

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

ANTICIPATORY BAIL APPLICATION NO. 841 OF 2021

Sanjay s/o Nivruti Thenge ... **Applicant**
Age: 47 years, Occu: Notary-Assistant,
R/o Bhaiyya Saheb Ambedkar Nagar,
Parbhani, District Parbhani

VERSUS

The State of Maharashtra, ... **Respondent**
Through Police Inspector,
New Mondha Police Station, Parbhani
Tq. & District Parbhani

Mr. S. B. Bhapkar, Advocate for the applicant,
Mr. S. B. Narwade, A.P.P. for the State.

CORAM : V. G. BISHT, J.
RESERVED ON : 9th September, 2021
PRONOUNCED ON : 16th September, 2021

ORDER:

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 256/2021 registered with Nava Mondha Police Station, Parbhani for the offences punishable under Sections 406, 417, 420, 441, 447, 464, 465, 468, 470, 471, 506 r/w 34 of the Indian Penal Code, 1860.

2. It is the case of prosecution that informant Anant Ramrao Kadam lodged a report that one Ismail Shaikh Amir had filed a complaint with Economical Offence Branch, Parbhani against him. Said Ismail Shaikh Amir alleged that informant had cheated him by selling

plots in Survey No. 255 with the help of fabricated documents. The informant appeared before the Branch and his statements were recorded. Later on, he came to know that agreement to sale dated 17.08.2012 vide Bond No.3476/2012 is forged one and he had not sold 10 plots to one Khairulla Khan s/o Ataulakhan. Alleged documents were registered before Notary- Advocate Vilas Anantrao Deshpande. The informant made enquiry with the said Advocate who told him that handwriting appearing on the alleged document and notary register is not in his handwriting but the same is of the applicant who was clerk with him. In this backdrop, the informant lodged report against Khairulla Khan and the present applicant.

3. Mr. S. B. Bhapkar, learned counsel for the applicant, submits that there is huge delay of more than 10 years in lodging the first information report. Accused Nos. 1 and 3 in the said first information report have already been released on bail and applicant who was clerk with Advocate Vilas Deshapnde has been made a scapegoat. He neither had prepared notarized document nor any false entry was taken by him in the notary register. Learned counsel lastly submits that investigation officer has taken custody of all the relevant documents and therefore, there is no necessity of custodial interrogation. Hence, the application may be allowed, urged learned counsel.

4. Mr. S. B. Narwade, learned A.P.P., on the other hand, would oppose the submissions by contending that the applicant had forged

not only the signature of Advocate Vilas A. Deshpande but also took false entry in the notary register. Learned A. P.P. invited my attention to the investigation papers to submit that having regard to the gravity of the offence, custody of the applicant is very much necessary.

5. Perused the investigation papers. The important document is agreement for sale purportedly executed by informant Anant Ramrao Kadam in favour of Kharirulla Khan Ataullakhan which is notarized, purportedly in the present of Advocate Vilas Deshpade. According to the prosecution, this document does not bear signature of Advocate Vilas Deshpande and rather applicant forged the signature. Similarly, he also took false entry in the notary register to that effect. In this factual backdrop, the statement of Advocate Vilas Deshpande assumes significance.

6. I have carefully gone through the statement of Advocate Vilas Anangtrao Deshpande. It appears that at the relevant time the applicant was his Munshi/Assistant. Referring to the said agreement for sale, he states that the applicant without taking his prior permission made entry in the notary register and that Column No. 11 of the said Register bears his signature but the said signature was not put by him on the date of execution of agreement for sale and it is his practice that at the time of annual inspection of the register he puts his signatures in the register.

7. What should engage attention at once here is the agreement for sale which is filed on record. It shows that this agreement for sale was executed in presence of Advocate Vilas Anantrao Deshpande under his signature. Pertinently enough, this signature is nowhere denied by Advocate Vilas A. Deshapande in his statement recorded before the investigating officer. His grievance only is that the entry in the register was not taken before obtaining his permission. At the same time, Advocate Vilas Deshpande also does not deny that Column No. 11 of the notary register wherein entry of said agreement for sale has been recorded does not bear his signature. One cannot be unmindful of the fact that once the document was notarized in the presence of Advocate Vilas Deshpande, all that was required to be done was to take entry into the concerned notary register. Merely because the prior permission of Advocate Vilas Deshpande was not taken and more particularly when he does not put his signature in the notary register on relevant date, it does not mean that the said entry was forged and was falsely taken in the notary register. I do not find merit in the submissions of the learned A.P.P. Moreover, the investigation papers reveal that agreement for sale and the notary register have already been taken into custody by the investigating officer. It is also not disputed that other accused have been released on bail.

8. In view of above facts and circumstances of the case, in my considered opinion, the application deserves consideration with certain conditions.

9. Hence following order.

ORDER

- i. In the event of arrest of the applicant in connection with crime No. 256/2021 registered with Nava Mondha Police Station, Parbhani for the offences punishable under Sections 406, 417, 420, 441, 447, 464, 465, 468, 470, 471, 506 r/w 34 of the Indian Penal Code, 1860, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs.20,000/- [Rs. Twenty thousand only], with one or two solvent sureties in the like amount.
 - ii. The applicant shall attend concerned police station as and when called and shall cooperate with the police in the investigation.
 - iii. The applicant shall not tamper with prosecution evidence in any manner.
10. Application stands disposed of in the aforesaid terms.

(V. G. BISHT, J.)

JPC