

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

912 ANTICIPATORY BAIL APPLICATION NO. 868 OF 2020

Badesh Ibrahim Mujawar,
Age. 56 years, Occ. Service,
Resident of 6-208, Mujawar Galli,
Paranda, Taluka Paranda,
District Osmanabad.

...Applicant.

Versus

The State of Maharashtra.

...Respondent.

WITH
ANTICIPATORY BAIL APPLICATION NO. 869 OF 2020

Mahesh Ratan Kasbe,
Age. 55 years, Occ. Service,
Resident of Mandai Peth,
Paranda, Taluka Paranda,
District Osmanabad.

...Applicant.

Versus

The State of Maharashtra.

...Respondent.

Advocate for Applicant : Mr. M.S. Kulkarni.
APP for Respondent : Mr. V.M. Kagne.

CORAM : MANGESH S. PATIL, J.
DATE : 26.11.2020

Per Court :

These are the applications under Section 438 of the Code of Criminal Procedure, seeking bail in the event of arrest of the applicants in connection

with Crime No. 217 of 2020, registered with Paranda Police Station for the offences punishable under Sections 420, 465, 466, 468, 471 read with 34 of the Indian Penal Code.

2. In sum and substance, the allegations are to the effect that the applicant in ABA No. 869/2020 was an employee on the post of clerk in the Municipal Council, Paranda. The other applicant was his assistant in the office. It is alleged that by sharing common intention, they prepared a false certificate dated 06.08.2018, to the effect that the property Survey No. 234/B to the extent of 10 Ares portion owned by one Nilofer Ejaz Pathan admeasuring 1,000 square meters was in residential zone even when it was duly reserved and earmarked in a development plan approved and published under the Maharashtra Regional and Town Planning Act, 1966.

3. Learned Advocate for the applicants Mr. Kulkarni, vehemently points out as to how there is no prohibition in the MRTP Act, to sell or transfer a property under reservation. He would, therefore, submit that in the absence of any such prohibition, no offence can be said to have been committed by owner of the property in selling the land under reservation and consequently nothing can be attributed to the present applicants who are merely a clerk and an assistant in the office of the Municipal Council.

4. Learned Advocate Mr. Kulkarni further points out as to how the entry in respect of deletion of the property from the reservation was subsequently modified and after it was reinstated and the modification was actually shown on the development plan on 19.11.2018. He would, therefore, submit that as on the date when the certificate was issued, no fault can be found with the applicants in preparing the certificate relying upon the entries that were available and made on the development plan.

5. The learned Advocate Mr. Kulkarni, then submits that custodial interrogation of the applicants is not necessary. Already the Deputy Collector and even the Collector has conducted and concluded the enquiry. Nothing is to be recovered from the applicants. They are the employees of the Municipal Council and unlikely to jump the bail. They would cooperate the Investigating Officer and may granted anticipatory bail.

6. The learned APP strongly opposes the application. He submits that the State has been cheated by indulging in forgery. Applicant Mahesh Kasbe was an employee who specifically admitted to have issued the certificate while submitting his say before the Collector. There is no record to show that he was authorized to issue any such certificate. There is no outward number on that certificate. He has signed on behalf of the Chief Officer which authority

he did not possess. The other applicant was his assistant and was handling the work of issuing certificates in respect of reservations. There are statements of some of the employees of the Municipal Council to these effect. *Prima facie* this is a case of issuance of false certificate which constitutes forgery. Their custodial interrogation is necessary to ascertain as to who were the real beneficiaries and at whose instance they had prepared and issued this false certificate.

7. I have carefully gone through the papers. At this stage it is suffice to note that there is no dispute about the fact that the certificate has been issued by applicant Mahesh Kasbe under his signature. There is also no dispute that the property regarding which the certificate was issued was still under reservation and, therefore, *prima facie* the contents of the certificate are factually incorrect.

8. The applicant Mahesh Kasbe under his signature for and on behalf of the Chief Officer had issued the certificate. There is no material to reveal that he had any authority to issue such certificate by putting a signature for and on behalf of the Chief Officer.

9. There are statements of couple of employees of the Municipal Council

Mr. Deepak Bhateawande and Mohan Satarkar to *prima facie* show that the duty of issuing such certificate was assigned to the other applicant Badesh Ibrahim Mujawar. It is thus quite clear that *prima facie* both the applicants were holding the charge of the relevant table for issuing such certificates and have issued the certificate which *prima face* is false, that too without any authority. This much of material is enough to reveal complicity of applicants in indulging in forgery.

10. Needless to state that the applicants must have dared to indulge into such illegal activity at the instance of someone who would be within there exclusive knowledge. Obviously, their custodial interrogation becomes imperative to reveal the names of the beneficiaries as well.

11. Considering all these aspects, neither of the applicants is entitled to anticipatory bail. The applications are rejected.

(MANGESH S. PATIL, J.)