

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

ANTICIPATORY BAIL APPLICATION NO. 1232 OF 2021

1. Hazi Mohammed Sharif Shaikh Ismail ... **Applicants**
Age 54 years, Occu: Business
2. Shaikh Mohd. Zishan Mohd. Shafit
Age 27 years, Occu: Business,
3. Shaikh Ishrat Tarannum d/o Mohammed
Sharif, Age 20 years, Occu: Housewife.
4. Shahista Tarannum Arshad Khan,
Age 26 years, Occu: Housewife
5. Arshad Aziz Khan,
Age 37 years, Occu: Business

All r/o Zamzam Colony, Near Bismilla
Masjid, Beed, Dist. Beed.

VERSUS

The State of Maharashtra, ... **Respondent**
Through Police Station Beed (City)
District Beed.

Mr. Sudarshan J. Salunke, Advocate for the applicants,
Mr. A. V. Deshmukh, A.P.P. for the State.
Mr. S.S. Thombre, Advocate assists to P.P.

CORAM : PRAKASH D. NAIK, J.

DATE : 17th November, 2021

ORDER:

1. The applicants are apprehending arrest in connection with Crime No. 165/2021 registered with Beed City Police Station District Beed for the offences punishable under Sections 406, 420, 468, 471, 34 of the Indian Penal Code (for short "IPC"). The First Information Report

(for short "FIR") was lodged by Rijwana Begam Amjad Khan Pathan on 22.08.2021.

2. Case of prosecution is that the complainant is residing at Beed alongwith her family. Wajed Khan and Shahed Khan are her brothers. The complainant intended to purchase house in the city of Beed. Her brothers were in real estate business. They were looking out for house for the complainant. Brothers of the complainant were acquainted with Hazi Mohammed (Applicant No.1), Shaikh Mohd. Zishan (applicant no.2). Daughters of applicant No.1 namely Shaikh Ishrat Tarannum (applicant No.3) and Shahista Tarannum (applicant No.4) were the owners of the house property- Survey No.8324 admeasuring 1916 square feet situated at Zamzam Colony, Beed. They were intending to sell the said property. Since the complainant was interested in purchasing the property, her brothers informed about it to the accused. The accused executed power of attorney in favour of Wajed Khan Sajed Khan on 11.03.2020 which was registered before the Sub Registrar, Beed. Consideration for sale of the said property was determined to the tune of Rs.49.98 lakhs. Sale deed was executed in favour of the complainant on 15.12.2020 and the house property was sold to her. Consideration was allegedly paid to the accused. Subsequently, it was learnt that the accused had prepared PR card in the name of Jakiya Sultana who is wife of suppliant No.1 and mother of applicant Nos. 3 and 4. It was also raveled that Hibanama (Gift Deed) was also

executed in favour of Zakiya Sultana. Thus inspite of selling the property to the complainant by accepting consideration, false documents were prepared and the complainant was cheated.

3. The applicants had preferred application for anticipatory bail before the Court of Sessions which has been rejected.

4. Learned counsel for the applicants advanced several submissions. Primarily, it is the contention of the applicants that entire case is false. The power of attorney executed in favour of the brothers of the complainant was cancelled and public notice in that regard was published in the newspaper. The consideration of Rs.49.98 lakhs as contended by the complainant was not parted to the applicants. There is no proof of handing over the said consideration for sale of the property. The sale deed was executed with applicant Nos. 3 and 4 under coercion. Pursuant to the execution of the said document, the complaints were lodged with the police authority. FIR has been registered at the instance of applicant No.4 with the same police station vide Crime No. 9/2021 for the offences punishable under section 420, 384, 465, 506, 34 IPC and section 25 of the Arms Act. It is further submitted that the suit was filed by Jakiya Sultana before the Civil Court seeking injunction against the complainant and others not to interfere with the possession of the premises and ad interim relief was granted in the said suit by way of injunction restraining opponents therein from interfering with the

possession of the applicants. Said suit is pending. Custodial interrogation of the applicants is not necessary.

5. It is further submitted that during pendency of the application, the applicants were directed to report the investigation officer and the said direction has been complied with, which is fortified by the acknowledgment of the Investigating officer. Custodial interrogation of the applicants is not necessary.

6. Learned APP submits that the accused were involved in cheating the complainant. Power of attorney was executed in favour of brothers of complainant in respect to the sad house property. There is no proof of termination of the said power of attorney. Sale deed was executed by the complainant and accused before the Sub registrar. Owners of the property/accused were present before the Sub registrar which is apparent from their signature and their photographs on the document. It is difficult to accept that the said document was executed under coercion. Accused have executed false document in the nature of Hibanama and on that basis prepared PR Card property and taken mutation entries in favour of mother of applicant Nos. 3 and 4 though entire consideration in respect of the sale of property was accepted which is apparent from the contents of the sale deed. Thus, inspite of sale of property, the complainant was deprived of property even after accepting the total consideration by the accused. Hence custodial interrogation of the applicant is necessary.

7. Learned counsel for the complainant supported the contention of learned A.P.P. He submitted that the sale deed was registered. False contention is being advanced that the document was executed under force. Entire consideration was paid in cash on account of cordial relationship between the complainant with the family of the accused. By keeping the complainant and others in dark, Hibanama was executed in favour of the mother of applicant Nos 3 and 4 and on that basis PR card was prepared in her favour. Public notice has been prepared to make the false claim on receipt of entire consideration in cash which is huge amount. The complainant was deprived of the property. Complaints were filed against the mother of applicant Nos. 3 and 4 wherein she has indulged in criminal acts. Contention of the applicants is after thought and imaginary. Custodial interrogation is necessary.

8. It is not disputed that applicant Nos. 3 and 4 were the owners of the house property. Case of the complainant is that sale deed was executed in her favour. I have perused the sale deed. It is mentioned that amount of consideration of Rs.49.98 lakhs is already paid to the owners of the property. It has been paid in cash. There is no receipt of acceptance of cash by way of consideration by the owner of the properties on record. It is apparent from the documents produced by the learned counsel of the applicants and annexed to the application that complaints were lodged after execution of the sale deed alleging that it was executed in coercion. Suit has been filed by the mother of

applicant Nos. 3 and 4 and apparently ad-interim injunction was granted. FIR has been registered at the instance applicant No.4 against the opponents alleging extortion and falsely execution of the sale deed. The applicants have attended the investigating officer pursuant to the directions of the Court. Entire matter relates to the documents. Considering the factual matrix of the case, investigation may proceed without subjecting the applicant to custodial interrogation.

9. In the light of the factual aspects of the matter, the applicants need not be subjected to custodial interrogation. Interim protection granted vide order dated 21.10.2021 deserves to be confirmed. Hence, the following order.

ORDER

- i. Anticipatory Bail Application No. 1232 of 2021 is allowed;
- ii. In the event of arrest of the applicants in Crime No.165/2021 registered with Beed City Police Station, District Beed, the applicants be released on bail on executing PR bond in the sum of Rs. 20,000/- each with one or more sureties in the like amount;
- iii. The applicants shall appear before the investigating officer as and when called till filing of the charge sheet.
- iv. Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

JPC