

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.306 OF 2021

Houseram S/O Dnyanoba Thorat,
Age 55 years, Occupation Service,
R/o Sushilnagar, Osmanabad
Taluka and District Osmanabad.

...Applicant

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Osmanabad City,
Taluka and District Osmanabad.

...Respondent

.....

Advocate for Applicant : Mr. M. S. Karad
APP for Respondent-State : Mr. A. M. Phule.

.....

WITH
BAIL APPLICATION NO.287 OF 2021

Sattar Allaudin Shaikh,
Age 70 years, Occupation Labour,
R/o Near Deshpande Stand,
Osmanabad.
At Present In District Jail,
Osmanabad.

...Applicant

VERSUS

The State of Maharashtra,
Through the City Police Station,
Osmanabad.

...Respondent

.....

Advocate for Applicant : Mr. G. J. Kore
APP for Respondent-State : Mr. A. M. Phule.

.....

CORAM : SMT.VIBHA KANKANWADI, J.

**DATE OF RESERVING THE ORDER :
22-04-2021**

**DATE OF PRONOUNCING THE ORDER :
08-06-2021**

ORDER :

1. The applicants are the accused No.2 and 1 respectively in Crime No.47 of 2021, registered with Osmanabad City Police Station, Osmanabad, on 13-02-2021, for the offence punishable under Section 420, 447, 464, 467, 468 read with 34 of the Indian Penal Code. They have filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. M. S. Karad, Mr. G. J. Kore for applicants and learned Additional Public Prosecutor Mr. A. M. Phule for respondent-State. In order to cut short it is stated that, all of them have made submissions in support of their respective contentions.

3. Perusal of the First information Report would show that it has been lodged by informant Ms. Dipti Jayant Deshpande who presently resides at Pune. She is Advocate by profession. Her native place is

Osmanabad. Her father had landed property in Osmanabad. She has brother Ajay, sister Preeti Niturkar and mother Aparna. Aparna stays with informant, Preeti stays at Mumbai with her family and Ajay is serving in United States of America. Their agricultural land Survey No.402/1 admeasuring 3.51 Hectare was looked after by cousin brother Sachin Deshpande, however he expired in February 2020. Her father had expired on 23-03-2009, after his death the names of the informant and others who are the legal heirs of father Jayant came to be mutated vide Mutation Entry No.17054. When informant visited Osmanabad in December 2020 and January 2021, she could noticed encroachment in the form of a tin shed. She made inquiry but was required to return to Pune. Thereafter, on 22-01-2021 she received a phone call stating that accused No.2 Sattar Shaikh has given him the land for Rs.20,000/- and then photocopy of agreement was sent on her WhatsApp number. She could notice that the agreement was stated to be executed between accused No.1 Houseram Dnyanoba Thorat and late father Jayant Sadashivrao Deshpande to which accused No.2 Sattar Shaikh was witness. It was stated to be executed before Advocate Pratap D. Deshmukh and it was stated that it was executed on 05-04-2017. Informant states that when her father had already expired on 23-03-2009, how he

could have signed it on 05-04-2017. Definitely it was a fake document and by that agreement, portion of 30 x 40 feet was conveyed and, thereafter, on that piece of land the tin shed as well as a permanent construction has been made by encroachment. Therefore, she lodged the report against both the present applicants as well as Advocate Pratap D. Deshmukh.

4. Perusal of the police papers especially the 7/12 extract would definitely show that the property was initially owned by Jayant Deshpande and, thereafter, it has been mutated in the name of informant, her mother, sister and brother. Though it appears that the said mutation entry has not been collected by the Investigating Officer up till now, but since it is a public document it could be made available at any point of time. The death certificate of Jayant Sadashivrao Deshpande would show that he expired on 23-03-2009. It has been stated in the report that the said original agreement to sell has been seized from applicant Houseram. Specimen signatures have been taken, so also the thumb impression of applicant Sattar Shaikh has been taken, and it has been sent for Analysis/examination to the expert. It appears that the said report is still awaited, however the things appears to be obvious that the person

who expired on 23-03-2009 could not have remained present for execution of any document on 05-04-2017. It can be seen that there was no direct contact or dialogues between the informant and the applicants and even Advocate Pratap Deshmukh and, therefore, whether the ingredients of Section 420 of the Indian Penal Code have been made out or not is doubtful. The Investigation is still pending and, therefore, it will not be appropriate stage to give a conclusion that said section is not applicable at all, however the other sections may apply. Statement of certain witnesses would show that applicant Sattar Shaikh was looking after the agricultural land belonging to the informant. However, it is stated by three witnesses namely Dattatraya Mesu Vidhate, Shankar @ Mahadeo Bhagwat Kanole and Puja Shankar @ Mahadeo Kanole that Sattar was removed from the post of Manager-cum-Munim about a year ago. Statement of Preeti and Ajay who returned to India on 27-02-2021 appears to have been recorded. Both of them have stated that the said agreement does not bear the signature of their father. Thus, there appears to be some evidence against the present applicants. No doubt, the investigation is still pending, however as regards the further physical custody of the applicant is concerned, it appears to be not required. Their specimen signatures have been

taken. The original document has been seized. It would take long time to stand their trial after the charge-sheet that would be filed in the matter. Taking into consideration the congestions in jail, present pandemic situation and the fact that both the applicants appear to be having permanent place of abode and the witnesses are staying outside Osmanabad, the applicants deserve to be released on bail with stringent conditions. Hence, following order.

ORDER

- 1) Applications are hereby allowed.
- 2) Applicants/ accused Houseram s/o Dnyanoba Thorat and Sattar Allaudin Shaikh, arrested in connection with Crime No.47 of 2021, registered with City Police Station, Osmanabad, for the offence punishable under Section 420, 447, 464, 467, 468 read with 34 of the Indian Penal Code, be released on P.R. of Rs.1,00,000/- each (one lakh) with two solvent sureties of Rs.50,000/- each (fifty thousand).
- 3) The applicants shall not tamper with the evidence of the prosecution in any manner.
- 4) They shall not indulge in any criminal activity.
- 5) The applicants to attend City Police Station,

Osmanabad Dist. Osmanabad on every Wednesday and Sunday from 09.00 a.m. to 12.00 noon and maintain diary of their attendance duly countersigned by the Police Station officer, till filing of the charge-sheet.

6) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-