

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 216 OF 2015
WITH
CRIMINAL APPLICATION NO. 176 OF 2015

Shri Shamrao Rauso Kashid ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. A.P.Mundargi, Senior Counsel i/b. Mr. Hrishikesh Mundargi, for the applicant.

Ms. Rutuja Ambekar, APP, for the State.

Mr. J.D.Thakur, PSI, Virar Police Station, Palghar, present.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 20th July, 2015.

P.C.

Heard. This is an application under Section 438 of Cr.P.C.

The applicant herein is apprehending his arrest in Crime No. 45 of 2015 registered at Virar Police Station for the offences punishable under Sections 420, 465, 467, 468, 471, 474 of IPC.

2. The applicant happens to be the proprietor of M/s. Shree Consultants and he is an architect by profession. It is the case of the prosecution that on 17.1.2015, the complainant herein lodged a report alleging therein that one Shri Santosh Tembavalkar had shown him one

Gala on the ground floor of Sai Siddhi Apartments at Virar (East). The complainant had made enquiries in respect of the valid title. Shri Tembavalkar had given him the registered sale deed of Gala No.4 which is adjacent to the Gala which was to be sold to the complainant. The complainant had then made an application under the Right to Information Act, 2005. It was revealed that no permission was given by the Town Planning Authority, Virar for construction of Sai Siddhi Apartments. Upon receiving the said information, the complainant had lodged a report. On that basis, Crime No.45 of 2015 was registered and investigation was set in motion.

3. On 21.1.2015, a news item was published in the daily newspaper "Karale Samachar" and the name of the applicant had appeared in the news item as the architect consultant of Sai Siddhi Apartments. The photograph of Shri Tembavalkar along with the statement was also published and he had reported to the news media that he is not aware of any transaction or any procedure adopted for erecting Sai Siddhi Apartments. The applicant had also filed an application to the Town Planning Department and had apprised them of the fact that he had never been an architect of Sai Siddhi Apartments and, therefore, the Town Planning Department shall verify the

office file. The Department of Town Planning had replied to the notice given by the present applicant and had informed that the Department had not received any file from CIDCO Authorities and there was no reference through the consultants. According to the Town Planning Department, the said file in respect of Survey No.38 Hissa No.8 situated at Waliv was allotted in favour of Rane Maheshwari. That the architects were shown as Encon Consultants. This was sufficient material to show that the present applicant was not involved in the said case. Subsequently, the Association of Practising Engineers, Architects and Town Planners had made a report to the Addl. Superintendent of Police, Vasai Police Station, bringing to his knowledge that the present applicant has been arraigned as an accused. It is alleged that he had submitted the file pertaining Sai Siddhi Apartments.

4. The Architects' Association made a representation to the police that some developers and builders have used the name of architects while submitting files without consulting them. The said representation was signed by 9 architects besides the present applicant.

5. The Developer Santosh Tembavalkar had also filed an application under Section 438 of Cr.P.C. The said application was rejected by this Court vide order dated 7.4.2015. This Court had considered the material

against Santosh Tembavalkar and has specifically observed that the owner of the land was Dayanand Patil. The land was given by virtue of development agreement with Sai Shraddha Construction. Shri Dayanand Patil had given power of attorney in favour of M/s. Sai Shraddha Construction. That the developer has built Sai Siddhi Apartments in the allotted area. The commencement certificate was also granted by CIDCO Authorities vide letter dated 24.7.2008, whereas the land was converted into non-agricultural land by the orders of the Collector dated 21.7.2008. The said land Survey No.125 was reserved. The owner Dayanand Patil entered into a development agreement dated 31.12.2007. It was observed by the Hon'ble Court that there was no development agreement executed between Dayanand Patil and the present applicant nor there is any power of attorney. It was noticed that all the documents were forged and fabricated and hence the application was rejected. The developer was arrested and granted bail by the Magistrate's Court vide order dated 29.4.2015. The Remand Yadi of Shri Tembavalkar would reveal that the said documents were fabricated by one Kishore Mahajan.

6. As far as the present applicant is concerned, there is no iota of evidence on record to indicate that he was not aware of any land being

developed by Santosh Tembavalkar in the name of Sai Siddhi Apartment much less he had prepared the draft plan of the said premises.

7. The learned APP, upon instructions from the I.O. fairly submits that the Association of Engineers has complained to other authorities that their name and registration number is being used by fake builders and developers.

8. It is surprising that till today no officer either from the CIDCO or from the Municipal Council has been shown as an accused. Upon perusal of the statement of officers of CIDCO, it is seen that the authorities have issued notice to the occupants apprising them of the fact that the encroachment would be removed. This is a case which needs thorough investigation by the investigating agency in respect of illegal construction taking place in Virar (East) region. The learned Senior Counsel rightly submits that the Municipal Council/CIDCO authorities have employed marshals and ward officers and other officers to control the illegal construction and yet the construction of illegal buildings was carried out and people have occupied the premises.

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9. In the abovementioned circumstances, the applicant herein deserves grant of pre-arrest bail.

10. Learned Counsel Shri Marwadi submits that today he has no instructions to address the Court. In view of this, the Intervention Application is dismissed for want of prosecution.

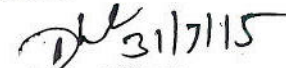
ORDER

- (i) The application is allowed.
- (ii) In the event of his arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (iii) The applicant shall report to the concerned police station as and when called.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)

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31/7/15
Section Officer
High Court, Appellate Side
Bombay