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

Anticipatory Bail Application No.2566 of 2024

Mayur Ravindra Bhagat

Age: 30 years, Occ.: Builder

& Developer, R/o. Bandar Ali Road,

Near Kulswamini Mandir,

Divya, District Thane.

... Applicant

Versus

The State of Maharashtra

(At the instance of Manpada Police

Station, C.R. No.0899/2024)

... Respondent

With

Interim Application No.4002 of 2024

In

Anticipatory Bail Application No.2566 of 2024

1. Sanjay Janba Honyalkar
Age: 55 years, Occ.: Service,
Presently residing at Room
No.503, A Wing, Momai Residency,
Survey No.87, Star Colony,
Dombivli East-421 201
2. Dattatray Sakharam Jadhav
Age: 44 years, Occ.: Service,
Presently residing at B-502,
Yashwant Complex, Behind

Hanuman Mandir, Sagaon,
Dombivli East 421201

3. Sameer Chandrakant Deshmukh

Age: 28 years, Occ.: Service,
Presently residing at Samartha
Krupa Building, Moti Nagar,
Manpada Road,
Dombivli (E)-421201

4. Ganesh Suresh Khade

Age: 33 years, Occ.: Service,
Residing at Room No.43, Dev
Darshan Society, Hanuman Nagar B,
Vikhroli Park Site, Mumbai 400079

5. Prakash Lakshman Prajapati

Age: 38 years, Occ.: Service,
Presently residing at A-408,
Trimurti CHS Ltd., Sagarli,
Dombivli East- 421201

6. Venkatachalam Sharma

Age: 54 years, Occ.: Service,
Presently residing at Room
No.308, Mahek Co.Op. Hsg.
Society Ltd., Near Jai Guru Dev
Medical, Dombivli East-421201

7. Sundresh Sharma

Age: 51 years, Occ.: Service,

Presently residing at Room
No.401, 4th Floor, Tulsi Vihar Co.
Op. Hsg. Society, Near Municipal
Hospital, Shastri Nagar,
Dombivli W- 421202

8. Rajesh Rajendra Yadav
Age: 37 years, Occ.: Service,
Residing at Room No.12, Rampyare
Singh Chawl, P.N. Road, Near B.P.E.S.
School, Farid Nagar, Bhandup
(West), Mumbai – 400078.

9. Lavina Shankar Krishnappa
Age: 39 years, Occ.: Service,
Indian Inhabitant of Mumbai
Presently residing at 1101, A Wing,
Garden View CHS Ltd., Behind
Sarvodaya Hospital, Golibar Road,
Ghatkopar (West) – 400 086

... Applicants/
Intervenors

In the matter between

Mayur Ravindra Bhagat
Age: 30 years, Occ.: Builder
& Developer, R/o. Bandar Ali Road,
Near Kulswamini Mandir,
Diva, District Thane

... Applicant

Versus

The State of Maharashtra

(At the instance of Manpada Police
Station, C.R.No.0899/2024)

... Respondent

Mr Aniket Vagal, along with Mr Kunal Pednekar, for the
Applicant.

Mr MG Patil, APP, for the Respondent/ State.

Ms Sapna Krishnappa, for the Intervenor.

PI DK Gund, Manpada Police Station, Thane, is present.

Coram: R.N. Laddha, J.

Date: 9 October 2024

P.C.:

By this application, the applicant seeks pre-arrest bail in
connection with CR No.0899 of 2024, registered at Manpada
Police Station, Thane, for offences punishable under Sections
420, 466, 467, 468 and 471 of the Indian Penal Code.

2. According to the informant, his father owned a parcel of
land bearing Survey No.58/10/B measuring 34 Gunthas in
Thane. After his demise, the applicant, proprietor of M/s Shree
Swastik Homes, usurped the land and began illegal construction
thereon. It is alleged that the applicant obtained forged and
fabricated construction permissions from the relevant
authorities and built the Radhai Complex and six buildings on
the informant's ancestral property. The units in these structures

were then sold to individual flat purchasers through registered sale deeds. Aggrieved, the informant lodged the present FIR.

3. Mr Aniket Vagal, the learned Counsel appearing on behalf of the applicant, contends that the applicant had entered into development agreements with the co-owners of the land, who represented to him that they were the landowners. The learned Counsel emphasises the delay in lodging the FIR as the alleged incident occurred on 7 November 2020, and the crime was registered on 18 July 2024. Mr Vagal further submits that the applicant has been falsely implicated in the crime, and the dispute is civil. Given the demolition of the buildings in question, the handing over of the land to the informant, and the applicant's cooperation with the investigation by providing the necessary documents, nothing remains to be recovered or discovered, rendering his custody unnecessary.

4. On the other hand, Mr MG Patil, the learned Additional Public Prosecutor representing the respondent/ State and Ms Sapna Krishnappa, the learned Counsel appearing for the intervenor/ the victim flat purchasers, jointly contend that the offence is serious, and the applicant defrauded several innocent individuals by selling units in buildings lacking legal sanction for its construction. Mr Patil, the learned APP, further

submits that the applicant forged permissions from authorities and unauthorisedly constructed buildings on land to which he was never entitled. The applicant has criminal antecedents of a similar nature. The investigation is nascent, and the applicant's custody is necessary to ascertain the persons involved in the crime.

5. This Court has given anxious consideration to the rival contentions and perused the records.

6. *Prima facie*, the applicant stands accused of constructing buildings on the informant's land without legal sanction and selling the units to individual purchasers. A cursory reading of the FIR reveals that since 2020, the informant voiced his concerns to the Kalyan Dombivali Municipal Corporation several times. However, the Corporation paid no heed until 9 March 2021, when the construction was declared illegal and directed to be demolished. Despite the declaration, the construction activities continued, and units were sold to innocent purchasers by showing forged permissions, as evidenced by the registered sale deeds of May 2022. Aggrieved by the Corporation's conduct, the informant filed a Writ Petition bearing No.7943 of 2022 before the Division Bench of this Court seeking directions for enforcement of the

Corporation's demolition order dated 9 March 2021. A perusal of the order dated 5 July 2024 passed by the Division Bench of this Court reveals that the Corporation scheduled the demolition on 16 July 2024. However, on that day, the demolition process was hindered due to political influence, as a large mob gathered at the site. The informant filed the present FIR on 18 July 2024 as a last resort. Further, the orders passed in the Writ Petition reveal that the illegal construction was finally demolished in September 2024. From these events, it transpires that the informant took necessary steps at all material times but faced difficulties due to the casual approach of the Municipal Corporation. While the Corporation acknowledges not issuing construction permits to the applicant, it remained silent for years together and allowed the applicant to continue his wrongdoing until the Division Bench of this Court intervened in July 2024. This in itself suggests that the applicant, in connivance with the officials, has managed to stay out of trouble since 2020. That apart, the applicant claims to have acquired development rights from the co-owners of the land. However, the records do not indicate whether the land was partitioned or whether the applicant conducted any due diligence before commencing construction activities. Cognisant of the complexities involved, the applicant designed an intricate

web to defraud the informant by misappropriating his property and circumventing legal procedures to obtain development permissions in order to profit from the sale of the residential units within the unauthorised construction.

7. The growing prevalence of unapproved construction projects entails a wide range of fraudulent behaviours, including bypassing safety norms, using substandard materials, obtaining spurious permissions, or misrepresenting the legal status of the construction project. These actions directly impact the landowner and flat buyers, posing a serious legal and financial risk. There are also attempts to legitimise these illegal activities through registering sale agreements or regularising the project by paying premiums to the Corporation. Such acts affect the public at large, necessitating the imposition of stringent action on erring individuals.

8. In the present case, at first glance, the records indicate the applicant's involvement in the crime and raise questions about the Corporation's role in allowing the unauthorised buildings to stand for many years. A thorough investigation is necessary to uncover the circumstances surrounding the building's construction and prolonged unauthorised status.

9. Granting anticipatory bail demands a thoughtful and judicious exercise of discretion by the Court, tailored to the unique facts of each case. When invoking this power, the Court must tread with caution, acknowledging that granting protection in serious cases may inadvertently compromise justice or impede the investigation by enabling evidence tampering or destruction. Suffice it to state that these principles are now well-settled and do not require reiteration. For reference, reliance can be placed on the decision of the Hon'ble Supreme Court in *Srikant Upadhyay v. State of Bihar*¹.

10. Furthermore, the principles to be considered for granting anticipatory bail are settled. The Court, *firstly*, must consider the *prima facie* case against the accused; *secondly*, the nature of the offence; and *thirdly*, the severity of its punishment. While bail can be denied on the requirement of custodial interrogation, its non-requirement cannot by itself be the sole ground to grant pre-arrest bail. These aspects are highlighted in *Sumitha Pradeep v. Arun Kumar C.K.*²

11. In the totality of the circumstances, this Court is not inclined to accede to the submission on behalf of the applicant. In cases of such nature, custodial interrogation is crucial to

1 2024 SCC OnLine SC 282.

2 2022 SCC OnLine SC 1529.

unearth the fraud in all its facets. Considering that the investigation is at a nascent stage and the applicant has criminal antecedents of a similar nature, the applicant's release on pre-arrest bail would jeopardise the course of an effective investigation. Therefore, this Court is not inclined to exercise its discretion in favour of the applicant. Resultantly, the application stands rejected. As a sequel, the interim application also stands disposed of.

12. It is clarified that the observations made herein are *prima facie* only to determine the applicant's entitlement for pre-arrest bail.

(R.N. Laddha, J.)