

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

BAIL APPLICATION NO.1099 OF 2022

Shaikh Ashfaq Shaikh Gouspasha ... APPLICANT

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Mr. H.V. Tungar, Advocate for applicant
Mr. N.T. Bhagat, A.P.P. for respondent – State
Mr. Y.B. Pathan, Advocate for Wakf Board
.....

WITH

BAIL APPLICATION NO.1158 OF 2022

Mujahed s/o Shaikh Mujib ... APPLICANT

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Mr. Rajendra S. Deshmukh, Senior Counsel with
Mr. Devang R. Deshmukh, Advocate for applicant
Mr. N.T. Bhagat, A.P.P. for respondent – State
Mr. Y.B. Pathan, Advocate for Wakf Board
.....

CORAM : R. G. AVACHAT, J.

DATE : 19th AUGUST, 2022.

PER COURT :

Heard. Both these applications for bail under
Section 439 of the Code of Criminal Procedure are taken up
together since they arise from one and the same crime. The

applicants have been arrested in connection with Crime No.0474/2021, registered at Shivaji Nagar Police Station, Beed for the offences punishable under Sections 409, 420, 467, 468, 471, 120-B, read with Section 34 of the Indian Penal Code and Section 52-A(2) of the Wakf Act, 1954.

2. The First Information Report (F.I.R.) has been lodged by the District Wakf Officer on 29/12/2021. As per the case of the prosecution, lands Survey Nos.22 and 95 belong to Dargah Shahenshah Wali. One Habibuddin was Inamdar of the said Dargah. There is order dated 2/2/1982 issued by the Deputy Collector, Land Reforms, Beed, declaring the said land to be Madadmash land. Madadmash means the land could be alienated with permission of the Deputy Collector. According to the informant, this order is forged one.

3. The applicants before this Court claim to have in fact been victims. According to them, they have purchased portion of land Survey No.22 for valuable consideration. There are four purchasers including the present applicants. All the four have purchased the land under one and the same sale deed. The applicant in Bail Application No.1099/2020 has paid the amount of consideration by cheque. However, the cheque was not presented for encashment. The applicant in

Bail Application No.1158/2022 has paid the amount of consideration of Rs.15,00,000/-.

4. The learned A.P.P. and learned Advocate Mr. Y.B. Pathan for the Wakf Board would submit that, the original order that was passed way back in 1982 is forged one. The land is unalienable. He would further submit that, part of the land Survey Nos.22 and 95 has been acquired for Solapur – Dhule National Highway. The learned A.P.P. would urge for rejection of the bail applications.

5. Considered the submissions advanced. Perused the F.I.R. and related papers. On investigation, the charge sheet has been filed. The present applicants and two other co-accused are alleged to have purchased unalienable land. It appears that, some of them have paid consideration by R.T.G.S. The learned counsel informs that, the possession has not been received under the sale deed. As such, according to them, the applicants have suffered monetary loss. They have been behind the bars since 14/3/2022. Similarly placed co-accused has been granted bail. The question is, whether the original order which dates back to 1982 was forged one, it is a case based on documentary evidence. The applicants have not received possession of the land. On the contrary some of

the purchases have parted with money. Whether they got title to the land under the sale deed would be a matter to be decided by the Civil Court. As such, in the facts and circumstances of the case, the applicants deserve to be released on bail. Hence the order :

ORDER

- (i) The Bail Applications are allowed.
- (ii) The applicants be released on bail in connection with Crime No.0474/2021, registered at Shivaji Nagar Police Station, Beed for the offences punishable under Sections 409, 420, 467, 468, 471, 120-B, read with Section 34 of the Indian Penal Code and Section 52-A(2) of the Wakf Act, 1954 on their furnishing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) each with one surety in the like amount.
- (iii) The applicants shall not tamper with the prosecution evidence.

**(R. G. AVACHAT)
JUDGE**

fmp/-