Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2437 OF 2025

Asif Mansoor Shaikh … Applicant

V/s.

State of Maharashtra … Respondent

Mr. Rajendra Rathod a/w Ali Bubere a/w Umar Dalvi a/w Dalvi with Mr. A. Shaikh, for the Applicant.

Mr. Prasanna P. Malshe, APP for the State – respondent.

Mr. Anand Chandu Rathod, PSI, Shantinagar Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 21, 2025

P.C.:

1. The present application is preferred by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking his release on regular bail in connection with Crime Register No. I-50 of 2023, registered with Shantinagar Police Station. The applicant is facing prosecution for offences punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860.

2. As per the case of the prosecution, the informant was in the process of searching for a residential house in Bhiwandi city. During such inquiry, it came to light that the applicant was allegedly constructing a 7-storeyed building named “Mehmood Residency” at Salamatpura, Nagaon–2, Bhiwandi, without obtaining proper permission or sanction from the competent authority. It is the specific allegation that the applicant, with dishonest intention, produced a false and fabricated building plan dated 6th May 1997 (bearing No. T/P/97), purportedly sanctioned by the Bhiwandi-Nizampur City Municipal Corporation (BNMC), and also relied on a forged building permission dated 12th April 1994 (No.127). It is alleged that despite being fully aware that the construction was unauthorized and illegal, the applicant intentionally misled the informant and the government authorities. Based on these allegations, a complaint came to be lodged by the informant, leading to registration of the present crime against the applicant and two other co-accused. The applicant's earlier prayer for bail before the learned Sessions Judge was rejected, and being aggrieved thereby, the present bail application has been moved before this Court.

3. The learned Advocate appearing for the applicant submitted that initially, the applicant had filed an application for anticipatory bail before this Court, wherein he was granted interim protection. Subsequently, the applicant also approached the Hon'ble Supreme Court by filing a Special Leave Petition, wherein he continued to enjoy interim protection. However, the anticipatory bail application eventually came to be rejected by this Court with liberty to the applicant to apply for regular bail. Thereafter, he filed a regular bail application before the learned Sessions Judge, which also came to be rejected. Hence, the applicant is before this Court seeking regular bail.

4. It is further submitted on behalf of the applicant that the co-accused, namely Faiyaz Shaikh, has already been granted bail. It is contended that the primary role in preparing forged documents and carrying out construction lies with the owner of the land/building, who was having a 50% share in the construction. It is therefore urged that the applicant cannot be held solely responsible for any fabrication or forgery of documents, including the building permission. It is pointed out that the charge sheet in the matter has already been filed and that the applicant has voluntarily surrendered before the learned Judicial Magistrate First Class on 4th March 2024. Hence, it is submitted that further custodial detention of the applicant is not warranted, particularly when investigation is complete and trial is likely to take time.

5. Per contra, the learned APP has strongly opposed the grant of bail to the applicant. It is submitted that the applicant was authorised by a registered Power of Attorney executed in his favour, which contains a specific clause (Clause 21) empowering him to apply for building permission and to carry out construction in accordance with such permission. It is the prosecution's case that the applicant, in exercise of such authority, forged the permission documents and misrepresented facts before innocent investors. It is further submitted that the applicant accepted Earnest Money Deposits and entered into agreements to sell flats by portraying the construction to be duly sanctioned under the provisions of the Maharashtra Regional and Town Planning Act, 1966. However, only after the informant took possession of the flat, a notice was issued by the planning authority on 27th June 2022 stating that the construction was wholly unauthorized and liable to be demolished.

6. The learned APP further submitted that the applicant was duty-bound to obtain requisite permissions from the planning authority but, instead, relied upon forged documents to gain unlawful advantage. The Municipal Corporation has categorically stated that no building permission bearing No.127 dated 12th April 1994 exists in their records. The applicant is alleged to have collected crores of rupees from multiple flat purchasers on the strength of such forged permissions, and that large amounts are yet to be recovered. Though the applicant was protected by interim orders during the investigation, the nature and gravity of the offence, the magnitude of fraud, and the role played by the applicant, who is the developer and the principal beneficiary of the forgery, distinguish his case from that of the co-accused. It is therefore submitted that the applicant does not deserve to be enlarged on bail, and the application be rejected.

7. I have carefully considered the rival submissions advanced by the learned counsel for the applicant and the learned APP for the State. I have also perused the material placed on record including the FIR, the charge-sheet, and the relevant documents relied upon by both sides.

8. The allegations against the applicant are not only grave but also reveal a well-orchestrated act of deception, having far-reaching consequences for innocent members of the public. It is the prosecution's specific case that the applicant, acting as a developer, has intentionally forged and fabricated a building plan and building permission. These forged documents, purportedly issued by the Bhiwandi-Nizampur City Municipal Corporation, were used to falsely represent that the construction of a 7-storeyed building named “Mehmood Residency” was duly sanctioned and approved by the competent planning authority.

9. The material on record prima facie supports the contention that the applicant used these forged permissions to enter into agreements with unsuspecting purchasers, including the informant, and collected substantial amounts of money on the false pretext of selling lawfully constructed residential premises. Such conduct demonstrates a clear and conscious intention on the part of the applicant to misrepresent facts and mislead flat purchasers, thereby inducing them to invest in an unauthorized and illegal construction.

10. What aggravates the seriousness of the offence is the fact that the alleged forged documents were not incidental or minor in nature, but went to the very root of the legality of the entire construction project. The act of falsely portraying the building as legally approved by the Municipal Corporation and using such misrepresentation as a tool to extract money from investors, reflects an element of calculated fraud. The applicant, being the developer, cannot be said to be unaware of the mandatory requirement of obtaining proper sanction before commencing construction. Despite being vested with the authority under a registered Power of Attorney to seek such permissions, he allegedly chose to rely on fabricated documents and continued the construction, thereby jeopardizing not only the investment but also the shelter of innocent purchasers.

11. Moreover, such fraudulent activities in the realm of real estate development are not only offences against individual victims but have wider ramifications on public trust in the regulatory system and the housing sector as a whole. The offence in question is not a mere private dispute, but involves a systematic misuse of authority, breach of trust, and fraudulent representations resulting in significant financial losses to the public. In this backdrop, the nature and seriousness of the accusations, coupled with the strong prima facie material on record, leave no doubt that the applicant played an active and central role in the commission of the offence.

12. The documents placed on record, particularly the registered Power of Attorney executed in favour of the applicant, clearly show that the applicant was legally authorised and empowered to apply for building permissions and to carry out construction strictly in accordance with law. A specific clause, Clause 21, expressly mandates that the applicant was to take necessary permissions from the competent planning authority, including the Municipal Corporation, and proceed with the construction only after obtaining such approvals.

13. This express delegation of responsibility under the Power of Attorney leaves no doubt that the applicant was duty-bound to ensure that all statutory and regulatory requirements, especially those under the Maharashtra Regional and Town Planning Act, 1966, were strictly complied with. In such a scenario, the applicant cannot shift the burden or blame upon any other co-accused or third party, including the landowner, since the duty to procure valid permissions was legally assigned to him.

14. However, the material placed on record, including the charge-sheet and the report from the Municipal Corporation, prima facie reveals that the applicant failed to obtain any lawful or genuine building permission from the Corporation. On the contrary, he is alleged to have forged and fabricated a building plan and a permission letter, and used those forged documents to carry out construction of a multi-storeyed building without lawful authority.

15. Further, after undertaking this unauthorized construction, the applicant proceeded to enter into agreements with flat purchasers and accepted substantial amounts of money by portraying the project as duly sanctioned. Innocent purchasers, having been misled by these forged permissions and the appearance of legality, parted with their hard-earned savings to purchase homes in a building that was, from its very inception, illegal.

16. This conduct of the applicant reflects not only a clear violation of legal obligations but also a deliberate and dishonest intent to commit fraud on unsuspecting members of the public. The fraudulent use of forged documents to facilitate illegal construction and collect crores of rupees from the public constitutes a serious economic offence, which must be treated with due seriousness by the Court.

17. In economic offences involving breach of trust and fraud, the custodial role of the accused becomes even more significant, especially when public confidence and systemic integrity are at stake. In the present case, the materials show that the applicant, despite being in a position of trust and responsibility, acted in clear violation of law, causing financial and emotional distress to multiple individuals.

18. Therefore, keeping in view the role of the applicant as the developer, the express responsibility cast upon him under the Power of Attorney, and the prima facie material suggesting deliberate forgery and unauthorized construction, this Court is of the opinion that the applicant is not entitled to the relief of bail at this stage.

19. The submission that the co-accused has been released on bail does not help the applicant, inasmuch as the role attributed to the applicant is distinct and graver. It is the applicant who has acted as the developer, forged the documents, and entered into agreements for sale with multiple flat purchasers. The co-accused, on the other hand, does not appear to have played a similar or leading role in forging documents or inducing investors.

20. The charge-sheet further discloses that the concerned Municipal Corporation has confirmed that the building permission relied upon by the applicant does not exist in its records. The gravity of the offence is also evident from the fact that the entire building constructed on the basis of such forged permission is now declared unauthorized, and subject to demolition proceedings. The public at large has been defrauded of crores of rupees, and the total financial impact of the offence is substantial.

21. Though it is true that the charge-sheet has now been filed and the applicant has surrendered, however, considering the seriousness of the allegations, the magnitude of fraud, and the adverse impact on the general public, this Court is of the opinion that this is not a fit case for grant of bail. Merely because the applicant remained protected for certain periods by way of interim relief during the pendency of his anticipatory bail proceedings, does not entitle him to regular bail as a matter of right.

22. Further, the economic offences involving fraud, forgery and cheating, particularly when they affect public interest and involve abuse of the trust of multiple investors, must be viewed with seriousness. Such offences have deep-rooted impact on the economy and public faith, and the conduct of the applicant, prima facie, appears to be deliberate and well-planned. The custodial interrogation may not be necessary post charge-sheet, but the applicant's release at this stage is likely to hamper the confidence of affected investors in the legal process.

23. In view of the aforesaid reasons and considering the overall facts and circumstances of the case, this Court is not inclined to exercise discretion in favour of the applicant. The application lacks merit and deserves to be rejected.

24. Accordingly, the bail application is rejected.

25. The Bail Application stands disposed of.

(AMIT BORKAR, J.)