

Adu. Vishal A. Bhumshali

अर्ज क्रमांक : 1362/17
दाखल दिनांक : 18/11/17
अर्ज नोंदल्याचा दिनांक : 18/11/17
सत्यप्रत तयार दिनांक 20/11/17
अक्षरी व अंकत वीम गॅरंटर फायल
सत्यप्रत दिल्याचा दिनांक : 20/11/17
सत्यप्रत दिली त्याचे नाव : अर्ज नोंदणी
एकुण मूळ X प्रत्येक फाजदार आकार 9X7
एकुण रकम रकम 631

श्री/श्रीमती रोशन जगदरे जगदरे
यांनी दि. 10 NOV 2017

अधिकारी
अपर जिल्हा अधिकाऱ्यांचा
वसई

अधिकारी
जिल्हा व अति. सत्र न्यायालय.
वसई

20 NOV 2017

C-BOE

(II) Stamp No. 1054/2017

फाजदारो जामिन अर्ज
क्रमांक 695/2090

तपासून व सबांधत पादकडाने

10 NOV 2017

अधिकारी
अपर जिल्हा अधिकाऱ्यांचा
वसई

ISSUE notice to IO and
APP to Sec 710 16/11/17

10/11/17

Received Copy
05/10/17
ST/Sec
LAPP

श्री श्री श्री रघुनाथ जगदरे वटाल
यांनी 10 NOV 2017 रोजी दाखल केले

IN THE COURT OF THE HON'BLE SESSIONS JUDGE, VASAI, AT VASAI

महाराष्ट्र न्यायपालिका

CRIMINAL BAIL APPLICATION NO. 719/2017

IN

C.R.No.I-534/2017 OF TULINJ POLICE STATION,
FOR THE OFFENCES U/s. 420, 465, 467, 468, 471
OF IPC r/w Section 3 & 4 of MOFA R/w section 52, 53
& 54 of MRTP act.

MR. SHYAMRAO RAUSO KASHID AGE: 50 yrs. Occ. Architect

R AT: - 104, A WING,
SIA SURAJ APARTMENT,
OSWAL NAGRI, NALASOPARA (E)

)...APPLICANT

V/s

THE STATE OF MAHARASHTRA

)...OPPONENT

AN APPLICATION OF THE
APPLICANT FOR GRANT OF BAIL
U/s. 439 of Cr.P.C.

MAY IT PLEASE YOUR HONOUR THAT:

The applicant herein above most respectfully submits as under:-

1. The applicant above named has been arrested by Tulinj Police station on 28.10.2017, in crime numbered above duly registered with them, on the complaint dated 18.09.2017, and lodged by Sandhya Vasant Patil, who is Assistant Commissioner of Vasai Virar Municipal Corporation in respect of alleged incident of Cheating and forgery.

2. The prosecution story briefly stated is as under:-

a) That the Assistant Commissioner of Vasai Virar Municipal Corporation, has lodged complaint with Tulinj Police Station, on the complaint of one Mr. Arun Singh belonging to Human Rights Foundation, contending therein that M/s. Apex Builders & Developers through partners Mr. Vivek G. Chaudhary & Ors., have constructed unauthorized building on the piece of land lying, being



and situated at Tulinj, Survey No. 56/1, 56A/6, 57A/1, 57B, 63/3 and that C.C. documents pertaining to the aforesaid buildings are inconsistent with the permissions obtained and hence illegally constructed.

b) It is further alleged that with the help of the said fabricated documents pertaining to permissions M/s. Appex Builders & Developers have sold flats to innocent buyers, hence this complaint.

c) After his arrest, the applicant was produced before learned J.M.F.C., Vasai, at Vasai who on perusing remand report was pleased to remand him police custody till 31.10.2017 and later on send him to the Magisterial Custody. Thereafter, bail application was moved in lower court immediately however same came to be rejected on 09.11.2017.

d) In the aforesaid circumstances the applicant herein most respectfully approaches this Hon'ble Court and prefers this bail application on the following amongst the other grounds.

GROUNDS

- i.) The applicant is innocent, has committed no crime, as alleged by the complainant and that she has been falsely implicated in the crime, on suspicion and with ulterior motive;
- ii.) The applicant states that, the offence alleged against the applicant is neither punishable with death nor with imprisonment for life. Therefore, bar put by Sec. 437 Cr.P.C shall not come in his way for grant of bail;
- iii.) The applicant states that, the applicant is not at all concerned about the alleged offences in any manner whatsoever;
- iv.) The applicant states that, the present applicant is only being made a scapegoat in the present offence;

- The applicant states that, applicant is an architect by profession and was engaged by the M/s. Appex Builders & Developers. As per his work profile he had made drawings, approved the same from the Vasai-Virar Municipal Corporation and obtained commencement certificate on behalf of M/s. Appex Builders & Developers;
- vi.) The applicant states that, after receiving the commencement certificate he rendered the same in original to the said M/s. Appex Builders & Developers and received their acknowledgement on delivery of the same as a matter of standard procedure practiced by any professional. A copy of acknowledge so received have also been delivered to the police to facilitate investigation;
- vii.) The applicant states that, the copy of Commencement Certificate has been fabricated and has been used by the Builders while executing sale agreements of the Flats constructed in their buildings. Therefore, it can be said that the said builders are the executors and actual users of the forged and fabricated documents in question;
- viii.) The applicant states that, surprisingly none of the builders were arrested, interrogated who could have possibly linked me to the said offence. Therefore, it is difficult to understand why & how the police came to a conclusion that this applicant is involved in this offense as nobody has yet accused this applicant to have forged any document. Even the perusal of the F.I.R. have allegations against the partners of M/s. Appex Builders & Developers, the applicant is nowhere named in any allegation, by anyone or in any manner;
- ix.) The applicant states that, the perusal of the F.I.R and the bank statements of the applicant clearly show that, the applicant has not received any of the misappropriated amounts in his own account. Further the applicant has induced anyone to obtain wrongful gain to himself and to cause wrongful loss to the victim. Therefore, Sec. 420 of the IPC cannot be attributed against the present applicant by any stretch of imagination;

- x.) The applicant further states that, nothing has been recovered from this applicant while in police custody;
- xi.) The applicant states that, the perusal of remand report dated 03.11.2017 shows that the accused no.2 viz. Kranti Tukaram Gavad, was arrested on 31.10.2017. In the course of his interrogation he has expressly revealed that accused no.2 upon the instructions of wanted accused no.1, i.e. Vivek Choudhary has fabricated the said disputed document with the help of architect viz. K.D. Mishra, wanted accused no.7;
- xii.) The applicant states that, accordingly, the police at the behest of the arrested accused no. 2 have recovered and seized all the machinery, mechanism used forge the document and also copies of sample of original and forged commencement certificates;
- xiii.) The applicant states that, the applicant has never created any forged or fabricated document neither has the applicant created any counterfeit seal and utilized the same in any manner whatsoever. Therefore, the sec. 465, 467, 468, 471 of the IPC cannot be attributed against the present applicant by any stretch of imagination;
- xiv.) The applicant states that, the applicant came to be arrested by the investigation machinery after which he was produced before ~~this~~ J.M.F.C. Hon'ble court and thereafter he was remanded to Magistrate custody. However, nothing incriminating has been recovered at the instance of the present applicant;
- xv.) The applicant states that, the said alleged offence is documentary in nature and the documents if required by the investigation machinery are in custody of the concerned departments;
- xvi.) The applicant further states that, as nothing is required to be recovered/discovered at the hands of the present applicant, his physical detention is not just and necessary;

Reddy



- ii.) The applicant undertakes to abide with the terms that may be imposed by this Hon'ble Court and further to co-operate with the police for the purpose of interrogation;
- xviii.) There are no antecedents to the discredit of the applicant like previous conviction or pendency of any criminal case;
- xix.) The applicant is not likely to tamper the evidence or witnesses of the prosecution;
- xx.) The applicant is not likely to abscond, being permanent resident of the given address;
- xxi.) This is first bail application of the applicant. The applicant has not preferred any other Application for bail, either in this Hon'ble Court or in the Hon'ble High court of Mumbai.

3. The applicant, therefore, most respectfully prays that:

- a) Your Honour may be pleased to enlarge the applicant on bail, on such terms as Your Honour may deem fit & proper;

AND FOR WHICH ACT OF KINDNESS & FAVOUR THE APPLICANTS AS IN DUTY BOUND SHALL EVER PRAY.

Rashid
Dated at ^{Vasai} ~~Thane~~ on this 10th day of November, 2017

Filed in court;

On: 10/11/2017

Sandip
Advocate for the Applicant

ORDER BELOW EXH.1 IN BAIL APPLN. NO.719/2017

Applicant/accused Shyamrao Rauso Kashid has filed this application for bail under Sec. 439 of Cr.P.C., in C.R.No.1-534/2017 registered with Tulinj police station for the offence punishable U/Sec.420, 465, 467, 468, 471 of I.P.C. & U/Sec. 3 & 4 of MOFA Act, r/w. Sec. 52, 53 & 54 of MRTP Act.

2] Perused the application, report filed by IO and case papers. Heard ld. Advocate for applicant/accused and ld. A.P.P.

3] Ld. Advocate for applicant/accused submitted that the accused is an Architect by profession and he provided services to M/S. Apex Builders and Developers for the project situated at Tulinj. He submitted that the accused being an architect obtained permission from CIDCO in the year 2006 and said permission was revised in the year 2010 and permission was granted to construct 64 flats, ten shops, one Bank and two offices i.e., 2832.73 sq. mtr. He submitted that since 2010 the accused nowhere connected with the project. He has only obtained the permission which is admittedly genuine and granted by competent authority. He submitted that it is a case of prosecution and as per the say of IO also the accused No.1 with the help of accused No.7, who is also an architect appointed by the other accused prepared forged commencement certificate(hereinafter referred as CC). Therefore, he submitted that as per the say of IO also present accused has not helped other accused for preparation of forged CC. He submitted that it may be negligency on the part of accused that after getting permission he did not verify the construction but that



negligency is not sufficient to ~~charge~~ **him** criminal responsibility. He submitted that **in the year 2016** the accused No.1 Vivek Chaudhry again approached to ~~the applicant~~ /accused and asked him to submit the proposal of regularization before competent authority and at that time accused No.1 Vivek Chaudhry has given undertaking that he has made the excess construction and therefore, at the instance of accused No.1 he submitted the proposal for regularization before corporation. Except that there is absolutely no role of accused in this crime. He submitted that the accused has received some amount towards his professional fees and that does not mean that he get benefit of forged documents. On these grounds he prayed that accused be released on bail.



4] On the other hand, Id. A.P.P.has submitted that admittedly the accused is an architect of the said project and had **not submitted his resignation inspite that he was aware that illegal construction is going on.** He submitted that this fact is sufficient to show **that accused helped other co-accused.** He submitted that the accused get benefit out of extra construction and therefore, he submitted that the accused is prima facie not fulfilled his responsibility as an architect and therefore, he is also involved in this crime. He submitted that other accused are absconding and therefore, accused cannot be released on bail.

5] I have minutely perused the case papers. **It is an admitted fact that the present accused was architecture of the said project and he obtained two CC which are genuine and the revised CC was obtained in the year 2010.** There is no iota of evidence to show that **after 2010 the** accused being architect


submitted any certificate before the competent authority certifying that the builder has constructed the building as per plan. It is say of I.O. that accused No.1 vivek Chaudhary prepared bogus CC with the help of wanted accused No.7 K.D.Mishra. If that is so then as per say of I.O., there are no allegations against this accused that he helped the co-accused for preparing bogus CC. There is also no iota of evidence to show that except professional fee the accused received other benefit from the said forged CC. There is no provision in MRTPA Act, that if builder or owner of said property made illegal construction then criminal action can ^{be} taken on the architect.

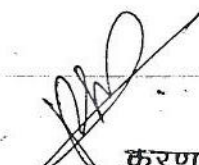
Therefore, prima facie there is no evidence to show that accused helped co-accused for preparation of bogus CC. Hence, the accused is entitled to be released on bail. Therefore, I proceed to pass the following order :-

ORDER

- 1] Application is allowed.
- 2] The applicant/accused be released on bail on furnishing P.R.bond of 15,000/- (Rs. Fifteen Thousand only) with one surety of like amount .
- 3] The applicant/accused shall not tamper with the evidence and threaten the witnesses.
- 4] The applicant/accused is directed to co-operate the IO and remain present as and when called for investigation.
- 5] Bail in lower Court.

Vasai.
Date:-17/11/2017


(N.R.Pradhan)
Additional Sessions Judge, Vasai.


करणार
उजवात करणार



सत्यप्रत
17/11/2017
AC
अधीक्षक
अपर जिल्हा न्यायालय
20 NOV 2017