IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1959 OF 2021

SANJAY PUNAMIYA)...APPLICANT

V/s.

STATE OF MAHARASHTRA)...RESPONDENT

WITH

INTERIM APPLICATION NO.2433 OF 2021

MILAN MANSUKHLAL GANDHI)...INTERVENOR

IN THE MATTER BETWEEN

SANJAY M. PUNAMIYA)...APPLICANT
V/s.

STATE OF MAHARASHTRA)...RESPONDENT

Mr.Niteen Pradhan, Senior Counsel a/w. Mr.Dilip Shukla,Advocate for the Applicant.
Mr.Ram Apte, Senior Counsel i/b. Mr.B.V.Salunkhe, Advocate for the Intervenor.
Mr.Shekhar Jagtap, Special Public Prosecutor for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 16th NOVEMBER 2021
PRONOUNCED ON : 22nd NOVEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 438 of the Code of Criminal Procedure (hereinafter referred to as the "Code") apprehending arrest under Section 420, 467, 468, 470, 471 of the Indian Penal Code (IPC) read with Section 13(1)(d) of Prevention of Corruption Act, registered vide Crime No.201 of 2016 with Police Station Thane.

2 The prosecution case as set out in the First Information Report (FIR) is thus :

Informant Milan Mansukhlal Gandhi is an Estate Agent and carrying Estate Agency in Mira-Bhayander area. He knows Shyamsunder Agarwal and his brother Muralidhar Agarwal since past about ten years as they are the owners of Satima Enterprises, Salasa Developers and Salgapur Developers. He was told by them that as the Urban Land Ceiling Act (hereafter referred to as ULC Act for the sake of brevity) was in force in Mira-Bhayander area, every builder constructing on ULC land has to pay a certain amount of money to the government for the construction project and if he wants to complete the construction without giving this share to the government, then they asked him the name of builder who needs the Certificate, as according to them Shyamsunder Radheshyam Agarwal had good acquaintance in Collector Office. In order to convince the informant, Muralidhar Agarwal showed him the certificate in respect of the land bearing old Survey No.663 (new Survey No.237) stating that the said land is exempted from the provisions of ULC Act. The informant was thus convinced. However, he realized that it was necessary to check the veracity of the matter before discussing the matter with any builder.

3 The prosecution then contends that the informant visited Mira-Bhayander Municipal Corporation in order to ensure that old Survey No.663 (new Survey No.237) having

construction plan has been duly approved on the basis of documents. The informant further found that the ULC order mentioned in the construction work of the building being constructed at old Survey No.664 and new Survey No.236 was also mentioned and non-agricultural permission was also obtained on the same basis. He was now fully convinced that Muralidhar Agarwal through his brother Shyamsunder Agarwal obtained the required Certificate from the ULC department.

4 According to prosecution, while the informant was searching for a builder, at that time, he met Kalpesh Balwand Patil, an Estate Agent in Bhayander area like him, who told him that not to trust Agarwal brothers and further that the ULC Certificate obtained by them was fake. Even he showed him the information secured through Right to Information Act (RTI). During discussion with one of his friends namely Ravi Shankar Sharma, the informant also showed him a photocopy of ULC Certificate of old Survey No.663 (new Survey No.237) obtained under RTI and also gave him a copy thereof. From the

documents the informant was convinced that Muralidhar Agarwal and his brother Shyamsunder Agarwal conspired to carry out the old Survey No.663 (new Survey No.237) admeasuring 23,340 sq. mtrs. and the certificates obtained from the ULC department was not legally obtained from the competent authority of the Upper District Collector. The said document was obtained by them in collusion with Additional Collector and competent authority of the concerned department of Mira-Bhayander Municipal Corporation and the permit was obtained on the basis of forged certificate. Thus, they caused loss to the government to the tune of Rs.11,16,69,600/- and on the basis of this, said FIR came to be registered and after due investigation the charge-sheet came to be filed.

5 Mr.Niteen Pradhan, learned senior counsel for the applicant, at the very outset, submits that despite filing of the charge-sheet, investigating agency commenced further investigation on the basis of certain complaints and arrested Satyawan Dashrath Dhanegave, Shekhar Kashinath Limaye and

Dilip Prabhakar Gheware. Even the present applicant who was witness earlier and whose statement was duly recorded under Section 161 of the Code is now also made an accused. At this juncture, the learned senior counsel was critical of the approach of the prosecution agency in as much as according to the learned senior counsel, no permission from the concerned trial Court was sought by the investigating agency to commence further investigation.

6 Dwelling further to the factual background of the case, the learned senior counsel submits that applicant's acquaintance namely Ratilal Jain somewhere in the year 2003 proposed him to start a business jointly. Accordingly, a partnership firm was formed in the name and style "Sandhya Enterprises" with three partners – Ratilal Jain, Sushil Mehta and the applicant herein. Ratilal Jain was an active partner and used to look after the affairs. In the month of August 2003, Ratilal Jain visited the applicant and informed him that Rakesh Manglya Mhatre had informed him that Survey No.569/1 is ready for sale

and accordingly, Ratilal Jain issued several cheques in favour of Rakesh M. Mhatre and his legal heirs. After handing over cheques to Rakesh M. Mhatre and his legal heirs, they were made to sign the Agreement and Power of Attorney of Rakesh M. Mhatre and his relatives. Then in the month of August 2005, Ratilal Jain informed the applicant and other partners that he is in need of money and therefore, he is desirous of selling the Survey No.569/1. However, the applicant and other partners advised Ratilal Jain that if he needed finance assistance, they would refund the amount that he had invested in the firm. Accordingly, a Deed of Retirement on 13th September 2005 was entered into and Ratilal Jain was given all the dues. Ratilal Jain then gave the original Agreement and Power of Attorney to the applicant.

7 The learned senior counsel further submits that after execution of the Retirement Deed, the applicant came to know that Survey No.569/1 has been sold by Rakesh Mhatre to one Vallabh Mulji Dhedia vide Agreement dated 24th April 2001 and

11th April 2001 and on that basis, Mutation Entry No.6161 came to be effected and accordingly 7/12 extract was also prepared. This was challenged by the applicant before Sub-Divisional Officer (SDO) who cancelled the said Mutation Entry No.616 and the names of Rakesh Mhatre and his legal heirs were restored vide Mutation Entry No.6186.

8 The learned senior counsel next submits that in the year 2006, the applicant applied for non-agricultural usage (NA for short) with the Office Collector, Thane and after due process the ULC department verified the ULC certificate as valid and legal and accordingly, NA order came to be passed on 10th April 2006.

9 The learned senior counsel lastly contends that the case of prosecution in short is that public servants namely Dhanegavi and Dilip Ghevare forged ULC certificate and which according to it was used by the applicant to get NA certificate dated 23rd October 2000 in conspiracy with each other to extend benefit to the builder which caused a loss of Rs.102 crores to the

State in Survey No.663, 664, 569/1, 661/1, 2, 3 and 662/2. According to the learned senior counsel, it is not the case of the prosecution that the applicant forged the ULC certificate. The responsibility of the alleged forgery, if at all, falls upon the said government servants namely Dhanegavi and Dilip Ghevare. The whole investigation is over. Even original certificate of ULC has been seized by the Investigating Officer and in such circumstances, there is no need of custodial interrogation. The learned senior counsel also placed reliance in **Sheila Sebastian vs. R. Jawaharaj & Anr. Etc.**[1] **Shri Gurbaksh Singh Sibbia and Others vs. State of Punjab**[2]**, Bhadresh Bipinbhai Sheth vs. State of Gujarat and Another**[3]**, Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others**[4]**, Sushila Aggarwal and Others vs. State (NCT of Delhi) and Another**[5]**, Mohammed Ibrahim and Others vs. State of Bihar and Another**[6]**, Joginder Kumar vs. State of U.P. and Others**[7]**, Mathloob Abdul Gafoor Qureshi vs. State of Maharashtra**

1 Criminal Appeal Nos.359-360 of 2010
2 (1980) 2 Supreme Court Cases 565
3 (2016) 1 Supreme Court Cases 152
4 (2011) 1 Supreme Court Cases 694
5 (2020) 5 Supreme Court Cases 1
6 (2009) 8 Supreme Court Cases 751
7 (1994) 4 Supreme Court Cases 260

and Anr.[8]**, Shyamsunder Radheshyam Agarwal vs. The State of Maharashtra**[9]**, Manoj Motaji Purohit vs. The State of Maharashtra with Ratilal Babhutmal Jain vs. The State of Maharashtra**[10].

10 Mr.Shekhar Jagtap, learned special public prosecutor, vehemently submits that the applicant purchased the subject land bearing Survey No.569/1 through his partnership firm, which was subsequently dissolved and he became the sole owner. Accordingly to the learned special public prosecutor, the applicant intentionally used the bogus / forged ULC certificate of the land bearing Survey No.569/1 at the time of executing and obtaining various instruments including Deed of Confirmation dated 18th May 2006, Agreement to Sell and General Power of Attorney in respect of land bearing Survey No.569/1, as well as obtaining N.A. NOC order dated 10th January 2006, NA dated 10th April 2006 and Completion Certificate dated 25th April 2006. The applicant later on sold the land at Survey No.569/1 to Siddharth Mahendra Mehta who is also his business associate.

8 1998 SCC Online Bom 772
9 Bail Application No.2482 of 2016 dated 9th December 2016
10 Bail Application No.1210 of 2017 and Bail Application No.1211 of 2017 dated 1st June 2017

The said Siddharth Mahendra Mehta on his part transferred the development rights of the land bearing Survey No.569/1 to various builders, as per instructions of the applicant, making him the ultimate beneficiary.

11 Apart from above subject land, the learned special public prosecutor also made reference to Survey No.661/3 and Survey No.530/1 and 532/3. According to the learned special public prosecutor, the applicant also acquired part of undivided land bearing Survey No.661/3 through his partnership firm and signed various documents on behalf of his partnership firm. The applicant was the sole owner of the property till 16th January 2007 when he sold the property to one Manharlal Balwantrai Mehta who carried on construction on the land. Here also, the applicant used bogus ULC certificate and relied on the ULC certificate at the time of executing the Agreement for Sale dated 16th January 2007.

12 The learned special public prosecutor next alleges that in the year 2004, the applicant in connivance with other accused namely Chandrashekhar Limaye, Dilip Gheware, Bhaskarrao Wankhede conspired to forge ULC certificate for the land bearing Survey No.569/1, 661/1,2,3 and 662/2 and showed that the said property fell in green zone. Although, the ULC certificate which was obtained through Chandrashekhar Limaye was shown to be issued on 23rd October 2000, however, the adhesive Court fee stamp is having date of 4th December 2001. Even according to the learned special public prosecutor, the applicant had conspired with the First Informant Milan Gandhi and submitted that the said First Informant after making representation to the Collector dated 14th June 2021 had filed Writ Petition No.2356 of 2021 wherein the present applicant was shown respondent no.5 and had shown his readiness and willingness to compensate the loss caused, if any, to the appropriate department of the said Office of Collector in relation to plot bearing Survey No.569/1 and 663/1 situate at Village Bhayander. The learned special public prosecutor then submits

that throughout the various transactions, the applicant was having deep knowledge that the document in question i.e. the ULC certificate is not a genuine document and despite that, he used it for his financial gains.

13 The learned special public prosecutor, during the course of arguments, also filed on record a tabular chart showing how the partnership firm was formed, transactions were entered into and how the applicant used forged ULC certificate bearing No.ULC/TA/ATP/2000/252 dated 23rd October 2000 for his financial gain. According to the learned special public prosecutor the investigation is in progress and in order to unearth the conspiracy and forgery which had led to huge loss of government exchequer, it is very much necessary to have the custody of the applicant so that the investigation can be carried out effectively. The learned special public prosecutor also placed reliance in **Mohammad Nazim vs. State of Himachal Pradesh**[11], **Chandrashekhar Murlidhar Dhavale vs. State of Maharashtra**[12],

11 2021 SCC Online HP 606
12 2020 SCC Online Bom 3722

Maruti Nivrutti Navale vs. State of Maharashtra and Another[13], P. Chidambaram vs. Directorate of Enforcement[14], Naushad Abdul Ali Shaikh vs. The State of Maharashtra with connected matters[15], State of Gujarat vs. Mohanlal Jitamalji Porwal and Another[16] and Suman Chattopadhyay vs. Republic of India[17].

14 Mr.Ram Apte, learned senior counsel for the intervenor/informant invited my attention to paragraphs 12 and 13 of the Intervention Application and submitted that baseless allegations have been leveled against the original complainant/ intervenor. On the contrary, according to him, the applicant cannot absolve his duty and responsibility to pay the loss caused to the government by filing the present anticipatory bail application and is liable to compensate the loss especially since he had undertaken in his Affidavit-in-Reply before the High Court. Thus, the present application does not deserve consideration and needs to be rejected, argued the learned senior

13 (2012) 9 Supreme Court Cases 235
14 (2019) 9 Supreme Court Cases 24
15 2016 SCC Online Bom 3403
16 (1987) 2 Supreme Court Cases 364
17 2021 SCC Online Ori 676

counsel.

15 On the basis of submissions advanced before me, following questions emerge for discussion –

(a) whether applicant, who is shown as a witness in Final Report submitted on 31st March 2017 be arraigned as an accused on the ground of "further investigation" without the permission of the concerned Court ?

(b) if yes, whether prosecution has been able to establish prima facie involvement of applicant-accused in alleged offences ?

The answer is an emphatic no. Let me qualify with reasons.

16 Pursuant to the complaint of Milan Mansukhlal Gandhi the said crime number under relevant sections of Indian Penal Code and Prevention of Corruption Act came to be registered and during course of investigation, which is apparent from the record, the applicant was summoned. It is further seen that the statement of present applicant came to be recorded on 11th December 2016 as a witness in connection with the said FIR

and after completion of investigation, the Final Report / charge-sheet came to be filed on 31st March 2017.

17 Before I go into the legal niceties, let me go through the statement of applicant dated 11th December 2016 so recorded by the Investigating Officer during the course of investigation. The applicant in his statement stated that on 2nd July 2003 a partnership firm in the name of "Sandhya Enterprises" consisting of himself, Ratilal Jain and Sushil Mehta came to be formed. Ratilal Jain then through one Arun Kadam of his office started interacting with one Rakesh Manglya Mhatre. Since the applicant and Sushil Mehta were busy in other business activities, all the responsibilities were handed over to Ratilal Jain. Somewhere in the month of August 2003, Ratilal Jain told the applicant and Sushil Mehta that said Rakesh Manglya Mhatre, owner of Survey No.569/1 is ready to sell the said land and he is required to be given a cheque in the sum of Rs.3,25,000/-. Therefore, the applicant and Sushil Mehta asked Ratilal Jain to give the cheque in the name of firm. After completion of talks with Rakesh

Manglya Mhatre, he and his relatives were summoned in the office by Ratilal Jain. The cheque was given and Rakesh Manglya Mhatre and his relatives executed Agreement and also signed Power of Attorney. On the next day, the applicant and Sushil Mehta went to the office of Ratilal Jain and put their signatures on Agreement and Power of Attorney.

18 It is further seen from his statement that in the month of August 2005 Ratilal Jain called him and Sushil Mehta and said that he is in need of money and therefore, the said land should be sold. However, he and Sushil Mehta advised that the applicant should take the amount invested by him in the said land and accordingly, the compensation was given to Ratilal Jain and a Deed of Retirement of his partnership was prepared on 13th September 2005. At that time, Ratilal Jain handed over Agreement, Power of Attorney and ULC certificate which was given to him by said Rakesh Manglya Mehta, to them. It is his further statement that meantime, he came to know that on 20th February 2006 one Vallabh Dedhia, a businessman, had

registered a Deed of Confirmation before Sub-Registrar, Thane, in respect of Survey No.569/1. When they confronted Ratilal Jain, he acknowledged that it was he who had entered into a transaction with Vallabh Dedhia but as the amount of transaction was not received by him, the transaction remained incomplete. This led to civil and criminal proceedings between them and said Vallabh Dedhia. Being fed up, he ultimately sold the said land i.e. Survey No.569/1 on 8th November 2006 to Siddharth Mehta of Balaji Developers for less consideration than the prevailing market rate.

19 It then appears that he was then shown the ULC certificate which was found during the house search panchnama of Manoj Purohit in respect of subject land and other lands and after perusal of it, he was of the opinion that it is a forged one. However, according to him, Ratilal Jain, despite having knowledge of this fact, did not tell him and rather concealed the said fact.

20 From the above, it is more than clear that the statement of the applicant was recorded in extenso and he had revealed all the relevant facts as to how the ULC certificate in question came firstly in possession of Ratilal Jain through Rakesh Manglya Mhatre and later on the same came to be seized from the house of Manoj Purohit.

21 Now is the time to perceive and ponder over question (a). It is quite disturbing that the Investigating Officer resorted to Section 173(8) of the Code after a long gap of six years. Section 173(8) of the Code provides as under :

> "173(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in

> relation to such report or reports as they apply in relation to a report forwarded under sub- section (2)."

A plain reading of the provision shows that the officer in charge must obtain **"further evidence"** apart from the **"Report"** submitted as per sub-section (2). Needless to say, after submission of Final Report / charge-sheet under Section 173(2) of the Code, the concerned Investigating Officer must obtain **"further evidence"** justifying or warranting **"further investigation".**

22 In **Vinay Tyagi vs. Irshad Ali**[18] the Hon'ble Apex Court made following observations :

> "22 "Further investigation" is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a "further investigation." Scope of such investigation is

18 (2013) 5 SCC 762

restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report.' 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation."

23 From the above observations, it is very much clear that the Hon'ble Apex Court categorically held that the "further

investigation" does not have the effect of wiping out previous investigation, rather it supplements the earlier investigation. A clear perception gaining ground is the exercise adopted and approached by the Investigating Officer is not less than re-opening and re-investigating the case afresh, contrary to mandate and dictum of Hon'ble Apex Court. Assuming that earlier investigation qua the applicant had gone haywire and the said fact dawned upon Investigating Officer subsequent to filing / submission of charge-sheet, then statutorily Investigating Officer was obliged to have brought the error to the knowledge of the concerned Court and obtain necessary permission. There is inscrutable silence of prosecution over this aspect. The learned special public prosecutor is tellingly silent on the approach adopted by the Investigating Officer. I, therefore, hold that the learned senior counsel for the applicant makes an eminent sense when he argues that the steps taken by the Investigating Officer do not satisfy the test of Section 173(8) of the Code in terms of "further investigation" vis-a-vis the permission and/or information to the concerned Court.

24 Assuming that all is well with the case of prosecution vis-a-vis the first question. The second question comes herein.

25 I have carefully gone through the investigation papers. The case put forth by the applicant is that he, Ratilal Jain and Sushil Mehta constituted a partnership firm as Ratilal Jain had proposed to purchase a land bearing Survey No.569/1 of Village Bhayander i.e. subject matter land belongs to one Rakesh Manglya Mhatre. Necessary Agreement and Power of Attorney were also executed between the parties. It is pertinent to note from record that "Certificate" dated 23rd October 2000 (Exh. C) which is ULC certificate in question, is in the name of Rakesh Manglya Mhatre pertaining to subject land and not in the name of the applicant. I have also an advantage to have statement of said Rakesh @ Babul Manglya Mhatre. According to him, in the year 2001, a transaction had taken place between him and Ratilal Jain through Arun Kadam. He and his representative had signed Development Agreement and had also given Power of Attorney to said Ratilal Jain, so as to obtain necessary

permission, who was running “Gagan Enterprises”. It appears that when he was shown an application addressed to Upper Collector and Competent Authority, purportedly signed by him in English in respect of issuance of Zone Certificate and non-applicability of the provisions of ULC Act in respect of Survey Nos.661, 662 and 569, he denied that it bears his signature. Similarly, he was shown the certificate bearing No.ULC/TA/ATP/ Certificate/2000/ 252 dated 23rd October 2000 i.e. ULC certificate in question, he again denied of having made any application in order to secure the said certificate either himself or through M/s.Vishesh Associates. Suffice it to say, this witness feigned ignorance in respect of ULC certificate in question. According to him, he neither had applied in person nor through agency so as to secure ULC certificate in respect of subject land and other lands. It is also pertinent to note that according to this witness, he had handed over Power of Attorney to Ratilal Jain to carry out further activities in respect of the land in question and other lands so as to obtain necessary certificates. Pertinently enough, this witness has not cast any aspersions on the role of the applicant herein, nor that Ratilal Jain adopted foul means to secure ULC certificate in question.

26 Coming to the ULC certificate in question, this certificate is endorsed by Additional Collector and competent authority in accordance with law. There is a letter (Exh. G) written by Additional Collector and competent authority, Thane Urban and Agglomeration, Thane to the Collector, Thane (Revenue Branch) informing him that certificate (Exh. C) dated 23rd October 2000 is valid as per Government Circular No.NAJAK 1022/ No.128/ULC 3 dated 25th November 2002. It is then seen from the record that the said ULC certificate in question came to be found during the house search panchnama of one Manoj Purohit. It is also relevant to note that the copy of the ULC certificate (Exh. K) was seized during the course of investigation and the original was kept with the police for sending it to Forensic Science Laboratory. Thus, the original ULC certificate in question is not forthcoming.

27 As against above, the case of prosecution is that the applicant was having all the knowledge since beginning that the document in question is not a genuine document and despite that he used the said forged document for financial gains. The learned special public prosecutor during the course of argument submitted the statements of various prosecution witnesses namely Rajiv Ganpat Rakvi, Harishchandra Atmaram Mhatre, Dwarkabai Kashinath Patil, Dilip Lalchand Porwal, Rakesh @ Babul Manglya Mhatre, Rashesh Manharlal Mehta, Sushil Mohanlal Mehta and others.

28 The statement of Rajiv Ganpat Rakvi shows that according to him, on 4th August 2004 applicant and others had proposed him to purchase his share of land. His statement then shows that he then came to know from the police that the ULC certificate in respect of 569/1, 661/1, 2,3, 662/2 was forged one. This statement does not in any manner help the prosecution, as far as the role of the applicant is concerned.

29 Harishchandra Atmaram Mhatre states that the part of Survey No.569/1 was given by his father and eight others for development to applicant by virtue of an Agreement and then he identified the signature of the applicant. Similar is the statement of Dwarkabai Kashinath Patil in respect of her share in Survey No.569/1, 661/1, 2, 662/2 being given to the applicant by virtue of an agreement and the agreement bears the signature of the applicant.

30 The statement of Dilip Lalchand Porwal is in the form of opinion and it appear that he has no personal knowledge.

31 The statement of Rakesh @ Babul Manglya Mhatre also shows that by virtue of an agreement dated 30th August 2003, he and eight others had given Survey No.569/1 for development and on the basis of ULC certificate given by Shekhar Limaye, the applicant had applied for permission of NA in respect of the said land.

32 The statement of Rakesh Manharlal Mehta then shows that applicant had given ULC certificate to his father in respect of transaction of Survey No.661/3.

33 Then there is statement of Sushil Mohanlal Mehta who was one of the partners of “Sandhya Enterprises”. According to him, he retired as a partner by Deed of Dissolution in 2006. The ULC certificate was used by the applicant in respect of Survey No.661/3 in order to get NA NOC and Completion Certificate. Interestingly, he does not say anywhere that the applicant was having the knowledge that the said ULC certificate was forged one. His statement also shows that he came to know only from the police that the said ULC certificate in question was a forged document.

34 Similarly, statement of Dhiraj Shyamji Vira shows that he came to know from the police that the ULC certificate in question was a forged one.

35 There is also a statement of Ratilal Bhagutmal Jain who was also a partner of M/s.Sandhya Enterprises. According to him, the ULC certificate in respect of Survey No.569/1, 661/1, 2, 3 and 662/2 was obtained by Mr.Chandrashekhar Limaye of Vishesh Associates from ULC Office, Thane, from Town Planner Dilip Ghevare.

36 Next is statement of Vishwarup @ Baban Shivaji Parkar. It appears that when he was shown the ULC certificate in respect of Survey No.569/1, 661/1, 2, 3 and 662/2 it was showing year 2000, but according to him it was written infact in the year 2004 and was typed at the residence of Gauri Sawant @ Vrushali Shinde. According to him, the Town Planner Shri. Dilip Ghevare, Bharat Kamble and the then Additional Collector Bhaskarrao Wankhede were involved in the forgery of the said certificate. They were helped by Bharat Kamble and Gauri Sawant.

37 On the other hand, statement of Bharat Kamble shows that they used to work under the direction of Town Planner Dilip Ghevare. So also Gauri Sawant @ Vrushali Shinde states in her statement that she had typed the certificate on the say of Baban Shivaji Parkar as he was directed to get the certificate typed by said Dilip Ghevare.

38 All the above referred statements do not, in any manner, prima facie indicate any constructive role played by the applicant in obtaining the ULC certificate. Merely making submissions that the applicant was having deep knowledge that the document in question is not a genuine one will not further the case of prosecution. It seems that the prosecution is harbouring only inferences, conjectures and surmises without any striking material. The same is not supported by equally and strong cogent and convincing material so as to prima facie establish the complicity of the applicant in the whole episode.

39 I have also carefully gone through the tabular chart submitted before me by the learned special public prosecutor during the course of arguments. It all depicts how the documents of Agreement and Power of Attorney were executed by land owners in favour of partnership firm of applicant and others, how Ratilal Jain and Sushil Mehta came to be retired from the said partnership firm and later on how the documents were recorded in his name. It also shows that from time to time the applicant used the ULC certificate in question before the Revenue Authority. I have already pointed out and again reiterate at the cost of repetition that except inferences of hand in glove with the other accused, no positive prima facie evidence is forthcoming, and therefore, in my view, this chart also will not further the case of prosecution.

40 In the case of **Bhadresh Bipinbhai Sheth (supra)** the Hon'ble Apex Court has enumerated following factors and parameters which need to be taken into consideration while considering anticipatory bail application :

"(x) The following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused in entitled to an order of bail."

41 Similarly, in **Siddharam Satlingappa Mhetre (supra)** the Hon'ble Apex Court has held that there is no requirement to make out a special case under Section 438 of the Code. The applicant is only required to make out a prima facie case to seek relief from the Court under Section 438 of the Code.

42 What is apparent from the record is that government servants Satyawan Dashrath Dhanegave, Shekhar Kashinath Limaye and Dilip Prabhakar Gheware and others were instrumental in forging the ULC certificate in question. I have already pointed out that no satisfactory evidence is forthcoming to point out prima facie involvement of the applicant. What is

apparent from the record is that the investigating agency has seized / gathered all the documents evidencing transactions pertaining to subject land and other lands, at the time of filing of charge-sheet only. The submission of the learned senior counsel for the applicant could not be scoffed out of significance when he argues that the custody of the applicant is unwarranted.

43 Even otherwise, the case of prosecution is that the ULC certificate in question was forged. According to the definition of **"forgery"** – whoever makes any false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits "forgery". Similarly, a person is said to have made a **"false document"** if (i) he makes or executes a document claiming to be someone else or authorised by someone else, or (ii) he alters or tampers a document, or (iii) he obtains a

document by practicing deception or from a person not in control of his senses. From the above, it is clear that the definition of “false document” is part of definition of “forgery”. Both goes hand in hand and must be read together.

44 Next, “forgery” and “fraud” are essential matters of evidence which could be proved as a fact by direct evidence or from inferences drawn from proved facts. In the case in hand, I have pointed out, no such material is forthcoming to enable me to draw atleast prima facie inference that it was the applicant who contributed, in any manner, towards the act of forgery. The prosecution will have to wait till the necessary evidence tested by cross-examination is led by the prosecution.

45 I have also gone through the various judgments relied by the learned special public prosecutor. In my considered opinion, those citations have no bearing to the case in hand as they are distinguishable on facts.

46 That must having been said, it must once again be stressed that the applicant deserves to be granted anticipatory bail.

47 In view of the foregoing discussion, I pass the following order :

ORDER

1 The application is allowed.

2 In the event of his arrest in Crime No.201 of 2016 for the offences punishable under Section 420, 467, 468, 470, 471 of the Indian Penal Code (IPC) read with Section 13(1)(d) of Prevention of Corruption Act, registered with Police Station Thane, the applicant be released on bail on his executing P.R.Bond in sum of Rs.1,00,000/- with 1/2 surety in like amount.

3 The applicant is directed to co-operate with the investigation and shall join the investigation thrice in a week i.e. on Monday, Tuesday and Wednesday between 11.00 a.m. to 2.00 p.m. till the filing of charge-sheet.

4 Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

5 It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

6 The application stands disposed off accordingly.

7 The Interim Application is allowed and stands disposed off accordingly.

(V. G. BISHT, J.)