

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2021 OF 2015

**ABID FATEH MOHD. KHATRI S/o.FATEH)
MOHAMMED KHATRI AND ANR.)...APPLICANTS**

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Shri Subhash Jha a/w. Ms.Rushita Jain i/b. Law Global, Advocate
for the Applicant.

Smt.S.V.Gajare, APP for the Respondent – State.

Shri Sunil Kalgutkar, Dy.S.P. (ACB), Raigad Unit.

CORAM : ABHAY M. THIPSAY, J.

DATE : 30th NOVEMBER 2015.

P.C. :

1 The applicants are the accused in C.R.No.123 of 2015
registered at Kopri Police Station, Thane. The said crime report is
in respect of the offences punishable under Section 420 of the IPC,

Section 467 of the IPC, Section 468 of the IPC, Section 471 of the IPC, Section 120-B of the IPC, and Section 109 of the IPC, as also the offences punishable under Section 13(2) of the Prevention of Corruption Act (P.C.Act) read with Section 13(1)(c) and Section 13(1)(d) thereof.

2 This application was being heard along with the Criminal Bail Application No.2020 of 2015 filed by a co-accused in this case – Nisar Fateh Mohd. Khatri. That accused has already been released on bail by the learned Special Judge on 24th November 2015, as the investigating agency failed to complete the investigation within the period stipulated by sub-clause (i) of Clause (a) of the first proviso to sub-section (2) of Section 167 of the Code of Criminal Procedure (Code). The investigation is still incomplete. The present applicants, however, were arrested later, and as such, as of today, they have not been under detention for a period of 90 days. Thus, the applicants cannot be released under the aforesaid provision.

3 It, however, appears that the said co-accused Nisar Fateh Mohd. Khatri, who has been released under the provisions of Clause (a) of the first proviso to sub-section (2) of Section 167 of the Code, has been attributed a greater and a more significant role than that attributed to the present applicants. This is without contemplating the defence of the applicants, but on the basis of the case put forth by the investigating agency itself.

4 These applicants are also in custody for about 88 days. The learned APP, on instructions from the Investigating Officer, states that it is not possible for the investigating agency to file charge-sheet in the matter on or before 3rd December 2015.

5 I have considered the matter.

6 The applicants are the brothers of the said co-accused Nisar Fateh Mohd. Khatri, who has been projected by the investigating agency as having played a greater and major role in

the alleged offences. The role attributed to the present applicants, even as per the version of the investigating agency, is passive.

7 The contract in question was, allegedly, improperly and illegally procured by forming a cartel, by deception and by making and using forged documents. This contract was procured by the firm M/s.F.A.Enterprises. Admittedly, none of the applicants is a partner in M/s.F.A.Enterprises.

8 The applicants are said to be the partners of M/s.F.A.Constructions. It is alleged that the amounts received by F.A.Enterprises towards the work done were transferred to the account of F.A.Constructions and were withdrawn therefrom. It is, however, not in dispute that the said Nisar Fateh Mohd. Khatri, who allegedly played an active role in the matter, is a partner in M/s.F.A.Constructions also.

9 Though the allegation is of having improperly and illegally procuring a contract, there is no allegation that the work

that has been carried out is of sub-standard quality. There is no allegation that whatever amounts have been paid to M/s.F.A.Enterprises so far, are more than the cost of the work that has been carried out till now.

10 The case has been registered after holding an 'open enquiry' and after interrogating the accused persons and after collecting a number of documents in the course of such 'open enquiry.'

11 Considering all the relevant aspects of the matter, and keeping in mind that the investigating agency concedes that it would not be able to complete the investigation and file charge-sheet within the period stipulated by sub-clause (i) of Clause (a) of the first proviso to sub-section (2) of Section 167 of the Code, I think it fit to release the applicants on bail.

12 I am informed that the said co-accused Nisar Fateh Mohd. Khatri has been ordered to be released on bail in the sum

of Rs.25,000/-. It would be, therefore, proper to fix the same amount in case of the present applicants also.

13 The application is allowed.

14 The applicants are ordered to be released on bail in the sum of Rs.25,000/- each, with one surety in like amount, on the condition that they shall attend the office of the investigating agency and make themselves available for investigation / interrogation as and when required by the Investigating Officer.

15 The applicants shall not contact, meet or approach any of the prosecution witnesses, in any manner, whatsoever.

16 All concerned to act on an authenticated copy of this order.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment / Order.**