

**Court No. - 16**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 1007 of 2024

**Applicant :-** Arsheen Faridi Khan

**Opposite Party :-** Directorate Of Enforcement, Lucknow Zonal Office Lko.

**Counsel for Applicant :-** Pranshu Agrawal, Mohammed Samar Ansari, Mohd. Yasir Abbasi, Nadeem Murtaza

**Counsel for Opposite Party :-** Kuldeep Srivastava

**Hon'ble Mohd. Faiz Alam Khan, J.**

1. Heard Shri Nadeem Murtaza, learned counsel for the applicant as well as Shri Kuldeep Srivastava, learned counsel appearing for Directorate of Enforcement and perused the record.

2. This anticipatory bail application has been moved by the accused/applicant- **Arsheen Faridi Khan** for grant of bail, in ECIR No. ECIR/LKZO/55/2021, under Section 3 and 4 of Prevention of Money Laundering Act, 2002, Police Station Directorate of Enforcement, Lucknow Zonal Office, District Lucknow, with the prayer to enlarge her on anticipatory bail as she is apprehending arrest in the above-mentioned case.

3. Learned counsel for the applicant submits that the applicant has falsely been implicated in this case and he has not committed any offence as claimed by the Enforcement Directorate nor she received, possessed or dealt with any property which may be termed as proceeds of crime.

4. It is vehemently submitted that initially the grand father of the applicant and his real brother were owners and co-sharers of House No. 91, Motilal Bose Road, Lucknow and another Kothi namely, Faridi Building situated at Hazratganj, Lucknow and they created a Waqf Alal Aulad on 09.11.1945 'Waqf Faridi' by means of a registered deed of Wakf and dedicated the same for the benefit of their descendants as well as for some charitable purposes. The aforesaid Waqf was registered with Uttar Pradesh Sunni central Board of Waqf.

5. It is also submitted that in pursuant to the permission granted by the District Judge the grand father of the applicant sold certain properties of Waqf by executing sale deed on 04.05.1960 in favour of Sunni Central Board of Waqf, U.P. and

out of the consideration of the aforesaid property purchased lease hold properties bearing Plot no. 23 -B, Ashok Marg and Plot No.3/1, New Berry Road, Lucknow, the lease of which was expiring on 31.03.1991 and 27.03.1999, respectively.

6. It is further submitted that in the wake of the properties ceasing to be Waqf Properties with the lapse of the term of lease the father of applicant moved application before the U.P. Sunni Central Waqf Board for deletion of these properties from its record. However, the said application was rejected by the Waqf Board, despite holding that the properties in question may not be Waqf properties and its retention in the record of the Board is not proper.

7. It is also submitted that the father of the applicant filed a case before the Waqf Tribunal against the said order and vide order dated 4.7.2018 the Waqf Tribunal directed the U.P. Sunni Waqf Board to delete the above mentioned properties from their record and the properties were in fact deleted from the Waqf No. 42-A and thereafter the Plot No. 3/1, New Berry Road, Lucknow was transferred to the father of the applicant on 21.8.2018 by Nazul Adhikari/ L.D..A. after taking necessary approvals through registered Free Hold Deed for sale consideration of Rs 1,78,22,934/-

8. It is also submitted that father of the applicant, namely, Dr. Abdul Jalil Faridi also executed a Will in favour of his three daughters, i.e. applicant and her two sisters, namely, Farha Arif and Anush Faridi on 9.4.1918 and Anush Faridi was also appointed as 'Mutawalli' of the 'Waqf Faridi' pertaining to the Waqf Property No. 3, situated at 91, Motilal Bose Road, Lucknow and Property No. 4, Faridi Building, Hazratganj, Lucknow.

9. It is further submitted that the father of the applicant has also executed an agreement of sell in favour of Shri Shailesh Kumar with regard to the Property No. 3/1, New Berry Road, Lucknow on 6.6.2018 for consideration of Rs.4,40,00,000/-, out of which Rs., 60,00,000/- were paid as advance money, however, unfortunately the father of the applicant has died on 18.4.2018 and by virtue of 'Will' made by him his three daughters (including applicant) became owner of the Free Hold Properties and in pursuance of the above agreement to sell executed by their father the sale deed was executed by the applicant, namely, Arsheen Faridi and her other two sisters on 24.12.2018 with regard to the property no. 3/1, New Berry Road, Lucknow.

10. It is also submitted that thereafter aunts of the applicant, namely, Mrs. Amina Jung and Ms. Nasima Aziz sent a legal

notice on 24.02.2020 with regard to the aforesaid properties stating that these properties have been wrongly converted into non-waqf property by late father of the applicant and suitable reply to the said notice was given on 2.3.2020 and aggrieved by the same on false claims the sister of the father of the applicant had lodged a First Information Report bearing Case Crime No. 0277/2020, under Sections 406, 420, 120-B of IPC, Police station Hazratganj, District Lucknow (predicate offence) and without making proper investigation the charge sheet was submitted therein under the pressure made by the complainant, namely, Amina Jung, wife of Mr. Najeeb Jung, however the applicant was neither named therein nor chargesheeted and it is only in the complaint filed by the Enforcement Directorate the name of the applicant has surfaced as an accused.

11. It is further submitted that the Enforcement Directorate has not considered this aspect of the matter that the property in question has been declared Non-Waqf by an order passed by the Waqf Tribunal and the remedy against that order lies in approaching any higher forum.

12. It is also submitted that the order passed by the Waqf Tribunal has also been challenged by the complainant Mrs. Amina Jung by filing a Civil Revision (Defective) No. 40/2020 and a Coordinate Bench of this Court, vide order dated 22.2.2021 had not interfered with the judgment of the Waqf Tribunal and only a direction was given not to create any third party rights and now the case has been remanded back to the Tribunal for deciding it afresh.

13. It is further submitted that allegations for invoking Prevention of Laundering Act against the applicant are pertaining to converting the Waqf Property into Non-Waqf Property, however, it has not been considered by the Enforcement Directorate that the property in question has been converted into Non-Waqf Property by an order of a competent Tribunal and also that a leased property may not be given in the Waqf and it is evident that the Enforcement Directorate was acting under sheer pressure of complainant Amina Jung.

14. It is also submitted that even if all the contentions of the complaint is believed it will emerge that a civil dispute has been given the colour of criminal prosecution and considering this a Coordinate Bench of this Court has stayed the proceedings of that case.

15. It is vehemently submitted that the allegations have also been levelled against the husband of the applicant of procuring order from Waqf Tribunal pertaining to declaration of property

in question as Non-Waqf, however, neither any officer or official of the Waqf Tribunal has been arrayed as an accused and the purchaser of the sale deed executed by the applicant has also not been arrayed as an accused and as much as the third daughter of the father of the applicant, namely, Farha has also not been prosecuted and her accounts are also not attached/seized.

16. Learned counsel for the applicant has also relied on following case laws:-

(1) ***Saumya Chaurasia Vs. Directorate of Enforcement*** 2023 SCC OnLine SC 167

(2) ***Vijay Madan Lal Chaudhary Vs. Union of India***, MANU/SC/0924/2022

(3) ***M/s Bharati Cement Corporation Pvt. Ltd. v/s Directorate of Enforcement*** (Criminal Revision No.87 of 2021) vide its order dated 08.09.2022.

(4) ***Mst. Peeran vs. Hafiz Mohyammad Ishaq*** AIR 1966 All. 201.

(5) ***Satender Kumar Antil vs. Central Bureau of Investigation & another***, 2022 SCC OnLine SC 825.

17. It is further submitted that the summons have been issued in this case by the Special Court after taking cognizance and applicant is apprehended that when she will appear before the Court below for seeking regular bail she may be taken into custody and though she has not been arrested by the Investigating Officer she is having apprehension of being arrested by the court. The complaint in this case has already been submitted. The applicant would cooperate in the trial also.

18. Shri Kuldeep Srivastava, learned counsel appearing for the Enforcement Directorate, vehemently opposes the prayer of bail of the applicant and submits that as per the evidence collected during the investigation conducted by the Enforcement Directorate, it is evident that the properties in question were Waqf properties and the lease rights of the aforesaid property were purchased by Dr. Abdul Jalil Faridi as Mutawalli of 'Faridi Waqf' from Sunni Central Waqf Board through a sale deed dated 31.10.1961, therefore the property in question was Waqf, however, he moved an application to delete these properties from the Waqf which was rejected by the Waqf Board, however, Dr. Abdul Jalil Faridi somehow managed to get the sale deed executed in his personal name by the Nazul Department.

19. It is further submitted that on one hand Dr. Abdul Jalil Faridi managed to get the lease deed executed in his personal name and on the other he keep on moving applications before the Waqf Board for deletion of the lease property from the list of Waqf.

20. It is further submitted that a conspiracy was hatched to alienate properties of Faridi Waqf and to use sale proceeds for personal enrichment of the conspirators, i. e. husband of applicant, Anush Faridi, Saqib Khan and applicant and immediately after the death of Dr. Abdul Jalil Faridi on 18.10.2018, the sale deed was executed by Anush Faridi, Arsheen Faridi and Farha Arif on 24.12.2018 in respect of plot no. 3/1, New Berry Road, Lucknow for considering of Rs. 4,40,00,000/- and the money has been misappropriated.

21. It is also submitted that the accused persons have gained Rs. 10.92 Crores as proceeds of the crime and the instant applicant is the daughter of Dr. Abdul Jalil Faridi and her husband has assisted her father in getting favourable orders from the Waqf Tribunal and Sunni Central Waqf Board pertaining to the properties in question and also in removing the documents from the file of Waqf Board.

22. It is also submitted that the applicant was/is actively involved in generation of proceeds of crime and also in misappropriating the same.

23. Shri Kuldeep Srivastava has also drawn the attention of this Court towards the various entries made in the diary allegedly written by Dr. Abdul Jalil Faridi and submits that involvement of the applicant in procuring an illegal order from the Waqf Tribunal or Waqf Board is evident from records.

24. It is also submitted that having regard to the twin conditions enumerated in Section 45 of P.M.L Act the applicant is not entitled to be released on anticipatory bail.

25. Learned counsel for Enforcement Directorate in support of his submissions have relied on ***Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation (2013)7 SCC 439, State of Bihar and another Vs. Amit Kumar (2017)13 SCC 751, Rohit Tandon Vs. DOE (2018) 11 SCC 46 as well as Vijay Madanlal Chaudhary Vs. Union of India. Directorate of Enforcement Vs. M. Gopal Reddy and another 2022 SCC OnLine SC 1862, Manish Sisodia Vs. Central Bureau of Investigation 2023 SCC OnLine SC 1393, Ram Kishor Arora VS. Directorate of Enforcement 2023 SCC OnLine SC 1682.***

26. Having heard learned counsel for the parties and having perused the record it would reveal that the allegations against the applicant as is evident from the record are to the tune that applicant before this Court is one of the three daughters of late Dr. Abdul Jalil Faridi and her husband Mohd. Mustafa Khan used to visit late Abdul Jalil Faridi regularly and assisted/helped him in his daily activities including delisting of Waqf Property from the register of waqf and illegal sale of the same and also of misappropriation of the proceeds of crime.

27. It is also alleged that the husband of applicant had helped late Abdul Jalil Faridi in conversion of Waqf Property bearing Plot No. 3/1, New Berry Road, Lucknow as non Waqf Property and he was also instrumental in getting favorable orders from Waqf Tribunal and Sunni Central Waqf Board pertaining to deletion of these properties from the register of Waqf and he was also involved in generation of proceeds of crime by late Abdul Jalil Faridi and misappropriating the same and in this regard in furtherance of a conspiracy hatched with Abdul Jalil Faridi he laundered an amount of Rs.6.52 Crores out of the sale proceeds of the said immovable property.

28. The record would reveal that there are certain facts which are undisputed between the parties. It is not disputed that two properties were given in Waqf by late Abdul Jalil Faridi and his brother by a Waqf deed dated 9.11.1945 and one of the said properties was sold on 4.5.1960 in favour of Sunni Central Waqf Board, U.P. and thereafter two properties were purchased by Dr. Abdul Jalil Faridi, one bearing Plot No. 3, Ashok Marg Lucknow on 4.8.1960 and second property bearing plot no. 3/1, New Berry Road, Lucknow on 31.10.1961.

29. It is also not disputed that the property bearing plot no. 3/1, New Berry Road, Lucknow could not be entered in the Certificate of registration of Waqf and applications were moved by Dr. Abdul Jalil Faridi for deleting his properties from the list of Waqf Properties registered at U.P. Sunni Central Waqf Board.

30. It is also not in dispute that late Dr. Abdul Jalil Faridi has approached this Court by filing a Writ Petition No. 21686(M/B) of 2017 seeking a direction for the Waqf Board to decide his application for deletion of Waqf Properties from Register of Waqf expeditiously and an order was passed by a Division Bench of this Court on 9.10.2017 directing the Waqf Board to pass an order strictly in accordance with law within a period of six weeks.

31. It is also not in dispute that the Waqf Board vide its order dated 27.2.2018 though opined that as the terms of lease of the

properties entered as Waqf has expired the Waqf therefore ceased to be in existence to the extent of the properties of plot no. 3/1, New Berry Road, Lucknow and house no. 23-B, Ashok Marg, Lucknow however rejected the application of Dr. Abdul Jalil Faridi on the ground that the Waqf Board has put a restraint upon itself by passing a resolution not to delete any such property and it is also not disputed that thereafter the matter was taken up to the Waqf Tribunal and Waqf Tribunal vide its order dated 4.7.2018 declared the aforesaid properties as non-waqf properties and further directed the Waqf Board to delete it from its record.

32. It is also not in dispute that on 21.8.2018 the property situated at plot no. 3/1, New Berry Road, Lucknow was transferred to the father of the applicant by Nazul Adhikari, L.D.A. after taking necessary approvals for a sale consideration of Rs. 1,78,22,934/- and also that these properties were given to his daughters by late Abdul Jalil Faridi by executing a Will dated 9.4.2018.

33. It is also not in dispute that the order of the Waqf Tribunal dated 4.7.2018 was challenged by the complainant of the predicate offences by filing a Civil Revision (Defective) No. 40/2020 before this Court and it was vide order dated 22.2.2021 passed therein the respondents were restrained from creating any third party risk and it is informed that this revision has been decided and the matter has been remanded back.

34. The question which is involved in this case is with regard to the fact that as to whether any property which has been leased for a definite period may be given in waqf or if given may continue to be as a waqf property even after expiry of term of the lease period and the said question, in the considered opinion of this Court may only be decided in Civil litigation for which a civil revision was instituted by the complainant of predicate offence and is stated to have been remanded by Coordinate Bench of this Court to the Tribunal to decide afresh.

35. The trial with regard to the predicate offences has also been stayed by a Coordinate bench of this Court, vide order passed in an application moved by the applicant under Section 482 Cr.P.C. till the next date of listing and admittedly the applicant was not named in the FIR of the predicate offence and nor chargesheeted and her complicity has surfaced in the complaint filed by Investigating Officer.

36. This Court is of considered view that the sting of twin conditions mentioned under Section 45 of the PMLA would depend upon the nature of accusation/ allegations levelled and

the material collected/ available in support of the same. In the instant dispute genuine questions of law and facts are involved and adjudication of the same is still pending before the Tribunal as the civil revision filed by the complainant of predicate offences against the order of the Waqf Tribunal has been decided and the matter has been remanded back to the Tribunal for deciding it afresh and rights with regard to the property in question. The applicant before this Court is not a flight risk and there appears no possibility of her tampering with the evidence or influencing witnesses as the evidence placed against the applicant is mainly of documentary nature she has also not been arrested by the Investigating Officer during the course of investigation and now complaint has been filed. Co-accused Mohd. Mustafa Khan has already been granted bail by this Court.

37. In view of all the facts, material and circumstances of the case and also keeping in view the nature of dispute existing between the parties the twin conditions as mentioned under Section 45 of P.M. L. Act stands satisfied and in the considered opinion of this Court keeping in view of the law laid down by in *Satender Kumar Antil Vs. Central Bureau of Investigation and others* : (2021) 10 SCC 773, *Siddharam Satlingappa Mhetre v. State of Maharashtra (2011) 1 SCC 694 as well as in Sushila Aggarwal v. State (NCT of Delhi) (2020) 5 SCC 1, Gurbaksh Singh Sibbia and Ors. v. State of Punjab MANU/SC/0215/1980 : 1980 (2) SCC 565 and in Nathu Singh Vs State of U.P. and Others, 2021(6) SCC 64, MANU/SC/0360/2021*, the facility of anticipatory bail with certain restrictions may be granted to the applicant.

38. Thus, the instant anticipatory bail application moved on behalf of the applicant- **Arsheen Faridi Khan** is **allowed** and it is provided that in the event of arrest of the applicant, involved in the above noted case, under any process of the trial court or on her surrender/ appearance before the trial court within **20 days from today i.e. on or before 18.06.2024**, whichever is earlier, he shall be released forthwith on anticipatory bail on her furnishing a personal bond with **two sureties** in the like amount to the satisfaction of the Trial Court concerned, subject to the following conditions::

**1. The applicant if not arrested earlier, shall surrender before the trial court within 20 days from today i.e. on or before 18.06.2024 and will cooperate in the trial.**

**2. The applicant shall Cooperate in the investigation and will make herself available as and when required by the Investigating officer of the case, even for the recovery of any**

fact, if the case is directed to be further investigated.

3. The applicant shall not make any attempt to influence the prosecution witnesses and will also not commit any crime during his release on anticipatory bail.

4. The applicant shall file an undertaking to the effect that she shall not seek any adjournment on the dates fixed for evidence and especially when the prosecution witnesses are present in court.

5. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C.

39. If in the opinion of the trial court default of any of the condition placed above is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and shall proceed against him in accordance with law.

40. It is clarified that all the observations contained in this order are only for disposal of this anticipatory bail application and shall not affect the proceedings before the trial court in any manner.

**Order Date :- 29.5.2024**

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