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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.16 OF 2021
with
Criminal Application No.127/2021

Shri Mahesh Ratan Kasbe
Age: 55 Yrs., occu. Service,
R/o Mandai Peth, Paranda,
Taluka Paranda, Dist.Osmanabad.
(presently in custody) = APPLICANT

VERSUS

The State of Maharashtra
Through the Office Incharge
Paranda Police Station,
District Osmanabad. = RESPONDENT

WITH

BAIL APPLICATION NO. 17 OF 2021
with
Criminal Application No.128/2021

Badesh Ibrahim Mujawar
Age: 56 Yrs., occu. Service,
R/o 6-108, Mujawar Galli,
Paranda, Tq. Paranda,
Dist. Osmanabad
(presently in custody) = APPLICANT

VERSUS

The State of Maharashtra
Through the Office Incharge
Paranda Police Station,
District Osmanabad. = RESPONDENT

Mr.Mukul S.Kulkarni,Advocate for Applicant/s;

Mr.NT Bhagat,APP for Respondent-State.

Mr.SS Kazi, Adv. h/for Mr. MN Shaikh,Adv. To assist
APP (in both matters)

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 15th January, 2021.

PER COURT :-

1. The Criminal Application Nos.127/2021 and 128/2021 moved to assist APP in respective Bail Applications are allowed and disposed of.

2. The applicants in respective Bail Applications seek bail under Section 439 of Cr.P.C. in connection with CR No.217/2020 registered with Paranda Police Station, District Osmanabad, for the offences punishable under Sections 420, 465, 466, 468, 471, read with 34 of IPC. Both the applicants came to be arrested on 10.12.2020 and since 11.12.2020 they are in Magisterial custody.

3. Heard learned Advocates and learned APP appearing for respective parties.

4. It has been vehemently submitted on behalf of the applicants that both the applicants are Government servants. Applicant – Mahesh Ratan Kasbe came to be appointed in 1990 on compassionate ground. He was promoted as a Clerk in 1997-1998.

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Applicant – Badesh Ibrahim Mujawar was appointed in 1989 and was promoted as Clerk in 2011. He was Assistant to applicant – Mahesh Kasbe. Applicant- Mahesh Kasbe had issued a certificate in respect of land Survey No.234/B, wherein it is stated that open plot is included in residential zone in the Development plan of Municipal Council. The said certificate was issued under the title “Zone Certificate” on 6.8.2018. It is pointed out that Draft Development plan of Paranda city was published on 29.8.2002. Modification plan, as proposed, was published on 30.12.2004. Vide the said modification, reservation of site No.7, i.e. Survey No.234/B, was sought to be deleted. After hearing the objections, the Municipal Council confirmed the modification as proposed on 4.7.2005. Notification under Section 31 of the MRTP Act by the Government was published on 13.6.2006. However, the deletion of site No.7, i.e. the disputed plot, was not approved by the Government. That means, it was retained as reserved as earlier. Thereafter, a notification was published by the Government on 24.7.2006 declaring that effective date for implementation of the Development plan

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except excluded part would be 1.8.2006. On 22.7.2006, the Government published the notification in respect of reinstating the reservations about the excluded part. Therefore, the informant says that on the day of the Certificate was issued by applicant – Mahesh, it was in reserved category and not in the residential zone. The informant further states that the said plot was sold by original owner Rajendra Chandrakant Jadhav to one Mrs. Nilophar Pathan by sale-deed dated 16.3.2011. Further, the said plot was purchased by one Wasim Jakir Saudagar on 6.8.2018 from Nilophar Pathan. A complaint was made to Collector, Osmanabad by one Vaishali Anil Gaikwad on 24.12.2018 in respect of sale transaction. After the enquiry was made, one Ranjeet Kalyan Kashid, Clerk working with Paranda Municipal Council, lodged the FIR.

5. It has been further submitted by the learned Advocate for the applicants that the the sale transactions are not prohibited under the provisions of MRTP Act even after the reservations are declared. What is prohibited is Development

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and no such activity of development has taken place on the said plot. Therefore, there is no question of cheating, that too by present applicants, to the Municipal Council. The applicant – Mahesh was entrusted with the work of issuing certificates for various purposes though he is working as Clerk in Recovery department and it was on the basis of oral directions given by the then Chief Officer of the Municipal Council. However, now subsequent to the issuance of said certificate, the Chief Officer has delegated his powers by specific order in writing on 19.10.2018. There was no intention on the part of the applicants to commit any offence. Applicant – Badesh was merely an Assistant to applicant-Mahesh and no role is played by him. Now, substantial part of the investigation is over and, therefore, further physical custody of the present applicants is not required. They prayed for releasing them on bail.

6. Per contra, learned APP strongly opposed the applications and submitted that the applicants are servants of the Municipal Council; yet without any authority, applicant – Mahesh has issued the

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certificate, in question and applicant – Badesh has assisted him. They had clear idea and they should have, in fact, considered the Development plan sanctioned by the Government before issuing any such certificate, which they had not done. They have issued a false and wrong certificate, which has then be utilized by the seller and purchaser for effecting the transactions. It is a serious offence and such prayer was rightly rejected by the learned Additional Sessions Judge.

7. At the outset, it is to be noted that the FIR has been filed by one of the Clerks, working with Municipal Council, Paranda. It appears from the said FIR that enquiry was conducted by Collector, Osmanabad and thereafter he had given directions to the Chief Officer of the Municipal Council to initiate criminal action. The Chief Officer, in turn, had directed the informant to lodge the report. As aforesaid, the said open plot bearing Survey No.234/B was reserved for Government offices and Staff quarters. It appears that the said reservation is to the extent of 10 Ares. Further, he says that there were sale transactions

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in respect of the said plot. He has stated that in spite of having knowledge about the reservation, the disputed certificate has been issued by applicant - Mahesh in conspiracy with applicant - Badesh. For this matter, being a Court taking criminal matters, this Court will not be able to go in detail that in spite of such reservation, the sale is not prohibited under the MRTP Act. However, at this stage, the fact is required to be noted that the present offence cannot be said to be an economic offence for the simple reason that no allegations have been made regarding direct giving and taking of amount. The certificate which was issued by applicant -Mahesh under his signature and he says that he was having oral directions/authority from the Chief Officer of the Municipal Council to issue such certificate; that the area admeasuring 10 Ares from Survey No.234/B owned by Nilophar Pathan is an open plot and it is included in the residential area. The said certificate has been issued on 6.8.2018. This certificate per se is not a document of ownership. It is not clear from the contents of the FIR that further steps or procedure, after the plot was

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reserved under the MRTP Act, were taken by the State Government or not. If it was reserved then definitely acquisition would be contemplated and then name of the Government would appear in the record of rights. The said certificate allegedly issued by applicant – Mahesh with the help of applicant – Badesh will not give any kind of right in anybody's favour. Definitely, they ought to have considered the Development plan before issuing the certificate. However, the most appropriate course of action either for Nilophar Pathan, who had purchased the property in 2011 or Wasim Saudagar, was to collect all the documents in respect of the said property including the Development plan. Only reliance on the certificate cannot be justified action. Now, it is not demonstrated by the informant as to how the Government has been cheated by issuance of the said certificate. Important point to be noted that these two applicants are only the accused persons in the offence as per the FIR. Nobody else has been arrayed as accused person to whom that certificate has been issued. Further, issuance of a wrong certificate is different from issuance of a

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false certificate. It would depend upon the evidence that would be adduced by the prosecution to see whether the disputed certificate was wrong certificate or false certificate. At the most, the action that could have been taken upon the present applicants would be disciplinary action and it has been stated that such action has been taken and the applicants are suspended. The Chief Officer, Municipal Council, Paranda has not personally lodged any report, stating that the applicants have misused the authority/power delegated to them. Therefore, taking into consideration all these aspects, further physical custody of the applicants is not required and, therefore, they deserve to be released on bail. Hence, following order, -

ORDER

- i. The Bail Applications stand allowed;
- ii. The applicants - Mahesh Ratan Kasbe and Badesh Ibrahim Mujawar, who have been arrested in connection with CR No.217/2020, registered with Paranda Police Station, District Osmanabad, for the offences punishable under Sections

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420, 465, 466, 468, 471, read with 34 of IPC, they be released on PR of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.

iii. The applicants shall not tamper with the evidence of the prosecution in any manner nor shall they indulge in any criminal activity.

iv. The applicants shall comply with the requirements under paragraphs No.12(1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

v. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV