

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

ANTICIPATORY BAIL APPLICATION NO. 595 OF 2024

Dr. Mahesh Shripad Kotbagi

..Applicant

Versus

The State of Maharashtra

..Respondents

Mr. Ashok Mundargi, Sr. Advocate a/w. Meghdeep Oak a/w.
Pratibha Ghorpade for Applicant.

Ms. Mahalakshmi Ganapathy, APP for State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 4 MARCH 2024

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.510 of 2023 registered at Warje Malwadi Police Station, Pune city, on 20.12.2023, under Sections 420, 465, 467, 468 and 471 of the Indian Penal Code. At present the offence is being investigated by the Economic Offence Wing (E.O.W.)

2. Heard Mr. Ashok Mundargi, learned senior counsel for the applicant and Ms. Mahalakshmi Ganapathy, learned APP for the State.

3. The F.I.R. is lodged by the first informant Manik Birla. He has stated that the applicant's maternal aunt Sumati Subhedar had a plot admeasuring 569 Sq.mtr. at Hingane Budruk, Karve Nagar, Pune. The applicant himself had a plot admeasuring 500 sq.mtrs. adjacent to Sumati's plot. It is alleged that the applicant approached the informant's father and suggested a scheme to develop both these plots together. The informant's father agreed. The applicant and the informant's father Ramchandra formed a partnership firm by the name Birla Kotbagi Promoters and Builders, on 23.07.2023 and the development agreement was executed between this partnership firm as the Developers and the informant and Sumati as the land owners. In lieu of their lands, both the land owners i.e. the first informant and Sumati were to get the terrace flats. The informant's father passed away on 13.04.2007. The informant joined the partnership firm in place of his father. The F.I.R. mentions 7 allegations which broadly alleged that, Sumati was given Rs.3,63,00,000/- instead of agreed amount of Rs.1,10,00,000/-. One Sangita Kalmani was given a power of attorney for executing the sale deed in respect of the construction

to be carried out only on the land admeasuring 738 sq.mtrs. On some of the agreements to sale, sale deeds etc. the informant's signatures and thumb impressions were forged. The development plan submitted to the Municipal Corporation on 03.11.2010 bear the informants' father's signatures, but he had already passed away in the year 2007.

4. Learned senior counsel for the applicant made following submissions.

The informant had earlier approached the Warje Malwadi police station with his complaint. Considering the scope of possible investigation, the said police had referred the matter for enquiry to the E.O.W. He submitted that, by October 2023 at different stages the E.O.W. had conducted the enquiry and had observed that no offence was committed. In between, an intimation was given to the applicant that there was no substance found in the complaint of the first informant. Shri. Mundargi further submitted that, after a detailed enquiry initiated at the behest of same police station, the result showed that no offence

was committed. In spite of that, on 20.12.2023 an F.I.R. was registered. This itself shows that it is registered without taking into account the detailed enquiry carried out by the said police station itself. Ironically, now the investigation was being carried out by the same E.O.W. and the applicant is apprehending his arrest. The applicant is a reputed Doctor in Pune city and has his own hospital. He submitted that the informant is in habit of making different signatures on different documents. He referred to some of the documents which are annexed to this application. He further submitted that the allegations of giving more amount to Sumati is not correct because the agreement itself made the provision for such extra payment to the extent of 35% of the net sales. The agreement itself mentions that, figure of Rs.1,10,00,000/- was a tentative figure. The amount of Rs.3,63,00,000/- is in consonance with those agreed clauses. He further submitted that, it is necessary to verify and confirm as to whether the informant's signatures are really forged. He further submitted that, in 2010 the ammonia prints of the original development plans were resubmitted and, therefore, since the original plans bear signature

of the informant's father, the same signatures appear on the resubmitted plans. There was no forgery about such signature. He further submitted that, if there is a dispute about the monetary gain or misappropriation inter-se between the partners, the criminal offence cannot be made out. Learned senior counsel invited my attention to the various cases pending against the first informant. Those cases are mentioned at 'Exhibit Q' of this application. He also submitted that, there is delay of about 5 years in registering the F.I.R.

5. Learned APP seeks time to answer all these questions by filing affidavit in reply. She submitted that, it is necessary that the applicant attends the police station and gives his specimen signatures. She seeks time to answer as to why after a detailed enquiry the same police station registered the F.I.R.

6. Considering these submissions on behalf of the learned APP, today I am adjourning the matter to enable her to file affidavit in reply to respond to the submissions made by Shri. Mundargi. Considering the above submissions, the applicant can be protected

by way of ad-interim relief till the next date. He will have to attend the concerned police station and to co-operate with the investigation; including giving his specimen signatures.

7. Hence, the following order.

ORDER

- i) In the event of his arrest in connection with C.R.No.510 of 2023 registered at Warje Malwadi Police Station, Pune city, till the next date, the Applicant is directed to be released on bail on his executing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii) This order shall operate till 16/04/2024.
- iii) The Applicant shall attend the concerned Police Station from 18/03/2024 to 20/03/2024 between 1.00p.m. to 5.00p.m. and thereafter as and when called and shall cooperate with the investigation.
- iv) Stand over to 16/04/2024.

(SARANG V. KOTWAL, J.)