

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.439 OF 2015

Rafiq Khan Pathan and ors.Applicants.
Vs.

The State of Maharashtra.Respondent.

Mr.J.V.Deshpande i/by Mateen Abdul Shaikh for the
Applicant.

Mrs. P.P.Shinde, APP. for the State.

CORAM : A.S.GADKARI, J.
DATE : 08TH FEBRUARY, 2016.

PC:

The applicants are apprehending arrest in CR I-139/2014 dated 10.10.2014 registered with Marine Drive Police Station, Mumbai under Section 430 read with 34 of the Indian Penal Code.

2) The prosecution case in brief is that the applicants along with other co accused persons committed the act of cheating inter alia the accused persons pretending themselves to be the Government servants or having influence with the Government Department represented that a loan of Rs.30.00 crores

will be sanctioned to the complainant Chandrabhan Dembla. Under the pretext that the said complainant may get an amount of Rs.30.00 crores as loan for conducting his manufacturing activities from the State Government, the applicants along with other accused persons accepted the amount of Rs.3.00 crores. As the complainant did not get the said loan amount from the State of Maharashtra, he lodged the first information report.

3) During the course of investigation, it was revealed that the person who pretended himself to be the Secretary of the State of Maharashtra was in fact Mr. Feroz Khan Pathan son of applicant No.2 and the brother of applicant Nos. 1 and 3. After completion of investigation charge sheet has been filed as against the arrested persons. The Investigating officer has filed an affidavit dated 9.2.2015 and additional affidavit dated 3.12.2015 thereby placing on record the various aspects pertaining to the investigation and the complicity of the applicants in the present crime.

4) It appears from the record that the applicants No.1 and 3 have no direct or indirect role to play in the entire crime and prima faice, it appears that they have been named in the present offence only because they are brothers of the co-accused i.e. Farooq Pathan and sons of accused Yusuf Pathan i.e. Applicant No.2. In my

considered opinion, as the applicant Nos. 1 and 3 have no role to play in the present crime and the said fact is supported by the contents of the aforesaid affidavits they can be granted protection of pre-arrest bail.

5) As far as Applicant No.2 Yusuf Khan Pathan is concerned, the said applicant was present at the time of accepting the part of the amount by Feroz Khan Pathan and has helped him in the said crime. The learned counsel for the applicant on instructions seeks leave to withdraw the present application as against the applicant No.2 with liberty to surrender before the Investigating officer. Leave and Liberty granted. In view of the same, the application of Applicant No.2 Yusuf Khan Pathan is dismissed as withdrawn.

Hence, the following order.

ORDER

a) In the event of arrest of Applicant Nos. 1 and 3 Rafiq Khan Pathan and Firoz Khan Pathan respectively in CR No.139/2014 registered with Marine Drive Police Station, Mumbai they shall be released on their furnishing PR bond of Rs.1.00 lac each with one or two separate solvent sureties in the like amount.

b) The applicant Nos. 1 and 3 shall attend the Investigating officer as and when called for between 11.00a.m. to 3.00p.m. for the purpose of investigation till the filing of the charge sheet.

- c) The applicants shall not tamper with the evidence and or influence the prosecution witnesses.
- d) The application of Applicant No.2 Yusuf Khan Pathan is dismissed as withdrawn.
- e) Application is partly allowed in the aforesaid terms.

(A.S.GADKARI, J.)