

Urmila Ingale

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

ANTICIPATORY BAIL APPLICATION NO. 1699 OF 2024

Mr. Rambilas Katwaru Chaubey

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Satish Kumar Pandey, for Applicant.
- Ms. S.E. Phad, APP for State.
- API- Mr. Vinayak Panmand EOW.

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CORAM : S.M.MODAK, J.

DATE : AUGUST 01, 2024

P. C.:

1. Heard learned Counsel for the Applicant and learned APP at length.

2. It is true that there are several FIRs registered with Aachole Police Station in respect of unauthorised construction carried out on government land. Some of them were lodged by the Corporation officials whereas some of them were filed by the owner of the land. Sum and substance of the allegations of those FIR is several buildings were constructed on a land which is reserved as per the development plan and flats are sold. The present FIR is

C.R. No. 69 of 2023 registered at the instance of Corporation officials. The offences are under Section 420 read with 34 of the Indian Penal Code [‘IPC’] and under Sections 52, 53, 54 of the Maharashtra Regional Town Planning Act, 1960 [‘MRTP’].

3. There are several accused persons named in the FIR. The present Applicant is not named. His name is disclosed during interrogation of Accused Ajay Harilal Gupta. Learned advocate for the present Applicant made following submissions :--

a. He has entered into an agreement for sale with one Arun Sadanand Gupta on 29/04/2009 and present applicant has agreed to purchase the land. The copy is annexed.

b. It is contended that said Arun Sadanand Gupta is the mastermind and he is granted anticipatory bail by the Court of Additional Sessions Judge Vasai on 09/03/2023.

c. Further contention is raised that this Applicant has not constructed the building and in fact it is constructed by one Ajay Harilal Gupta.

d. My attention is invited to the Development Agreement executed in between present applicant Shri Ramvilas Katvaru Chaube and Ajay Harilal Gupta as as a developer. The land described is old survey no. 34 new survey no. 23. **Clause 4** casts an obligation on Ajay to obtain all building permissions whereas

according to learned APP as per **Clause 5** consideration of the development to be receivable is mentioned. One of the consideration is in kind that is to say certain percentage in construction.

4. The prosecution claims that the Applicant has received the consideration in kind and he has sold away the flats to various persons in the building- 'Shraddha Saburi'. Not only that, he has accepted the consideration from such flat purchasers. The statements of those purchasers and the entries in their respective bank accounts showing payment to this applicant are shown to me. On these materials, the Applicant cannot disown his responsibility, he being part and parcel of the construction activity.

Other FIRs

5. There are two more FIRs registered at the same Police Station. They are C.R. No. 196 and C.R. No. 195 of 2022. The first FIR is at the instance of the owner of the land whereas second FIR is at the instance of Corporation officials. The first FIR is for the offence under IPC only, whereas second FIR apart from IPC offences, offences under MRTP Act are mentioned. These FIRs are

in respect of construction which is not related to the present Applicant.

Other bail orders

6. It is true that this Court has granted anticipatory bail to one Lalaram Sukhramji Mali bearing Anticipatory Bail Application No. 831 of 2023 on 20/03/2023, however, his role is different. The said Applicant has purchased already constructed building from one Sachidanand Rameshchandra Pandey whereas the role of this Applicant is of higher degree. He has entered development agreement and he also received kind consideration in the building and entered flat purchase agreements. He also received money consideration.

7. It is true the Court of Additional Session Judge, Vasai has granted anticipatory bail to coaccused Ajay Sadanand Gupta. He was arrested in other two FIRs C.R. No. 196 and C.R. No. 195 of 2022. it is the consideration for granted protection from arrest in present FIR. Here facts are different. The said Ajay Harilal is the person with whom the present applicant entered into an agreement

of sale and present applicant sold flats to purchasers and received consideration also.

8. Learned Counsel for the Applicant also relied upon an order dated 12/09/2022 passed by this Court in Anticipatory Bail Application No. 2172 of 2022 in case of **Akash Harsha Gharat Vs. The State of Maharashtra**. Learned Single Judge has criticized on the conduct of the Corporation officials for paying heed to unauthorised construction and in that case, the accused can be held responsible. One of the fact which differentiates the case is that the said Applicant has not disposed of any tenement in Mahalaxmi Apartments. The fact is otherwise in this case.

Other grounds

9. My attention is also invited to ground no. 11 of the report dated 16/09/2023 given by the Economic Offence Wing to learned Additional Sessions Judge wherein emphasis is money is not recovered. No doubt, one of the offence is under Section 420 of IPC, but there are offences under MRTP Act. Brazenly, unauthorised construction is carried out and flats are also sold. The

Applicant has played certain part. His custodial interrogation is required.

10. It is claimed that he is 65 years old and his reputation will be affected. These factors cannot be considered when the custodial interrogation is required. Hence, the Application is rejected.

11. The Applicant intends to approach Hon'ble Supreme Court. Let the order be stayed for 3 weeks. In the meantime, the Applicant is directed to give attendance to Economic Offence Wing, Mira Bhayander Municipal Corporation on 07th August 2024 and 14th August 2024 from 10:00 a.m. to 12:00 noon.

12. The Application is disposed of.

Urmila Ingale

[S.M.MODAK, J.]

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