

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO. 409 OF 2020
WITH
INTERIM APPLICATION NO.7237 OF 2020**

Sachin Sakharam Yadavade .. Applicant

Vs.

The State Of Maharashtra & Anr. .. Respondent

Mr. Manoj Mohite, Sr. Adv. i/by Mr. Ajinkya J., Advocate for
Applicant in both BA & IA.

Mr. Ateet Shirodkar, APP for the Respondent No.2.

Mr. A. R. Kapadnis, A.P.P. for the State.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd MARCH, 2021

PC.

1. The applicant is arrested on 04.09.2019 in connection with C.R. No.I-303 of 2019 registered with Mahatma Phule Police Station, Kalyan for the offence punishable under Sections 406, 420, 448, 450, 457, 467, 468 of Indian Penal Code (for short "IPC").

2. The case of the prosecution is that the property being shop No. 2 and 3 at Swati Building, near Saint Thomas School,

Chikanghar, Kalyan (w.) was let out by the complainant to the applicant on leave and license basis for a period commencing from 01.08.2014 to 31.07.2015. After the expiry of period of leave and license, the shops were in possession of complainant. The applicant by breaking open the lock of the shop entered into the premises and took possession. The applicant prepared the Agreement for Sale by forging the signature of Chandrakant Savailal Pandya and producing the said documents before the office of Kalyan-Dombivali Municipal Corporation (for short "KDMC") for transfer of tax receipt in the name of applicant. On the basis of said documents, the applicant transferred tax receipt and electricity bills in the name of applicant. On 27.06.2018, the KDMC deleted the name of applicant from tax receipt and entered the name of the complainant in respect of the disputed shops. The applicant did not hand over the possession of the shops to complainant. Hence, complaint was lodged.

3. The applicant was arrested. On completing investigation, charge-sheet is filed. The applicant preferred an application for bail before the Court of learned JMFC, Kalyan. The said application was rejected. Thereafter, the applicant preferred an application before the Court of Sessions. The said application was rejected by order dated 04.12.2019.

4. Learned advocate for applicant submitted that the document dated 08.11.2006 was executed between the father of applicant and Mukund Builders and was notarized before the Notary. The applicant cannot be held responsible for execution of said document. The document produced by the complainant is the notarized document executed before the same Notary. These documents do not decide the title of the parties to the disputed shops. Although, the offence came to light on 18.05.2018, the FIR was lodged on 30.06.2019. There is delay in lodging FIR. The complainant has alleged that the applicant had prepared the document for the purpose of transferring property in the name of applicant. The tax receipt of the disputed shops transferred in the name of complainant. Section 406 of IPC is not attracted in the present case. The applicant was in possession of the premises on the basis of leave and license agreement executed between the applicant and the complainant. He was put into possession by the complainant. Sections 448, 450 and 457 of IPC cannot be invoked in this case.

5. Learned APP submitted that the offence is serious. The applicant is involved in forgery of stamp paper and using the same for mutating his name on property of complainant. Investigating Officer has collected the photocopy of stamp paper dated 08.11.2006. The said document is regarding execution of sale deed in the name of father of accused. Letter dated 09.09.2019 of Stamp and Registration Department shows that

the stamp bearing No.TE752093 is released on 12.02.2018 and supplied to the stamp vendor on 16.03.2019 and it was sold on 13.04.2018. The accused used stamp paper for establishing his title over the property. 13 cases were registered against the applicant in the past. The cases were registered from 2001 to 2019. Learned counsel for the applicant submitted only two cases are pending against the applicant.

6. Learned counsel for complainant has filed affidavit-in-reply opposing bail. It is contended that complainant is owner of the commercial shops. The complainant had let out shop No.2 on leave and license basis to applicant for period of one year till 31.07.2015. In 2018 the applicant broke open the lock of shop No.1. The complainant had lodged complaint on 18.05.2015 with KDMC. The applicant and his associates have threatened and abused the complainant in the ward office. NC complaint was lodged against the applicant on 30.05.2018. The applicant had mutated the municipal records in his name on the basis of forged and fabricated documents. The complainant had purchased the shops from Mukund Builders and was in possession of the shops. Stamp paper on which the documents i.e. agreement for sale was drafted and printed in the year 2018 in order to show ante-dated agreement. The applicant and stamp vendor had colluded with each other. Stamp paper was issued 11.02.2018 from Nashik Press and it was disbursed to stamp vendor on 16.03.2018. the sale deed was prepared on

08.11.2006. The Notary who alleged to have notarized the document had expired in the year 2017. The applicant is habitual offender and several cases are registered against him. The complainant has been threatened.

7. The applicant is in custody from 04.09.2019. the dispute relates to the documents relating to property. Investigation is completed and the charge-sheet is filed. The documents are collected during investigation. The offences are triable by the Magistrate. The applicant has undergone detention of about one and half year. Further detention is not necessary. Hence, bail can be granted to the applicant. Both applications are disposed off in terms of order below.

ORDER

- (i) Bail Application No.409 of 2020, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 303 of 2019, Mahatma Phule Police Station, on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty-Five Thousand Only) with one or more sureties in the like amount;
- (iii) The applicant shall report concerned police station once in three months on every first Saturday of the month between 11.00 am. to 1.00 pm. till further order;

- (iv) The applicant shall not tamper with the evidence;
- (v) Bail Application stands disposed of accordingly;

(PRAKASH D. NAIK, J.)