constructing these unauthorized buildings on two occasions. To that extent, his case is different from that of Arun Gupta. Therefore, the principle of parity will not operate in his favour.

8. I do not find any force in the submission of learned counsel for the Applicant that the present FIR is in the nature of second FIR because as pointed out by learned APP, the first FIR was in respect of a different construction carried out at survey No.30, 22 and 23. The present subject matter is a building

constructed on survey No.23 and 24. On the first occasion, the Applicant was knowing that the land was reserved and hence the construction which was the subject matter of C.R.No.1/2008 at Nalasopara police station, was demolished and yet he carried out another construction on a reserved land. Thus, the Applicant has knowingly committed this offence. To make the matter worse, 45 innocent unsuspecting purchasers were made to purchase rooms in that unauthorized building. They were kept in the dark. Thus, offence of cheating is made out. All the offences applied in this case are clearly made out against the present Applicant. The offences are serious.

9. Considering the gravity of the offences and the manner in which the offences are committed, his custodial interrogation is necessary and he cannot be protected u/s 438 of Cr.P.C. Hence the application is rejected.

(SARANG V. KOTWAL, J.)