

(1)

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

CRIMINAL APPLICATION NO.717 OF 2017

Abdul Majid Abdul Aziz Momin,
Age: 47 years, Occ: Business,
R/o. Sadat nagar, Lane no.5,
Railway Station, Aurangabad. ..APPLICANT

VERSUS

The State of Maharashtra & anr ..RESPONDENTS

Mr S.V. Mundhe, Advocate for applicant;
Mr V.S. Badakh, Addl. Public Prosecutor for
respondents

WITH

CRIMINAL APPLICATION NO.7012 OF 2016

1. Mohammad Sarvar Pasha
s/o Afzal Miya, Age: 45 years,
Occ: Business, R/o Times Colony,
Katkat Gate, Aurangabad.
2. Mohammad Wasim Ahmed Alim,
Age: 33 years, Occ: Business,
R/o. Sadaf Colony, Katkat
Gate, Aurangabad.
3. Mohammad Afsar Shamim
s/o. Mohammad Gaus,
Age: 48 years, Occ: Business,
R/o. Times Colony, Katkat
Gate, Aurangabad. ..APPLICANTS

VERSUS

The State of Maharashtra
Through Police Station Officer
City Chowk Police Station
Aurangabad. ..RESPONDENT

(2)

WITH
CRIMINAL APPLICATION NO. 335 OF 2017
 IN
CRIMINAL APPLICATION NO.7012 OF 2016

Shaikh Mujtaba Rafique s/o Abdul
 Wahab, Age: 51 years,
 Occ: Business, R/o. Times Colony,
 Katkat Gate, Aurangabad. ..APPLICANT

VERSUS

The State of Maharashtra & ors ..RESPONDENTS

WITH
CRIMINAL APPLICATION NO.7036 OF 2016

1. Muzaffar Khan s/o Jahiroddin Khan,
 Age: 34 years, Occ: Business,
 R/o. Mominpura, Lotakaranja,
 Aurangabad.
2. Afsaribegum w/o Iqabal Salim,
 Age: 60 years, Occ: Household,
 R/o. Times Colony, Aurangabad.
3. Numan Salim s/o Iqbal Salim,
 Age: 23 years, Occ: Education,
 R/o. As above.
4. Fahim Akhtar s/o Mohd. Gaus,
 Age: 66 years, Occ: Business,
 R/o. Sadaf Colony, Katkat Gate,
 Aurangabad. ..APPLICANTS

VERSUS

The State of Maharashtra
 Through Police Station Officer
 City Chowk Police Station
 Aurangabad. ..RESPONDENT

(3)

WITH
CRIMINAL APPLICATION NO.333 OF 2017
IN
CRIMINAL APPLICATION NO. 7036 OF 2016

Shaikh Mujtaba Rafique s/o Abdul
Wahab, Age: 51 years,
Occ: Business, R/o. Times Colony,
Katkat Gate, Aurangabad. ..APPLICANT

VERSUS

The State of Maharashtra
Through Police Station Officer
City Chowk Police Station
Aurangabad & ors. ..RESPONDENT

WITH
CRIMINAL APPLICATION NO. 798 OF 2017

Mohammad Amjad Nadeem
s/o Mohammad Gaus,
R/o. Times Colony, Katkat Gate,
Aurangabad. ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station Officer
City Chowk Police Station
Aurangabad. ..RESPONDENT

Mr Niteen V. Gaware, Advocate for applicants in
Criminal Application Nos.7012/2016, 7036/2016 &
798/2017;
Mr V.S. Badakh, Addl. Public Prosecutor for
respondent/State
Mr M.R. Jadhav, Advocate to assist A.P.P.

CORAM : N.W. SAMBRE, J.

DATE : 1st MARCH, 2017

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ORAL ORDER :

For the reasons stated in Criminal Application Nos. 335 of 2017 and 333 of 2017 seeking permission to assist the prosecution, same stand allowed.

2. Heard respective Counsel.

3. In Crime No. 519 of 2016 registered with City Chowk Police Station, District Aurangabad, for offence punishable under Sections 403, 409, 420, 423, 467, 468, 471, 504, 506 and 120-B of the Indian Penal Code, the applicants in Criminal Application Nos. 717 of 2017, 7012 of 2016 and 7036 of 2016, are seeking pre-arrest bail and applicant in Criminal Application No.798 of 2017 is seeking regular bail.

4. The sum and substance of the contents of the complaint as could be noted from the first information report against each of the applicants

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are as under :-

One Shaikh Mujtaba Rafiq Abdul Wahab, complainant, appears to be investor and deals in real estate. According to him, one Iqbal Salim Mohammad Gaus, who is presently retired from the office of City Survey, Aurangabad, prompts him to provide various lands. According to him, said Iqbal Salim is accused No.1 in the crime, whereas remaining all accused are his close relatives viz. wife, sons, brother in law, brother, nephew etc. According to him, in all, eight properties were promised by present applicants to be sold to him of which details and parties with whom he has entered into agreement of purchase are as under :

Sr. No.	Details of Properties	Parties	Date of Agreement	Remarks
1.	Bhavsingpura Gut No. 24/3, (2A 30G)	1) Muzaffer Khan (A9) (15 lacs cheque) 2) Abdul Majid (A-10) (20 lacs cheque) Not an applicant	20.5.2011 (Isar pawati)	Civil Suit No. 260/2013 (45 lacs recovery suit is pending)
2.	Nandrabad Gut No. 23 (15A &	Afasar Shamim (20 lacs & 10	02.07.2014 (Isar	Ready to execute

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	2A)	lacs by pawati) cheque)		registry if the informant is ready to pay remaining amount of Rs. 3 Crores
3.	Ohar Gut No. 209 (3 A 7 R) Main owner Yusuf Khan	Buyer: informant Seller: Yusuf Khan consent: Sarwar Pasha	1.11.2011 (isar pawarti) 22.7.2013 (Bharna pawati)	Earlier the deal was between the informant and Sarwar Pasha and the main owner at Bharna pawati Sarwar Pasha gave his consent and got out of the deal
4.	Ohar Gut No. 202(99 G)	Muzaffar Khan (A-9)	15.12.201 1 Sale deed executed.	Civil Suit RCS No. 41/2014 is pending between Azharuddi n (informan t and others)
5.	Ohar Gut No. 206 (79 G)	1) Sarwar pasha (25 + 25 lacs cheque) 2) Waseem Ahmed (25 + 25	26.6.2013 Sale deed executed	Sale deed in the name of Mujtaba Maaz

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		lacs cheque) Note: Sarwar pasha and Waseem Ahmed are partners.		(informant)
6.	Ohar Gut No. 202 (7A 7 R)	Main owner Sharifabi	15.12.201 1 Sale deed executed	Azharuddin (nephew of informant) purchased property by main owner
7.	Satara Gut No. 58	---	---	---
8.	Ohar Gut No. 209	---	---	---
9.	Total Amount	1 Crore 65 lacs only (for property at Bhavsingpura, Nandrabad and Ohar)	---	8 Crore 10 lacs (Imaginary cash amount as per informant 's FIR)

4. So far as above referred properties are concerned, the prosecution has come out with a case that accused persons, with common intention conspired together and practiced fraud and cheated the complainant.

5. While seeking pre-arrest bail in the aforesaid background of prosecution case, learned

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Counsel for the applicants makes following submissions.

Sr. No.	Gut No.& Date of Agreement	Submissions
1.	Bhavsingpura Gut No. 24/3, (2A 30G), 20.5.2011	On behalf of complainant or his representatives, RCS No. 260/2013 for recovery of Rs. 45 lacs out of said transaction is moved.
2.	Nandrabad Gut No. 23 (15A & 2A), 02.07.2014	The applicants expressed their readiness and willingness to execute registered sale deed, provided complainant pays balance consideration.
3.	Ohar Gut No. 209 (3 A 7 R), 01.11.2011, Additional payment made on 22.07.2013	The owner of the said property is one Yusuf Khan and Sarwar Pasha, brother-in-law of accused No.1 was consenting party and Sarwar Pasha refrain himself from the deal. As such, deal remain between Yusuf Khan -complainant -original owner, to which applicants have no action in view of the consent given.
4.	Ohar Gut No. 202(99 G), Sale deed executed on 15.12.2011	RCS No. 41/2014 is pending between the complainant and others.
5.	Ohar Gut No. 206 (79 G) Sale deed executed on 26.06.2013	Sale deed in the name of Mujtaba Maaz (informant).
6.	Ohar Gut No. 202 (7A 7 R), Sale deed executed on 15.12.2011	Sale deed executed on 15.12.2011 between nephew of complainant namely, Azharuddin from main owner namely, sharifabi.

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7.	Satara Gut No. 58	No agreement entered into between the applicants-accused
8.	Ohar Gut No. 209	No agreement entered into between the applicants-accused

6. In the above referred background of the sum and substance, the submission of Mr. Gaware, learned Counsel for the applicants is, the contents of the complaint which has resulted into registration of crime, depicts civil dispute and registration of offence is purely with an intention to twist the arms of the applicants. He would invite attention of this Court to two civil suits filed by the complainant through his relatives, which according to him, justify the stand of applicants of civil dispute.

7. Per contra, learned Additional Public Prosecutor, who is assisted by learned Counsel for the complainant, would urge that investigation, till this date, speaks of prima facie involvement of the applicants in crime in question. According to him, all the accused persons have hatched criminal conspiracy and taking undue advantage of

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the post, held earlier by the main accused Iqbal Salim Mohamad Gaus, fraud is practiced and the complainant is cheated. He would then invite attention of this Court to the satisfaction of ingredients of cheating, criminal breach of trust and criminal conspiracy. It is also claimed that the sale deeds executed, speak of agreed transactions between the parties i.e. applicants – accused and the complainant and as such, the contents of the complaint justifies practice of fraud. The submission is made that though the sale deeds of the properties are executed, lawful possession is not handed over to the complainant. It is then claimed that custodial interrogation of the applicants-accused is necessary, as the amount of cash is required to be recovered and involvement of the applicants in serious offence could be inferred from available material.

8. So far as the applicant Sarvar Pasha is concerned, who appears to be brother in law of main accused Iqbal Salim Mohamad Gaus, from the record,

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it could be inferred that the said accused has no concerned with land Gat No. 206 at Ohar and so far as land Gat No. 209 at Ohar is concerned, the complainant himself consented for recuse by Sarvar Pasha from the said deal. So far as accused Mohammad Washim is concerned, similar like of Sarvar Pasha, appears to be his case. Accused Mohammad Afsar Shamim is alleged to have involved in transaction of Rs.3 crores in relation to property Gat No. 23. The applicant in clear terms has stated that he is ready and willing to execute sale deed, provided the complainant pays balance consideration. Accused Faim Akhtar is not attributed any specific role. Against other accused Amzad Nadim and Mujaffar Khan, baseless allegations could be inferred from the material available on record.

9. it is then to be noted that in some of the matters, particularly as regards transactions in relation to the properties, time barred claims are sought to be covered in the crime in question. There are two civil suits initiated from the side

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of complainant being Regular Civil Suit No.260 of 2013 for recovery of Rs.45,00,000/- and another Regular Civil Suit No. 41 of 2014, which are pending between Azharuddin, nephew of the accused persons.

10. It is also required to be noted that accused have executed sale deed in favour of the complainant in relation to land at Ohar being Gat No. 202 and 206. It is also required to be noted that there is appropriate remedy available to the complainant qua land in question before the competent civil Court.

11. So far as the claim of prosecution that amount of cash paid by the complainant to accused is required to be recovered is concerned, it is worth to mention here that there is no acknowledgment by accused of receipt of such cash amount from the complainant. In absence of any evidence to that effect, the claim of prosecution for recovery of cash amount in contractual matter,

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custody of the applicants is required sans any basis, as the said issue, in my opinion, can be gone into, only and only in civil proceedings, wherein party is required to establish the said claim by bringing on record cogent evidence in support thereof.

12. In the aforesaid background, in my opinion, the claim of the applicants that they are entitled to be protected is required to be allowed, when the offence is based on documents and the applicants hold immovable property within jurisdiction of the Court. As such, likelihood of running away from the investigation would hardly be inferred. It is then to be noted that all the family members of main accused are implicated in the crime in question, in absence of sufficient material in support of claim of hatching conspiracy.

13. In the above referred back ground, in my opinion, all the applicants deserve to be released

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on bail. Hence, the following order is passed: -

(i) In the event of arrest of the applicants, in (Criminal Application Nos. 717 of 2017, 7012 of 2016, 7036 of 2016) Crime No. 519 of 2016 registered with City Chowk Police Station, District Aurangabad, for offence punishable under Sections 403, 409, 420, 423, 467, 468, 471, 504, 506 and 120-B of the Indian Penal Code, the applicants be released on bail, upon furnishing P.R. bond of Rs.25,000/- by each of them, with one or two sureties in the like amount.

(ii) The applicant in (Criminal Application No. 798 of 2017) be released on bail, in Crime No. 519 of 2016 registered with City Chowk Police Station, District Aurangabad, for offence punishable under Sections 403, 409, 420, 423, 467, 468, 471, 504, 506 and 120-B of the Indian Penal Code, upon furnishing P.R. bond of Rs.25,000/- with one or two sureties in the like amount.

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(iii) The applicants shall attend the Investigating Officer on 15th to 18th March, 2017 between 10.00 a.m. and 12.00 noon and thereafter as and when called for.

(iv) The applicants shall not influence the prosecution witnesses or tamper with evidence.

14. All the Criminal Applications stand allowed in above terms.

(N.W. SAMBRE, J.)

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