

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

55 BAIL APPLICATION NO.1192 OF 2021

PRAKASH GYANDEV PATEL
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Shri S.P.Brahme h/f. Shri S.U. Chaudhari
APP for Respondent : Shri S.W.Munde

...
CORAM : M.G.SEWLIKAR, J.

DATE: 25th October, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.191 of 2020, registered with Dhule City Police Station, District Dhule, under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code.

2. Facts leading to this application are that informant - Chandrashekhar Ravan Patil had filed the report that accused - Harshal Pradeep Jain is an Estate Agent dealing in selling and purchasing of plots. Informant wanted to purchase a plot at Dhule. Therefore, informant approached accused Harshal. Plot No.2 admeasuring 1614 sq.ft. in Survey No.89/3/4/5 at Sudhaiv Colony, Valvadi was shown to the informant by accused Harshal.

Accused Harshal represented that the name of owner is Ashabai Dadabhau Gaikwad and a lady, who impersonated Ashabai Dadabhau Gaikwad was introduced to the informant as Ashabai Dadabhau Gaikwad. That lady turned out to be one Nita Prakash Patel. Therefore, offence was registered against the said Harshal Jain and others. During the investigation of this crime, it was revealed that applicant had also impersonated as owner of the plot. It was revealed that applicant impersonated one Pandit Daulat Chaudhari and executed agreement of sale dated 27th July, 2020 in respect of Plot No.58 admeasuring 221.75 sq.mtrs. out of Survey No.90/3/1/2/3. It was also revealed that applicant impersonated Pandit Dault Chaudhari while executing the sale deed.

3. Heard Shri S.P.Brahme, learned counsel holding for Shri S.U.Chaudhari, learned counsel for the applicant and Shri S.W.Munde, learned APP for the respondent-State.

4. Shri S.P.Brahme, learned counsel for the applicant submits that name of the applicant does not appear in the FIR. Charge-sheet is filed. He submits that applicant is behind bars since ten months. He further submits that applicant is the resident of Borala, Tq. and Dist.Nandurbar. He has no criminal antecedents.

Therefore, applicant deserves to be released on bail. He placed reliance on the case of *Sanjay Chandra Vs. CBI [(2012) 1 SCC 40]*. He seeks release on parity also as one of the accused has been released on bail.

5. Shri Munde, learned APP for the respondent submits that the role of the accused, who is released on bail is different than that of the applicant. He submits that in that application, accused Rajesh More was not an impostor. He, therefore, prays for rejection of the application.

6. Applicant has impersonated Pandit Dault Chaudhari not once but twice. First time at the time of executing agreement of sale and second time at the time of execution of sale deed. It is true that he has no criminal antecedents but his conduct shows that he impersonated real owner Pandit Dault Chaudhari twice. There is nothing on record to show that applicant has any occupation for living. If he is released on bail, he will commit similar offence again.

7. In case of *Sanjay Chandra* (supra) following observations were made :

"14) In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of

imprisonment as a lesson."

8. In the case at hand, the applicant not only impersonated Pandit Dault Chaudhari once but he impersonated the real owner Pandit Dault Chaudhari twice. Ground of parity is not applicable to him because in that application accused Rajesh More did not act as an impostor. It was alleged against him that he had received Rs.11,000/- as earnest money from the informant but the sale deed did not mention that such amount was received by Rajesh. Therefore, ground of parity is not available. It is pertinent to note that in the same offence another impostor had applied for bail vide Bail Application No.451 of 2021. This Bail Application was withdrawn as this Court (Coram: M.G.Sewlikar, J.) was not inclined to grant any relief to the applicant. Having regard to seriousness of the offence, I am not inclined to release the applicant on bail. Application is rejected.

(M.G.SEWLIKAR)
JUDGE

SPT