

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

20 ANTICIPATORY BAIL APPLICATION NO.31 OF 2021

**ALAM KHAN S/O ABDULLAH KHAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicant : Mr. Deshpande Gaurav L.
APP for Respondents/State : Mr. V. M. Kagne.

**CORAM : MANGESH S. PATIL, J.
DATE : 01.02.2021.**

PER COURT :

In this application under Section 438 of the Code of Criminal Procedure the applicant is seeking bail in the event of his arrest in connection with Crime No. 79/2020 registered with Dharmabad Police Station, District Nanded for the offences punishable under Sections 420, 468, 471, 473 read with Section 34 of the Indian Penal Code.

2. In short the allegations as can be understood from the F.I.R. and the papers of investigation are to the effect that the applicant in collusion with the other accused managed to bring about fabricated certificates purporting to be issued by the Municipal Council, to facilitate registration of sale deed of the properties falling in the municipal area.

3. The learned advocate for the applicant submits that his name does not find place in the F.I.R. He is neither an employee of the Municipal Council nor has played any role in the alleged crime. It is merely on the basis of statement of co-accused that he is now being implicated. He is an engineer. There is no law to demonstrate that the certificates were indeed necessary for registration of sale-deeds. The allegations are therefore improbable. He is the only bread earner of his family. He is ready to cooperate the

Investigating Officer. Co-accused Mohsin Khan Moin Khan and one more accused have been granted regular bail by the concerned Magistrate. Nothing is to be recovered from or discovered by the applicant. Considering the principles laid down in the case of **Sanjay Chandra vs. Central Bureau of Investigation, (2012) 1 Supreme Court Cases 40** and catena of judgments of the Supreme Court custodial interrogation of the applicant is not necessary and he may be granted anticipatory bail.

4. Learned A.P.P. opposes the application. He submits that it is a matter of running of a systematic racket by several persons who have indulged in fabrication to enable the interested persons in getting the sale-deeds registered. There is a specific version of the Chief Officer and the Superintendent of the Municipal Council about the certificates being forged ones. Several such certificates have been traced. The applicant hand in gloves with the other accused has forged and fabricated the certificates and therefore his custodial interrogation is necessary.

5. Learned A.P.P. would further point out that the business partner of the applicant has also been implicated albeit subsequently he has been granted regular bail. A specific role is attributed to the applicant by two of such co-accused. Since the matter is still under investigation, the applicant is not entitled to claim anticipatory bail.

6. I have carefully considered the rival submissions and the law laid down by the Apex Court not only in the case of **Sanjay Chandra (supra)** and even in the case of **Sushila Aggarwal Vs State (Nct of Delhi) and another; (2020) 5 Supreme Court Cases 1.**

7. Obviously, the applicant has not been named in the F.I.R. However there should be two possibilities so that the name of a person would appear in an F.I.R. Firstly, he should be known to the informant and secondly, even the informant should be able to comprehend the role attributable to the person to be named in the F.I.R. Therefore, mere absence of name in the F.I.R. is

inconsequential at the stage of investigation.

8. It is being alleged that several forged certificates purporting to have been issued by the Municipal Council under the signature of the Chief Officer have been brought into existence. Needless to state that it would not be a handiwork of a person or two. There must have been a racket of a kind involving several persons playing their own part in accomplishing the crime.

9. A specific role has been attributed to the applicant may be by the co-accused Mohsin Khan Moin Khan who is the Superintendent serving in the Municipal Council and co-accused Abdul Malik who happens to be the business partner of the applicant. Since both of them have specifically asserted and attributed a specific role to the applicant, in my considered view he is not entitled to the discretionary relief of anticipatory bail when the investigation is at a nascent stage.

10. The Application is rejected.

(MANGESH S. PATIL, J.)

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