

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

BAIL APPLICATION NO.1977 OF 2016

Dashrath Tukaram Gaiker ... Applicant

Vs.

The State of Maharashtra ... Respondent

**with
BAIL APPLICATION NO.2242 OF 2016**

Shantaram Tukaram Parte ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.Ganesh Gole i/b S.H. Batwal for the Applicant in BA/1977/2016
Mr.S.H. Gangal for Applicant in BA/2242/2016
Ms.Rutuja Ambekar, APP, for Respondent – State in both Bas
Mr.D.H. Rath, API, Panvel Taluka police station – present

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 17, 2017

P.C. :

1. These Bail Applications are moved as the applicants/accused are facing charges under sections 406, 419, 420, 467, 468, 471, 120B of the Indian Penal Code in C.R. No.I-63 of 2016 registered at Panvel police station, Navi Mumbai. One Samshudoha Islam Khan is the complainant. It is the case of the

prosecution that the complainant who is a transporter and in the business of land transactions wanted to buy a land in Panvel and the applicant/accused Dashrath Gaikar who was working as a real estate agent, told him that a land admeasuring 2 hectares and 3 ares, owned by one Pradipkumar Bhatnagar at Morbe, is available for sale. So, through the applicant/accused Dashrath Gaiker, the consideration amount for the said land was fixed at Rs.1,10,00,000/-. As per the case of the complainant, he met Pradipkumar Bhatnagar and through Dashrath Gaiker and an initial amount of Rs.5 lakhs and thereafter Rs.21 lakhs by cheque were paid between 14.3.2015 to 23.3.2015. Thereafter, the advocate of the complainant issued a public notice on 13.3.2015. In May, 2015, Dashrath Gaiker informed the complainant that Pradipkumar Bhatnagar, the landlord, has expired in May and, therefore, he brought the legal heirs of Pradipkumar Bhatnagar i.e., his son Raju Pradipkumar Bhatnagar and daughter Mamtakumari Bhatnagar. As per the case of the complainant, he paid an amount of Rs.54 lakhs from 1.7.2015 to 20.3.2016 and had entered into a registered sale deed on 26.8.2015. Thus, the complainant in all, paid Rs.1,20,00,000/- to Pradipkumar Bhatnagar and thereafter to Raju Bhatnagar and Mamtakumari Bhatnagar. It is the case of the

complainant that when he got the measurements of the land done, on 17.2.2016, he found that the original landlord Pradipkumar Bhatnagar was not dead but was alive. He, therefore, found his address, went there and met him. Then he realised that the original Pradipkumar Bhatnagar was a different person whom he met earlier in 2013. He also realised that the two legal heirs i.e., Raju Bhatnagar and Mamtakumari Bhatnagar were also bogus and the transaction which was entered into by him in respect of the said land is fake. The persons who have signed as witnesses i.e., the applicant/accused Shantaram Parte and one Prahlad, falsely identified the two legal heirs. It is the case of the prosecution that the complainant was thus cheated for Rs.1,20,00,000/- and hence, he approached the police on 24.4.2016. The applicant/accused Shantaram was arrested on 26.4.2016 and the applicant-accused Dashrath was arrested on 24.4.2016 and hence, this Bail Application.

2. The learned Counsel for the applicant/accused Shantaram Parte has submitted that the said applicant/accused is innocent. He has signed the sale deed dated 27.8.2015 and has identified Raju Pradipkumar Bhatnagar and Mamtakumari Bhatnagar.

Besides that, he has not played any role in this fraud. He has submitted that the applicant/accused is inside the prison since last 11 months and therefore, he be bailed out.

3. Learned Counsel for the applicant/accused Dashrath Gaiker has submitted that Dashrath Gaiker is innocent. He is not aware of any fraud. He has not committed any offence of forgery. He has not prepared any forged document. Chargesheet is filed and there is nothing to show that the applicant/accused was actively participated in the offence. The learned Counsel further submitted that the applicant-accused Dashrath was working as a real estate agent and he has acted as a middleman in the transaction between Pradipkumar Bhatnagar and the complainant. He further submitted that the complainant has given a false complaint against him and other persons. He produced an extract of online information in respect of transactions of the impugned property and submitted that as per this information, the complainant sold two acres of land to one Chandrakant Bhoir on 8.10.2015 i.e., within 1½ months after the sale deed. He further submitted that he also sold two ares of land to one Mukhtar Qureshi by sale deed dated 6.10.2015. The learned counsel further submitted that the

police ought to have investigated the further transaction between the complainant and the other persons. The learned Counsel further submitted that there is no evidence to show that the applicant/accused Dashrath Gaiker has received any money as a beneficiary and out of this transaction.

4. Learned Prosecutor while opposing the Bail Application, has submitted that the applicant/accused is a part of the conspiracy. He has signed the sale deed as a witness and has identified the persons as Raju Pradipkumar Bhatnagar and Mamtakumari Bhatnagar. He submitted that on 26.8.2015, Shantaram Parte has signed and also on 11.3.2015 on the receipt of earnest money. Hence, he should not be released.

5. Perused the FIR, the documents which are produced before the Court and the statements. The applicant/accused Dashrath Gaiker, as per the complaint and other documents, has acted as a middleman. It appears that he has introduced one person as Pradipkumar Bhatnagar. The complainant has made payments by cheque and the details of the cheques are mentioned in the complaint. As per the case of the complainant, the true Pradipkumar Bhatnagar is a different person with whom he has

transacted and paid the amount. On 17.2.2016, on information when he took search of real Pradipkumar Bhatnagar, he found that he was alive and he did not have any legal heirs, namely, Raju Bhatnagar or Mamtakumari Bhatnagar.

6. Also perused the statement of Pradipkumar Bhatnagar. He has denied having such legal heirs and he has denied that he had ever executed any sale deed in respect of the land. Thus, *prima facie*, it shows that the applicant/accused Dashrath Gaiker, who acted as a middleman, has presented three fictitious persons, namely, Pradipkumar, Raju and Mamtakumari and facilitated the further transaction i.e., the sale deed dated 27.8.2015 and thus, the complainant has parted with an amount of Rs.1,20,00,000/- as the payment is made by cheques. The bank statement is available to the police in respect of further transactions which the complainant has entered into and the police may collect the requisite information. However, after going through the available documents which are placed before the Court, the applicant/accused in this offence appears to be the main perpetrator of the crime and considering the manner in which it is committed and the seriousness of the offence, no bail can be

granted to Dashrath Gaiker. Accordingly, the Bail Application *qua* the applicant/accused Dashrath Gaiker is rejected.

7. As regards the applicant/accused Shantaram Parte is concerned, he is a signatory to the receipt of earnest money payment and also a signatory to the sale deed. He has been inside the prison since last 11 months. Considering the role attributed to him, he is granted bail on the following terms:

- a) The applicant-accused Shantaram Parte shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- (Rupees Thirty thousand only) with one or two solvent sureties in the like amount.
- b) The applicant-accused Shantaram Parte shall not tamper with the evidence or pressurise the complainant or the witnesses;
- c) The said applicant-accused shall not indulge into any criminal activity and shall attend on all the Court dates;
- d) The said applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his

permanent address to the Investigating Officer alongwith documentary proof of his address.

e) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

8. Bail Application is disposed of on the above terms.

(MRIDULA BHATKAR, J.)