**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL BAIL APPLICATION NO.819 OF 2021**

Nagesh Shivaji Khyatamavar .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Prasanna Bhangale for the Applicant.
Mrs.M.M.Deshmukh, APP for the State.

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**CORAM: BHARATI DANGRE, J.**
**DATED : 08th SEPTEMBER, 2021**

**P.C:-**

1. The Applicant came to be arrested on 29/01/2020 in connection with C.R.No.60 of 2020 registered in Narpoli Police Station, Thane City on 28/01/2020, alleging commission of offence under Sections 467, 468, 471, 420 read with Section 34 of the Indian Penal Code (for short, "IPC")

On the offence being investigated, charge-sheet was filed on 27/03/2020 and a supplementary charge-sheet also came to be filed, which is placed on record.

2. The crime came to be registered at the instance of a Junior Clerk, working in the office of Sub-Registrar, Division II, Bhiwandi III. In the complaint it was alleged that one Arun Kankhar was working in the office as Senior Clerk whereas one Shobha Ramesh Jadhav was working as a peon. From

August 2018, two persons were assigned to the office through 'S2 Infotech Company' and the said persons are Deepak Shinde and Nagesh Khyatamavar (Applicant). It is also informed that one Shravan Kumar S. Gajam was working as a Computer Operator once upon a time, but he was relieved from his work, four to five months back.

An email was received from the Head Office of District Registrar and Collector Stamps, Thane wherein an *modus operandi* was disclosed where less stamp duty was accepted and certain stamps were found to be forged by giving an impression that the stamp duty has been paid and this caused revenue loss to the Government. An inquiry was conducted with the offices of the Sub-Registrar in the State by calling for records of the original documents from 2014 to 2019 and list of suspicious documents was prepared which enlisted 288 documents registered in the office of the Sub-Registrar, Division II, Bhiwandi III. The aforesaid documents were inspected by Arun Kankhar, the In-charge Sub-Registrar, the informant and the present Applicant. On inspection, the *modus operandi* which revealed was that certain developers, got their agreements registered and the Agent Shravan Kumar prepared the forged challan receipts and paid registration fees for registration of the documents, causing loss to the Government, which was estimated as Rs.11,74,400/-. The accusation faced by the Applicant is that in the conspiracy with Shravan, the false receipts of payment of stamp duty were produced. The role of the Applicant has surfaced at the time of filing of supplementary charge-sheet through the co-accused.

3. When the learned APP is specifically asked about the role assigned to the present Applicant, she submitted that he was working as a Computer Operator and had joined the duties only in the year 2018 and his job was to scan the documents.

4. Mr.Bhangale, learned counsel appearing for the Applicant, has invited my attention to one query report at page 246 dated 10/02/2020 when the Investigating Officer had sought certain relevant information from the Department about the methodology of working in the office and from the said response of the Department, it is apparent that it is the duty of the Sub-Registrar to determine the stamp duty and submit the report about the payment of stamp duty, after the documents are duly stamped. The concerned Sub-Registrar Class II is assigned the role of the Administrative In-charge of the affairs. Further, when specifically inquired as to if the document is not properly stamped, what is the procedure to be followed, the procedure is stated to the effect that it is the duty of the Sub-Registrar to find out whether the proper stamp duty has been paid and if not, in terms of Sections 33 and 33-A of the Maharashtra Stamp Act, the documents can be impounded. An audit of the said office is also reported to have been conducted between October 2018 to December 2018. Further, when a query is raised whether the stamp duty and the registration fee can be accepted in cash, it is clarified that the stamp duty cannot be accepted in cash, however, the registration fee can be accepted to the extent of Rs.300/-. On being asked, who will verify the document, which is produced for registration, it is stated that when the parties bring the

document for registration, it is the duty of the Sub-Registrar to verify the same as per Rule 44 of the Maharashtra Registration Rules 1961. About the query as to who shall verify whether the stamp duty is paid or not, the response is that the preliminary scrutiny is done by the Clerk and by the Sub-Registrar. Thereafter a document gets registered on-line and the Entry Operator will verify whether the stamp duty is paid or not. On the query as to whether a third person can deposit the stamp duty, the answer is in the negative.

5. From the aforesaid response of the Department, the role assigned to the applicant is very minuscule as he is only uploading the documents on-line, after they are verified by the Sub-Registrar.

6. As far as In-charge Sub-Registrar Arun Kankhar and Dilip Niurutti Avhad, who is the complainant working as Clerk in the said office are concerned, they are released on bail by this Court by order dated 20/01/2021 with the following observations.

> "5. Learned APP submitted that the applicant Dilip Aavhad is concerned with the transaction relating to three documents whereas the applicant Arun Kankhar is concerned with eight documents. The co-accused Shravankumar S. Gajam had deposited 4 Lakhs, although he had undertaken to deposit the balance amount in due course of time, he has not deposited the said amount.
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> 6. The applicant Dilip Avhad had lodged the FIR pursuant to receipt of E-mail for initiating action against persons involved in the crime. It is alleged that, both the applicants are concerned with the transactions relating to some of the

documents as stated above. One of the co-accused Lata Sampat Sangale was concerned with transaction relating to eight documents, has been granted anticipatory bail by the Sessions Court, Thane. The investigation is completed and charge-sheet is filed. There are no criminal antecedents against the applicants. Further detention of the applicants is not warranted. Bail can be granted on certain terms and conditions."

7. The role attributed to the applicant is much smaller than the gravity of accusations against accused Nos.4, 5 and 6 and, particularly when the Sub-Registrar Arun Kankhar, is released on bail, I do not think that further incarceration of the Applicant is warranted. Hence the following order.

: **<u>ORDER</u>** :

(a) The application is allowed.

(b) Applicant – Nagesh Shivaji Khyatamavar shall be released on bail in C.R.No.60 of 2020 registered with Narpoli Police Station, Thane City on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(d) The applicant shall report the concerned police station once in three month, on first Monday of the month between 11.00 a.m. to 1.00 p.m., till further order.

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

**( SMT. BHARATI DANGRE, J.)**