IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.935 OF 2020
AND
INTERIM APPLICATION NO.470 OF 2021
AND
INTERIM APPLICATION NO.164 OF 2021
AND
INTERIM APPLICATION NO.1428 OF 2020
IN
ANTICIPATORY BAIL APPLICATION NO.935 OF 2020

Sukesh Gupta ... Applicant
Versus
The State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.936 OF 2020
AND
INTERIM APPLICATION NO.469 OF 2021
AND
INTERIM APPLICATION NO.165 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.936 OF 2020

Mohammed Zakir Usman ... Applicant
Versus
The State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.937 OF 2020
AND
INTERIM APPLICATION NO.468 OF 2021
AND
INTERIM APPLICATION NO.163 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.937 OF 2020

Potlacheruvu Suresh Kumar ... Applicant
Versus
The State of Maharashtra ... Respondent

.....

Mr.Ashok Mundergi, Senior Advocate a/w Mr. Niranjan Mundargi with Mr.Deepak Deshmukh, i/by Naik Naik & Co. for applicants in ABA No.935 of 2020.

Mr.Girish Kulkarni a/w. Mr.Deepak Deshmukh i/b. M/s.Naik Naik & Co., Advocate for Applicant in ABA 936 of 2020.

Mr.Diljeet Ahluwalia a/w. Mr.Deepak Deshmukh i/b. M/s.Naik Naik & Co., Advocate for Applicant in ABA 937 of 2020.

Mr. Vikram Nankani, Senior Advocate, with Mr. Abhay Jadeja, Mr.Varun Satiya, Mr.Arun Unnikrishnan i/b. Crawford Bayley and Co. for Respondent no.2 in ABA No.935 of 2020.

Mr. Rajiv Chavan, Senior Advocate, with Abhay Jadeja, Mr.Varun Satiya, Mr.Arun Unnikrishnan i/by Crawford Bayley & Co. for Respondent no.2 in ABA No.936/2020.

Mr.Pranav Badekha a/w. Mr.Abhay Jadeja, Mr.Varun Satiya and Mr.Arun Unnikrishnan, Advocate i/b. M/s.Craword Bayley & Co., for Respondent No.2 in ABA 937 of 2020.

Mr. Deepak Thakare, GP with Mr. A.R. Kapadnis, APP, for State in all applications.

.....

CORAM : PRAKASH D. NAIK, J.

CLOSED FOR ORDERS ON : 9th MARCH, 2021.

DATE OF PRONOUNCEMENT : 9th JUNE, 2021.

P.C. :

The applicants in all these applications are apprehending arrest in connection with C.R.No.367 of 2019, registered with Worli Police Station, Mumbai, for the offences punishable under Sections 406, 420, 465, 468, 471 read with 120-B of Indian Penal Code ("IPC", for short). First Information Report ("FIR", for short) was registered on 19th September, 2019. The investigation was thereafter transferred to EOW Unit IX, Mumbai, vide C.R.No.82 of 2019.

2 The case of the prosecution is as follows:

(a) FIR is lodged by Shri G. Dineshkumar Subhash Chandra, director Niharika Infrastructure Private Limited. The registered office of the company is situated at 311, 3rd floor, plot no.49A, Shiv Smruti Chambers, Dr.Annie Besant Road, Worli Naka, Worli, Mumbai.

(b) The complainant company is owner of property named Nazari Baug admesauring 111,882 square feet having toal area of 28,106 square yard. The said property viz. plot of land is purchased by complainant company vide sale agreement dated 30th May, 2011, from original owner and possessor M/s.Nazari Baug Palace Trust. The agreement is registered with Sub–Registrar I, Registration office Hyderabad vide Registration No.1640/2018. M/s. Nazari Baug Palace Trust were owners/possessor of the property vide Deed of Trust dated 3rd July, 2006, bearing registration no.2758 of 2018, registered with Sub-registrar–I, registration office at Hyderabad.

(c) In the special general body meeting of the complainant company held in February 2019 at the registered office of the company, resolution was passed and the directors P. Suresh Kumar and C.S. Ravindran were removed from the Board of Directors by following procedure established by law. Hence from 13th February, 2019, their authorities and powers, as director of the company had come to an end.

(d) The aforesaid two directors acted in connivance with Mohammad Zakir Usman and fabricated resolution appointing Mr.Mohammed Zakir Usamn to enter into the transaction of sale, transfer etc., in respect to property viz. Nazri Baug Palace. The fabricated resolution was dated 24th January, 2019. On the basis of the resolution, Mr.Mohamed Zakir Usman executed back dated sale agreement dated 28th January, 2019, and the property was handed over to IRIS

Hospitality Private Limited. In the sale agreement, it was stated that the consideration for sale of the property was settled towards the loan given to the complainant company in 2011.

(e) Mr. Mohammed Zakir Usman, P. Suresh Kumar, C.S. Ravindran and Amit Amla (Director M/s. IRIS Hospitality Private Limited) had acted in connivance with each other and prepared the sale agreement in respect to the aforesaid plot. The document was prepared in May 2019, and, shown to have been submitted for registration on 28th January, 2019, by manipulating the date of registration. The agreement was registered on 22nd May, 2019, with registration No.1791 / 2019, in the office of Sub-registrar Hyderabad.

(f) The sister concern of the complainant company M/s.Aashi Realtors (partner Sukesh Gupta) had obtained loan of 110 crores from non banking financial institution on 15th July, 2018, and, the property viz. Nazri Bagh was mortgaged. Inspite of the knowledge of the said fact to Mr.Sukesh Gupta, he acted in connivance with Mr.Ravindran, Mr.Amit Amla and Arjun Amla and on the basis of fabricated resolution dated 24th January, 2019, the property was sold to IRIS Hospitality pvt. Ltd. The value of the property is around 300 crores.

3 Applicant preferred application for anticipatory bail before the Sessions Court. Interim protection was granted vide order dated 10th October, 2019, to the applicants directing the investigating officer not to arrest the applicants till the next date. During the pendency of the said application, the applicants preferred Writ Petition (Stamp) No.2306 of 2020, before this Court.

4 By order dated 28th September, 2020, this Court directed that no coercive measures shall be adopted against the petitioner in respect to FIR No.367 of 2019 dated 19th September, 2019. The said order was challenged by the complainant before the Hon'ble Supreme Court by preferring Special Leave Petition No.4819 of 2020. The Supreme Court by order dated 12th October, 2020, issued notice to the respondents therein and interim stay was granted on the directions of no coercive measures to the order passed by this Court. However, it was clarified that the said order will not affect the interim order passed by the Sessions Court. The application for anticipatory

bail was rejected by the Sessions Court vide order dated 8th December, 2020. While rejecting the said application, the learned Sessions Judge had observed that the say of the investigating officer shows that accused C.S. Ravindran was arrested in the crime. It was revealed in the investigation that from 17th January, 2019 to 26th January, 2019, Mr.Ravindran was in Hong-Kong and Vietnam. The original documents (Par Patra) No.Z3594792 show that Mr.Ravindra was out of India. In the police custody, it was told by him that he has signed the resolution on 18th May, 2019, on the say of Sukesh Gupta. The E-mail in respect of the resolution showing it to be received on 18th May, 2019, by Mr.C.S. Ravindran, is seized. The call records of C.S. Ravindran and WhatsApp record show that Mr.Sukesh Gupta had informed Mr.Ravindran on 18th May, 2019 that the disputed resolution dated 24th January, 2019,would be sent by P. Suresh Kumar by E-mail and he was asked to sign the same and sent it back to Sukesh Gupta. The fact that C.S. Ravindran was in Hong-Kong and Vietnam from 17th January, 2019 to 26th January, 2019, is verified by investigating officer. The Par Patra shows that he was out of India during the said period. The resolution was received by E-mail on 18th May, 2019 by Mr.C.S. Ravindran. During investigation, WhatsApp recordings between Mr.Ravindran and accused Sukesh Gupta, are seized by WhatsApp dated 18th May, 2019. Accused Sukesh Gupta had informed Ravindran that P.Suresh Kumar would forward the resolution dated 24th January, 2019 in respect to Niharika Infrastructure Pvt. Ltd. and informed Mr.Ravindran to sign the same. This fact prima facie show that the resolution dated 24th January, 2019 and the sale deed were not executed on the shown date. The applicants have filed extract of minutes of Board of Directors of M/s.Neeharika Infrastructure Pvt. Ltd. held on 24th January, 2019. The complete copy of the minutes is not produced. The resolution is not produced. It is not clear as to how many directors of Board have signed the resolution. The resolution and the minutes do not appear to be executed on the date mentioned on it. There is prima facie material against the accused. Investigation is to be carried out as to where the resolution was prepared. The original documents are also yet to be recovered in the investigation. The offence is serious. Thorough investigation is necessary. Custodial interrogation of the applicant is necessary. There is no material to infer that the accused is falsely implicated in this crime.

5 The applicants have thereafter preferred application for anticipatory bail before this Court.

6 All the applications were heard together. They are arising out of the same FIR. Hence, the applications are disposed of by common order.

7 Arguments were lead by learned counsel Mr.Diljeet Ahluwalia, appearing for the applicant in ABA No.937 of 2020.

8 Learned counsel Mr.Ahluwalia has submitted, as under:

(i) The FIR is frivolous.

(ii) Accused no.1(applicant P. Suresh Kumar) is salaried employee. He has clear antecedents and deep roots in the society. He has cooperated with the investigation. He was interrogated.

(iii) The reply filed by respondent no.2 (complainant) is false and conveniently bypassing issue which goes to the root of the matter as recorded in the order of this Court dated 18th December, 2020. It also depict undue influence of Rajesh Agarwal who has used the powerful pressure of criminal law against the liberty of the applicant to extract accused not.4 to give up its legal rights in respect to the property.

(iv) There is no whisper in the FIR of the factum that entire purchase consideration of Rs.48 crores was paid by M/s.Aashi Realtors, as per the terms and conditions agreed in the loan agreement dated 26th November, 2010, as per which the property was to be vested with Aashi as on 31st March, 2014, on non payment of Rs.94 crores. The period of repayment of loan was extended by two years vide loan agreement dated 10th April, 2014. Loan amount of Rs.160 crores not having been paid, the property finally vested with Aashi on 31st March, 2016.

(v) Shareholding of respondent no.2 was transferred by the previous share holders to M/s.Agarwal Reality, whose main share holder is Mr.Rajesh Agarwal on 19th October, 2016, at par value of Rs. 1Lakh on the basis of property having already vested with Aashi seven months prior. The property did not weigh in the valuation of its shares as per loan agreement. The previous share holder Mr.Biyani had obtained registered declaration–cum–indemnity bond from accused no.4 (Sukesh Gupta), which is admitted by respondent no.2 in reply.

(vi) Shareholding was instructed to be transferred to Agarwal

Reality on behalf of accused no.4 on dishonest inducement that Agarwal Reality was owner and controlled by him while Rajesh Agarwal intended to usurp the property of over 300 crores by merely purchasing the shares at Rs.1 lakh. The question as to how Agarwal Reality bought the shareholding at Rs.1 lakh, if it had property wroth Rs.300 crores was observed by this Court in the order dated 18th December, 2020.

(vii) The complainant in their reply has admitted that shareholding was purchased for meager amount of Rs.1 lakh but Agarwal Reality had brought in money subsequently into the company.

(viii) The justification of purchase of share holding at Rs.1 lakh from Biyanis on 19th October, 2016, is the basis of their having Rs.45 crores loan into their own company on 29th May, 2017 i.e. after seven months, which was stated earlier to be as per per arrangement with previous owner.

(ix) Rs.45 crores loan was taken from IIFL by respondent no.2 against collateral security of Aashi. Thereafter Splash Zone, a group company of Rajesh Agarwal took a loan of Rs.78

crors from Indiabulls, out of which clearing the loan of respondent no.2 in IIFL, by mortgaging the same property of Aashi now with India Bulls. Thereafter Aashi took a loan of Rs.110 crores from SREI Finance, out of which clearing the loan taken by Splash Zone with Indiabulls on the basis of the same property. This loan was repaid by SREI Finance selling the same property of Aashi. In effect it was money of Aashi, which was brought into by respondent no.2 after seven months of change of shareholding. To justify purchase of shareholding by Agarwal Reality at par value on this basis, is preposterous.

(x) In the reply respondent no.2, has alleged that since at the time of acquisition, respondent no.2 was a debt ridden company having huge liabilities, the entire share holding of respondent no.2 was acquired by Agarwal Reality, for an amount of Rs.1 lakh. Respondent no.2 had denied that the property vested with Aashi and as a result of which the entire share holding of respondent no.2 was acquired for Rs.1 lakh. The respondent no.2 was a debt ridden company. The balance sheet of respondent no.2 as on 19th October, 2016, shows it to be a debt free company, and, this explanation is false. Agarwal Realty did not consider valuation of the property while purchasing the shares.

(xi) The respondent no.2 has stated in the reply that applicants seek to justify its criminal action of forging and fabricating documents and fraudulently and wrongfully transferring the property of respondent no.2 to IRIS hospitality, is belied by the fact that the entire amount has been repaid by respondent no.2 to Aashi and other companies of Sukesh Gupta on instructions of Sukesh Gupta. The ledger account of respondent no.2 with Aashi shows that as on 31st March, 2019, after adjustment of all *inter-se* payments, it is the complainant which owes Aashi Rs.4.81 crores.

(xii) The applicant P. Suresh Kumar and accused no2 C.S. Ravindran were the only two directors in the Board of respondent no.2 with effect from 26th March, 2017. They had authorized accused no.3 Mohammad Zakir Usman to execute a sale deed qua the property to accused no.5 M/s.IRIS Hospitality, as per the loan agreement. Rajesh Agarwal came to know about the said fact and he asked the applicant P. Suresh Kumar to send his digital signature for uploading the previous balance sheets for financial year 2016 – 17 onwards, which was done by him. By misusing the digital signature, Rajesh Agarwal hatched the conspiracy to upload DIR 12 Forms on 5th February, 2019, showing appointment of Ramesh Pasupuleti and Naveen K. Agarwal from ante date 26th March, 2017. Thereafter, the fraudulent incorporated directors signed DIR 12 Forms on 14th February, 2019, removing P. Suresh Kumar on 13th February, 2019.

(xiii) Respondent no.2 had admitted in their impleadment application before the Sessions Court that when the intervenor came to know about the criminal conspiracy, forgery and other criminal activities of respondent no.1 therein committed in collusion and connivance with other accused, vide its board resolution dated 13th February, 2019, passed in Special general meeting had at the registered office of intervenor at Worli removed accused from their office as the directors of intervenor. Same averments were made in written arguments dated 28th September, 2020. This is contrary to FIR.

(xiv) The applicants had filed application under Section 340 read with Section 195 of Cr.P.C., before the Apex Court on 11th January, 2021. In the reply, the respondent no.2 had stated that it was done erroneously due to inadvertence.

(xv) The contention of respondent no.2 not knowing about the loan agreement is absurd. In the reply filed before the Supreme Court, the respondent no.1 has stated that during the course of investigation, statement of Sunil Biyani, erstwhile director of NIPL was recorded. He admitted his signature and execution of loan agreement dated 26th November, 2010, between NIPL and Aashi Realtors. Sunil Biyani also stated that for purchasing the property, the sale consideration was directly paid by Aashi Realtors to Nazari Baug Palace Trust.

(xvi) Respondent no.2 has suppressed material documents. Form 32 filed by G. Dineshkumar, wherein he was appointed Director with effect from 1st October, 2012, from where he resigned with effect from 18th September, 2014. Thus loan agreement dated 10th April, 2014 was signed by Mr.Sunil Biyani in capacity of being Director of respondent no.2.

Agreement dated 10th April, 2014, shows that the first line of agreement is "This loan agreement is entered on this 10th day of April 2014 at Hyderabad." This was referred to in Resolution. The Resolution passed in meeting of shareholders of respondent no.2 on 4th April, 2014, shows consent of members to execute loan agreement to secure loan amount taken for the property purchased from Nazri Baug Trust.

(xvii) Aashi has filed civil suit in the Court at Hyderabad seeking declaration that sale deed dated 28th January, 2019 is null and void. The affidavit–in–reply filed by respondent no.2 is false. Mr.Rajesh Agarwal has influence with investigating agency. The FIR is false and prima facie there is doubt on genuineness of the prosecution case. The essential ingredients for the offence under Sections 406, 420, 465, 468, 471 and 120 B of IPC are completely lacking in the FIR.

(xviii) The law relating to anticipatory bail application is well settled. In the case of ***Siddharam Mehtra Versus State of Maharashtra***[1], it was observed that the courts must

1 **(2011) 1 SCC 694**

evaluate the entire material against the accused very carefully. The court must comprehend exact role of the accused. Frivolity in prosecution case should always be considered, and, it is the element of genuineness that shall have to be considered in matter of bail. In the case of ***Gurubaksh Sibbia Versus State of Punjab***[2], it is observed that A person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which it is imperative to protect his freedom, in so far as one may and to give full play to presumption that he is innocent. If *malafide* shown, anticipatory bail should be granted in the generality of the cases.

(xix) Dispute is of civil nature. Custodial interrogation is not necessary. The applicant has cooperated in investigation. He has attended investigating officer.

(xx) Learned counsel relied upon the documents annexed to the application as well as the compilation of additional documents, in support of his submission. He also tendered written submissions.

---

2 **(1980) 2 SCC 565**

9 Learned senior advocate Mr.Mundargi appeared for the applicant in Anticipatory Bail Application No.935 of 2020 (Sukesh Gupta). The contentions of said applicant are as follws:

(a) The applicant has been falsely implicated.

(b) NIPL was to repay due amount of Rs.96.8 crores to M/s.Aashi Realtors within stipulated time i.e. 31st March, 2014. Complainant failed to comply with its obligation to repay the due amount to M/s.Aashi Realtors and to avoid liability, and, usurp the property, registered the FIR.

(c) In terms of arrangement between the parties upon inability of complainant to repay the amount, the property Nazri Baug was to be transferred to M/s.Aashi Realtors.

(d) M/s.Aashi Realtors is a partnership firm. It is in business of real estate development and investments. In 2010, the directors of complainant Mr.Gopal Biyani and Sunil Biyani approached M/s.Aashi to avail finance to purchase the said property. After series of discussions, representations and undertaking made by directors of complainant, to secure financial facilities Aashi agreed to provide financial assistance. The complainant executed agreement on 26th November, 2010, reducing the terms of repayment and rights of Aashi in the event of non payment of facility by 31st March, 2014, or the period of extension granted by Aashi.

(e) M/s.Aashi undertook to pay consideration of Rs.48 crores for the property directly to the Trust with complainant promising to consider Rs.48 crores to be loan payable to Aashi from the date of execution of sale deed at the rate of interest of 24 % per annum, compounded on the monthly compoundable basis with term loan to be repaid by 31st March,2014 failing which the property was to vest with Aashi without any encumbrances.

(f) Applicant Sukesh Gupta was given special power of attorney by the trust for registration of the same as payment was being made by Aashi and being considered as loan to complainant. Aashi advanced the amounts for conveyance of said property in the name of NIPL and got the said sale deed executed on 30th May, 2011. The sale deed was registered through the applicant Sukesh Gupta.

(g) Complainant was unable to repay the due amount of Rs.96.08 crores to Aashi within stipulated time, and, at their request, extension agreement was executed on 10th April, 2014, extending period of repayment by end of 31st March, 2016. Inspite of extension, the complainant could not arrange amount agreed to re-convey the schedule property to Aashi as per clause 21 of the agreement dated 26th November, 2010. Amount of Rs.160 crores was due on 9th April, 2016 from the complainant.

(h) Mr.Rajesh Agarwal, Mr.Navin Agarwal and Mr.Dilip Agarwal contacted applicant Sukesh Gupta. They falsely alarmed him about raid of Directorate of Enforcement and Income Tax and advised him to get shareholding of Mr.Sunil Biyani and Gopikishan Biyani transferred. Vide share purchase agreement dated 19th October, 2016, M/s.Agrawal Reality purchased 100 % shares of the complainant, which were earlier held by Mr.Sunil Biyani and Mr.Gopikishan Biyani. The shares were brought for Rs.1 lakh. The property was not even considered for purpose of valuing the shares of complainant. The complainant is trying to usurp and claim the property wroth Rs.300 crores. On 28th January, 2019, M/s.Aashi as consenting party authorised Mr.V.V.Sai to execute sale deed alongwith complainant in favour of M/s.IRIS Hospitality Pvt. Ltd. IRIS was aware of the amount payable by NIPL to Aashi, expressed its interest to purchase the schedule property. The sale was done to IRIS as Aashi's nominee in terms of loan agreement. As per loan agreement and subsequent agreement, the board of NIPL vide resolution dated 24th January, 2019, authorized Mr.Mohammad Usman (accused no.3) for completing the registration of the sale deed of the said property, as per the terms of loan agreement. The extract of the minutes of meeting was signed by Mr.C.S. Ravindran. On 28th January, 2019, the sale deed was signed between complainant, Aashi and M/s.IRIS Hospitality handing over physical possession and original of documents to the vendee.

(i) M/s.IRIS Hospitality had no financial capacity to purchase property and M/s.Aashi exercised its right under agreement dated 26th November, 2010, and got the property conveyed in the name of its nominee M/s.IRIS Hospitality. Sale deed was executed in favour of nominee of Aashi i.e. IRIS on 28th January, 2019, and, registered at Joint Sub-registrar Hyderabad.

(j) The complainant passed resolution dated 13th February, 2019, illegally removing Mr.Suresh Kumar and Mr.Ravindran, as directors of the complainant.

(k) On 13th December, 2019, the applicant, Sukesh Gupta filed a complaint with EOW against Mr.Rajesh Agarwal, Mr.Dilip Agarwal, NIPL and M/s.Agarwal Reality Developers.

(l) The loan amount has escalated to Rs.3,45,14,27,983/- with interest.

(m) M/s.Aashi had filed a suit against IRIS and complainant before the Civil Court at Hyderabad, declaring them as owner of the property, to declare sale deed dated 28th January, 2019, as null and void. By order dated 2nd September, 2020, the civil Court granted ad-interim injunction against NIPL from alienating the property.

(n) A private complaint was filed in the Court at Hyderabad and FIR has been registered against complainant and its directors vide direction under Section 156(3) of Cr.P.C., for offences punishable under Sections 387, 406, 420, 467, 468, 471 read with 120 B of IPC.

(o) Custodial interrogation of the applicant is not necessary. The dispute relates to documents. The applicant has co-operated with the investigation. The FIR do not constitute any offences under Sections 406, 420, 467, 468, 471 and 120-B of IPC.

10 Mr.Girish Kulkarni, learned counsel for the applicant in anticipatory bail application no.936 of 2020, submitted that the FIR is registered with *malafide* intention. The applicant has acted in accordance with the resolution. The applicant was authorised to sell the property. The documents on record show that the complainant was to repay the amount to Aashi within stipulated time. The applicant is not concerned with fabrication of documents. The applicant is not concerned with the internal disputes between the complainant and the co-accused. As per the loan agreement and subsequent agreements, complainant vide resolution dated 24th January, 2019, authorized the applicant to complete registration of sale deed of the property as per the terms of loan agreement. The extract of minutes of the said meeting was signed by Mr.Ravindran. The sale deed was signed between complainant, in capacity as vendor and Aashi, as consenting party and M/s.IRIS Hospitality, as vendee, handing over possession and original documents to the vendor. Civil

proceedings are also initiated in respect to the dispute. Custodial interrogation of the applicant is not necessary. The applicant has cooperated with investigation officer.

11 Learned APP submitted that the accused/applicants are involved in fabrication of documents. False resolution was prepared. By using the said resolution, the property was transferred. The accused, who were removed as director of complainant company had acted in connivance with co-accused. During the course of investigation, accused C.S. Ravindran was arrested. The board resolution dated 26th January, 2019, was allegedly signed by the said accused. During investigation, it was revealed that from 17th January, 2019 to 26th January, 2019, he was in Hong–Kong and Vietnam. Thus, it is crystal clear that the resolution dated 24th January, 2019, is forged. The statement of Rajesh Kumar Mallur, the company secretary shows that the resolution is forged as it is not signed by the directors. The seal on the resolution is also false. The resolution for transfer of loan is to be passed in annual general meeting and not in the meeting of board of directors. No such meeting had taken place. The minutes of the meeting are forged. During interrogation, the arrested accused has disclosed that he had signed resolution on

18th May, 2019, on the say of accused Sukesh Gupta. The E-mail in respect of receipt of resolution showing it to be received on 18th May, 2019, by C.S. Ravindran is seized. The call details of C.S. Ravindran and the WhatsApp record shows that Sukesh Gupta had informed C.S. Ravindran on 18th May, 2019 that the disputed resolution dated 24th January, 2019, would be sent by P. Suresh Kumar by E-mail, and, he was asked to sign the same and sent it back to Sukesh Gupta. Hence, the resolution is forged. Prima facie, there is material against accused. Investigation is to be carried out as to where the resolution was prepared. The amount of Rs.16,25,00,000/-, is lying in the bank account of M/s.Aashi Realtors. The value of the plot is Rs.300 crores. Amount of Rs.16,25,00,000/-, is transferred in the account of M/s.Aashi Realtors by M/s.IRIS Hospitality Private Limited. The transfer of remaining amount is to be investigated. The original documents are to be recovered. Learned APP relied upon the affidavit filed by the Assistant Police Inspector attached to EOW, opposing the application for anticipatory bail.

12 Learned senior advocate Mr.Vikram Nankani appeared for the intervenor / respondent no.2. He relied upon contents of the affidavit in reply filed by the complainant.

Reliance is placed on the documents annexed to affidavit–in–reply. The submissions of learned counsel for the complainant can be summarised as under:

(a) The case of the accused hinges on the alleged ground that the respondent no.2 had failed to repay the amount of Rs.48 crores alongwith monthly compoundable interest at the rate of 24% per annum under the purported loan agreement dated 26th November, 2010, agreement dated 10th April, 2014 and another agreement dated 10th April, 2014, and, that Nazari Baug Palace was vested in M/s.Aashi Realtors by operation of the alleged loan agreements and Aashi sold the property to IRIS Hospitality Pvt. Ltd. The alleged ground on which the applicant seeks to justify criminal action of forging and fabricating documents and fraudulently and wrongly transferred the property of complainant to IRIS is belied by the fact that the entire amount had been repaid by respondent no.2 to Aashi and other companies of the applicant Sukesh Gupta, on his instructions, which fact is suppressed by him to mislead this Court. Reliance is placed on ledger account of Aashi in the books of respondent no.2 along with bank statement reflecting payment to Aashi and other companies.

(b) The accused have suppressed vital facts from this Court. It is suppressed that post acquisition of the entire shareholding of the complainant by Agarwal Reality Developer Private Limited in October 2016, Agarwal reality through IIFL Wealth Finance Limited and Saibaba Investment and Finance Private Limited infused an amount of Rs.49,99,00,000/- into respondent no.2. In addition, Splash Zone Entertainment Private Limited and Saibaba Investments on the request of Agarwal Reality, paid amount of Rs.6,91,39,289/- and Rs.3,53,28,950/- towards payment of stamp duty in respect of the property. Thus, aggregate amount of Rs.60,43,68,239/- was infused into respondent no.2 post acquisition of entire share holding of respondent no.2 by Agarwal Reality.

(c) On the date of acquisition of respondent no.2 by Agarwal Reality, despite payment of part amount to the Trust, the sale deed dated 30th May, 2011, was not registered and the property was not reflecting in name of respondent no.2/ complainant in the records of Sub-registrar of Hyderabad. The sale deed dated 30th May, 2011, was registered on 14th May, 2018, post payment of stamp duty, transfer duty, registration fees and other charges by respondent no.2 from the amount infused by Agarwal Reality.

(d) The accused have suppressed that against the amount of Rs.48 crores, Aashi had actually paid Rs.37 crores to Nazri Baug Palace Trust on behalf of complainant, which amount has been repaid by complainant to Aashi. The ledger account of Aashi in the books of respondent no.2 and the bank statements of respondent no.2 reflect that the entire amount had been repaid to Aashi and other companies of Sukesh Gupta.

(e) The fact that Aashi had paid Rs.37 crores and defaulted payment of Rs.11 crores is substantiated by statement of Kishor Laxman Joshi recorded by investigating officer during investigation. He has stated that as per the sale deed dated 30th May, 2011, the Trust was entitled to receive amount of Rs.48 crores as consideration. The trust has received only Rs.37 crores from Aashi and Rs.11 crores is due from respondent no.2. Since Aashi failed to pay the entire consideration of Rs.48 crores to the trust, under the sale deed, the trust refused to part with physical possession of property to respondent no.2. the property is in physical possession of Trust.

(f) Accused have suppressed that Aashi has received Rs.16.25 crores from M/s.IRIS Hospitality in respect of the property, which has market value of Rs.300 crores. This fact is suppressed as the same belies the case of the accused. Since respondent no.2 failed to return the amount to Aashi, they had exercised its right under alleged loan agreement and conveyed the property to IRIS to set off alleged outstanding amount. The fact that Aashi has received an amount of Rs.16.25 crores from IRIS has been disclosed by the investigating officer in his reply filed before the Sessions Court.

(g) The accused have suppressed the fact that Mohammad Zakir Usman who is one of the co-accused who is neither a director nor employee of respondent no.2 was paid an amount of Rs.1 crores on 20th May, 2019, just one day prior to date of presentation of the forged and fabricated sale deed before the Sub-registrar of Hyderabad. It would be safe to assume that Mohammad Usman was paid an amount of Rs.1 crores for sole purpose of executing and registering the fabricated sale deed in May 2019, whilst the said sale deed is said to be executed and registered on 28th January, 2019. This is also reflected in reply filed by Investigating Officer dated 18th November, 2019, before Sessions Court.

(h) The sale deed dated 30th May, 2011, was executed between the Trust and respondent no.2 at a time when the applicant Sukesh Gupta was in control of respondent no.2, and, had even the sale deed registered as power of attorney holder of the trust, does not make any reference to the loan agreement dated 26th November, 2019, i.e. prior to execution of sale deed dated 20th May, 2011.

(i) While entering into the share purchase agreement dated 19th October, 2016, Agarwal Reality was not informed about loan agreement nor any reference to the same was made in share purchase agreement. The loan agreements were not forming part of the application for anticipatory bail filed before the Sessions Court. The same were tendered belatedly during the course of arguments. They were surfaced for the first time in Criminal Writ Petition No.2306 of 2020, preferred before this Court. The alleged loan agreements were not forming part of bail application preferred by co-accused C.S. Ravindran, before the

Magistrate and Sessions Court. The agreement dated 10th April, 2014, in the nature of extension does not make any reference to alleged loan agreement. The agreement was signed by P. Suresh Kumar on behalf of respondent no.2 and Sukesh Gupta. Whereas, the second agreement which allegedly overrides the first agreement is signed by Sunil Biyani on behalf of respondent no.2 and Suresh Gupta. The second agreement refers Mr.Sukesh Kumar as authorized representative of respondent no.2. Despite the same, the second agreement has been signed by Sunil Biyani on behalf of respondent no.2 and not of P. Suresh Kumar, who had signed the alleged agreement on the very same day. There are various discrepancies in the said agreements. The veracity of alleged loan agreements can be determined in investigation. Even assuming that the said agreements are genuine, even then the property could not stand vested in the name of Aashi by operation of the alleged loan agreements since entire amount was not advanced to respondent no.2.

(j) The board resolution dated 24th January, 2019 and sale deed dated 28th January, 2019, are fabricated by the accused in connivance with each other. The board resolution was signed by C.S. Ravindran on 18th May, 2019, when he ceased to be director of respondent no.2 and not on 24th January,2019, as alleged. On 18th May, 2019, when Mr.Ravindran was at Bangalore, he received an E-mail with an attachment, extract of minutes of board of directors meeting held on 24th January, 2019. E-mail was followed by telephone calls from P. Suresh Kumar and Sukesh Gupta requesting Mr.Ravindran to sign and send extract of minutes of Board of Directors meeting held on 24th January, 2019. Therefore the alleged board resolution has been fabricated and signed by Mr.Ravindran on 18th May, 2019, as director of respondent no.2 when infact he ceased to be director of respondent no.2 with effect from 13th February, 2019.

(k) In the E-mail dated 21st October, 2019, addressed by Mr.Ravindran to Investigating officer, it is stated that on 18th May, 2019, he received an E-mail from Sane Ranu under the advise of P. Suresh Kumar and Sukesh Gupta with attached draft Board Resolution, requesting for his signature and followed telephonic call from P. Suresh Kumar and Sukesh Gupta requesting him to sign and send back the board resolution immediately. He also stated that he received WhatsApp messages from P. Suresh Kumar and Sukesh Gupta.

(l) Mr.Ravindran was not in India when the meeting of board of directors allegedly took place on 24th January, 2019. He was at Hong–Kong/Vietnam from 17th January, 2019 to 26th January, 2019. The stamps on his passport corroborates this fact. This was reflected in reply filed by investigating officer before Sessions Court.

(m) Section 174 of Companies Act mandates quorum of minimum two directors for conducting meeting of board of directors. In the present case, on 24th January, 2019, Mr.Ravindran was in Hong–Kong/Vietnam. Mr.P. Suresh Kumar had contended in his application for anticipatory bail that he was unavailable during the meeting held on 24th January, 2019, and, he had given his verbal consent for Board Resolution. No other director was present for the meeting dated 24th January, 2019. Thus, as to in whose presence the meeting was held on 24th January, 2019, is moot question.

(n) The minutes book of respondent no.2 do not record the meeting dated 24th January, 2019. The minutes book was shown during the investigation. Investigation revealed that, accused have forged the seal and letterhead of respondent no.2, and, not complied provisions of Companies Act.

(o) The sale deed has been executed in May 2019 and ante dated to 28th January, 2019. This is substantiated by letter dated 22nd August, 2019, addressed by Jt. Sub-registrar–I Hyderabad, wherein he has categorically stated that the bogus and fabricated sale deed bearing registration no.1791 of 2019, was presented on 21st May, 2019, before the Sub-registrar–I for registration, and, thereafter, the same was registered on 22nd May, 2019. The sale deed is based on wrong and incorrect fact. Sukesh Gupta was director of respondent no.2 from 1st April, 2012 to 1st October, 2012. His wife was director from 1st June, 2012 to 1st October, 2012.

(p) The accused have not cooperated with the investigation. They have not attended the investigating officer on several occasion.

(q) Gopikishan Biyani and Sunil Biyani on instructions of Sukesh Gupta transferred their shareholding in respondent no.2 to Agarwal Reality. This is substantiated in complaint filed by Sukesh Gupta dated 13th December, 2019. At relevant point, Aashi and respondent no.2 were alter egos of Sukesh Gupta. 27 cases are registered against him. The respondent no.2 deny that property vested with Aashi and as a result of which the entire shareholding of respondent no.2 was acquired for Rs. 1 lakh only. The respondent no.2 was a debt ridden company. Upon acquisition, amount of Rs.60,43,68,239/-, was infused in respondent no.2. From this amount, respondent no.2 made payment ot Aashi, paid stamp duty, transfer duty and registration fees in respect of property and got sale deed dated 30th May, 2011, stamped and registered.

(r) P. Suresh Kumar and C.S. Ravindran were legally removed as directors of respondent no.2 as they failed to obtain the qualification shares within prescribed time. This is evident from Form No.DIR – 12 filed by respondent no.2 on 14th February, 2012.

13 Senior Advocate Mr.Rajeev Chavan, appearing for respondent no.2 in anticipatory bail application no.936 of 2020, has reiterated the submission of Shri Nankani. Apart from that he submitted that the applicant Mohammad Usman was acting in

connivance with the co-accused. He was not director of the company. Huge amount was transferred into the account of the said applicant. The evidence on record clearly shows that he was acting in connivance with other accused. He relied upon the affidavit–in–reply filed on behalf of the complainant opposing the relief sought in the application for anticipatory bail. He relied upon the decision of the Supreme Court in the case of ***Mohammad Ibrahim and Others Versus State of Bihar and Another***[3]. In the said decision, it was observed that civil disputes in some cases may also contain ingredients of criminal offences. Such disputes have to be entertained notwithstanding that they are also civil disputes. The Apex Court has also dealt with the existence of the ingredients which are required to constitute the offence under Sections 467 and 471 of IPC. It was observed that the condition precedent for an offence under sections 467 and 471, is forgery. The condition precedent for forgery is making false documents.

14 Learned advocate Mr.Pranav Badheka has submitted that role is attributed to the accused showing their complicity in the crime. The role of Sukesh Gupta is that he is main

3 (2009) 8 SCC 751

conspirator and beneficiary. He appointed C.S. Ravindran and P. Suresh Kumar, as his employees, and Mohammad Zakir Usman, as his close associate and friend to execute forged documents. He is the orchestrator of fraudulent transaction between complainant Aashi Realtors and IRIS Hospitality, forged and fabricated board resolution dated 24th January, 2019, and sale deed dated 28th January, 2019 were executed at his behest. Applicant Suresh Kumar is the co-conspirator. He telephonically instructed Mr.Ravindran to sign the forged and fabricated board resolution dated 24th January, 2019 in May 2019. Mohammad Usman is a co-conspirator. He was appointed as authorized representative of complainant company to execute forged sale deed dated 28th January, 2019. He executed sale deed dated 28th January, 2019, on behalf of complainant without authority. Custodial interrogation of the accused is required since they have forged and fabricated loan agreement dated 26th November, 2010, loan agreement dated 10th April, 2014, Board resolution dated 24th January, 2019, sale deed dated 28th January, 2019. Huge amount in cash have changed hands. Government records have been manipulated. Several cases are registered against Sukesh Gupta.

15 From the FIR and all the documents placed for consideration by both the parties, it is apparent that the main issue involved in this FIR is that the resolution dated 24th January, 2019, has been fabricated and that the sale deed in respect to the subject property was executed. The contention of the applicants, however, is that the dispute is of civil nature. The applicants have relied upon the loan agreement. Shares were transferred for meager amount, although, it was claimed that the value of the property was 300 crores.

16 The contention of the complainant which is asserted through the documents on record is that there is suppression of vital facts by the applicant accused. There is strong evidence on record to show that the resolution authorizing the co-accused to execute transaction of transferring property, is forged. The loan agreements are forged and the agreement for sale is also forged. It is also contended that the loan agreements had surfaced at belated stage and there is reason to believe that the same are fabricated. The entire amount obtained through loan has been repaid by respondent no.2 company. The investigation has revealed that the resolution dated 24th January, 2019, is false and frivolous. The arrested accused has disclosed the involvement of the applicants and revealed that the documents are false and

fabricated. The applicants are trying to divert the issue by submitting that it was a loan transaction or that the shares were sold for meager amount etc. The prime question relating to investigation of FIR is whether the board resolution dated 24th January, 2019, and, consequently the sale deed executed by the accused are fabricated documents and by using them, the property worth crores of rupees was transferred.

17 It is apparent that the board resolution was signed by C.S. Ravindran. According to complainant, he ceased to be director. He was not in India when the meeting of board of directors was held on 24th January, 2019. The investigation revealed that from 17th January, 2019 to 26th January, 2019, he was in Hong-Kong/Vietnam. Apparently, minutes of respondent no.2 do not record the meeting of board of directors dated 24th January, 2019. According to prosecution, the accused have forged the seal and letterhead of complainant. Fabricated sale deed was executed in May 2019, and, entry dated 28th January, 2019. The Joint Sub-registrar had forwarded letter dated 22nd August, 2019, stating that the sale deed bearing registration no.1791 of 2019, was presented on 21st May, 2019, before the Sub-registrar–I for registration, and, thereafter, the same was registered on 22nd May, 2019.

18 The investigating officer has placed on record by filling affidavit–in–reply that C.S. Ravindran was arrested and his custodial interrogation had revealed that during the period 17th January, 2019 to 26th January, 2019, he was in Hong-Kong and Vietnam. The scrutiny of his passport corroborates this fact. Mr. C.S. Ravindran who has allegedly signed the board resolution dated 24th January, 2019, was not in India on 24th January, 2019. The investigating officer recorded statement of Rajesh Kumar Vyankatesh Vallu Mallor, company secretary of the complainant. He revealed that the alleged resolution is false and bogus for various reasons, viz.

(i) As per Companies Act 2013, it is mandatory that all company resolutions should bear signatures of atleast two directors. The present resolution is signed by one director Mr.Ravindran;

(ii) The company seal used to prepare resolution dated 24th January, 2019, is fake and forged;

(iii) The name of company on the resolution is mentioned as Neeharika Infrastructures P. L., whereas, as per section 4 of Companies Act, 2013, it is mandatory that this name should be Neeharika Infrastructure Private Limited;

(iv) Any Resolution regarding sale of the company property, have to be passed in Annual General Meeting. The present Resolution is allegedly passed in the meeting of Board of Directors.

(v) No Board meeting or any other type of meeting of the company was held on that date.

19 The affidavit of EOW, further mentions that, during the course of investigation Mr.Rajesh Kumar Mallor produced minutes book of M/s.Neeharika Infrastructure Pvt. Ltd., and its scrutiny revealed that there is no mention of alleged board meeting or passing of any resolution on the said date. During custodial interrogation of Mr.C.S. Ravindran, it is revealed that, he has signed the alleged resolution dated 24th January, 2019, under instructions of applicant Sukesh Gupta. Mobile number of Mr.Ravindran was seized and its scrutiny had revealed that Sukesh Gupta had sent WhatsApp message to Mr.Ravidran on 18th May, 2019, stating that P. Suresh Kumar would be sending an E-mail to him in respect of resolution of NIPL and he was asked to sign the resolution and send it back. Draft of Resolution was sent on WhatsApp to Mr.Ravindran. Thus, investigation has prima facie revealed that, alleged forged back dated resolution is prepared by accused on 18th May, 2019. On 21st October, 2019,

Mr.Ravindran had sent E-mail from his E-mail ID which contains attachment of E-mail which he had received from Mr.Sane Ramu in respect of resolution. However, attachment was not accessible. E-mail account was scrutinized to check the original mail containing draft of said resolution sent by Mr.Sane Ramu to Mr. Ravindran was not found. Prima facie there is reason to believe that, Mr.C.S. Ravindaran has destroyed evidence. In the bail application, Mr.Ravindran has admitted that on 18th May, 2019, he was at Bangalore, while he received an E-mail from Mr.Sane Ramu with an attachment i.e. extract of minutes of Board of Directors meeting held on 24th January, 2019. the E-mail was followed by phone callas from Mr.P. Suresh Kumar and Mr.Sukesh Gupta requesting him to sign and send extracts immediately. During investigation, letter was received from T. Durga Palavi, practicing company secretary, stating that, Mr.Mohammad Zakir Usman was never a Director or employee of company, which authorised him to sell the property of the company. Sukesh Gupta and his wife are partners of Aashi Realtors. Investigation revealed that, amount of Rs.16.25 crores was transferred from account of IRIS hospitality to Aashi Realtors. On 20th May, 2019, one day before registration of agreement, amount of Rs.1 crore was transferred from said account to the account of Mohammad

Zakir Usman. Mr.Ravindran, during interrogation has revealed that the other accused had received consideration in cash. Sunil Biyani admitted execution of loan agreement dated 26th No ember, 2010, extension agreement dated 10th April, 2014 and share purchase agreement dated 19th October, 2016. He stated that, equity shares of NIPL were sold at face value to M/s.Agarwal Reality since the property was 100% financed by Aashi and there was interest burden which diluted value of property. Statement of Kishor Joshi was recorded during investigation. He is authorised signatory of Nazari Baug Palace Trust to the sale deed dated 30th May, 2011. He admitted execution of sale deed and execution of General Power of Attorney dated 30th May, 2011, in favour of Mr.Sukesh Gupta. Trust was entitled to receive Rs.48 crores, as consideration. Trust has received Rs.37 crores from Aashi Realtors. Rs.11 crores are due from Ashi Realtors. Statement of Mr.V. Ravinder, Joint Sub-Registrar- I, R.O. Hyderabad was recorded. He revealed that, the said agreement was produced in his office on 21st may, 2019, as Document No. P – 63 / 2019 for scrutiny and was registered on 22nd May, 2019, as Document No. 179 / 2019. The discrepancy in presentation date was clerical error, which was rectified under orders of District Registrar, Hyderabad, dated 14th

August, 2019, wherein Registrar warned the staff to be more careful and avoid such error. The officer had communicated with Jammu and Kashmir Bank, Srinagar branch and sought information regarding original deed of sale dated 30th May, 2011, executed between Nazri Baug Palace Trust, represented by Sedef Trustee Company Pvt. Ltd., through its director Mr.Kishor Joshi and NIPL, and, original sale deed dated 28th January, 2019, executed between NIPL by Mohammad Zakir Usman on behalf of NIPL and IRIS Hospitality. The bank had intimated that, IRIS Hospitality has mortgaged original documents with it and availed loan. In the suit filed by IRIS, the Court by order dated 16th November, 2019, directed the bank to maintain status–quo *vis–a–vis* safe custody of documents. It is further stated that, custodial interrogation of the accused and in depth investigation of crime is required to unearth truth of preparation of forged Resolution dated 24th January, 2019, and, to find out participation of other persons. By order dated 18th December, 2020, the accused were directed to appear before EOW from 5th January, 2021 to 8th January, 2021, and, cooperate with investigation. They have failed to abide by the order of this Court.

20 The prosecution case is that the accused in

connivance with each other, fabricated the board resolution with an intention to usurp property. The prosecution relied on following circumstances:

(i) The alleged Board Resolution was signed by C.S. Ravindran on 18th May, 2019, when he ceased to be director of Respondent No.2 and not on 24th January, 2019 as alleged.

(ii) On 18th May, 2019, when C.S. Ravindran was in Bangalore, he received an email from Sane Ramu with an attachment named ‘Extract of Minutes of Board of Directors meeting held on 24th January, 2019. This email was followed by telephone calls from P. Suresh Kumar and Sukesh Gupta requesting Mr.C.S. Ravindran to sign and send the ‘Extract of Minutes of Board of Directors meeting held on 24th January, 2019 immediately.

(iii) The fact that Mr.C.S. Ravindran forged and fabricated the alleged Board Resolution on 18th May, 2019 is substantiated from the averments made by C.S. Ravindran in his Bail Application No. 282 of 2019 filed before the Learned Magistrate Court, Mumbai and Bail Application No. 2985 of 2019 filed before the Honb’le Sessions Court, Mumbai, wherein C.S. Ravindran clearly admits to the fact he signed the alleged Board Resolution on 18th May, 2019 on the instructions of P. Sureshkumar and Sukesh Gupta.

(iv) In the email dated 21st October, 2019 addressed by C.S. Ravindran to the Investigation Officer, C.S. Ravindran reiterated that on 18th May, 2019, when he was in Bangalore, he received an email from Sane Ramu under the advice of P. Sureshkumar and the applicant with an attached drafted board resolution requesting for his signatures and followed telephone calls from P. Suresh Kumar and Suresh Gupta requesting Mr.C.S. Ravindran to sign and send board resolution immediately.

(v) C.S. Ravindran was not in India when the alleged meeting of the Board of Directors of Respondent No.2 purportedly took place on 24th January, 2019. During the period starting from 17th January, 2019 and ending on 26th January, 2019 C.S. Ravindran was in Hong Kong/Vietnam. The stamps forming part of his Passport No. Z3594792 corroborate that, during the period starting from 17th January, 2019 and ending on 26th January, 2019, C.S. Ravindran was in Hong Kong/Vietnam.

(vi) Section 174 of the Companies Act, 2013 mandates the quorum of minimum 2 directors for conducting a meeting of the Board of Directors of a company. In the present case, on 24th January, 2019 C.S. Ravindran was in Hong Kong/Vietnam and P. Suresh kumar in his Anticipatory Bail Application No.937 of 2020 filed before the Hon’ble Court has averred that he was unavailable during the course of the alleged meeting of the board of Directors of Respondent No.2 purportedly held on 24th January, 2019 and that he had only given his verbal consent for the alleged Board Resolution. No other director of Respondent No.2 was present for this alleged meeting of the Board of Directors of Respondent No.2 purportedly held on 24th January, 2019.

(vii) The Minutes book of Respondent No.2 do not record the alleged meeting of the Board of Directors of Respondent No.2 taking place on 24th January, 2019. In fact, during the course of investigation, the Investigation Officer had seized the Minutes book of Respondent No.2 when no record of the alleged meeting of the Board of Directors of Respondent No.2 purportedly taken place on 24th January, 2019 was found.

(viii) The Investigation conducted so far has revealed that the accused have forged the seal and letter head of Respondent No.2 and not complied with several provisions of the companies Act, 2013, in order to pass the alleged Board Resolution and usurp the Property.

21 It is alleged that on the basis of forged and fabricated Board Resolution, the accused caused the execution and registration of alleged Sale Deed and wrongly transferred the Property to its nominee IRIS in May, 2019 and thereafter, ante dated bogus and fabricated Sale Deed, in order to show that the same was purportedly executed on 28th January, 2019.

22 To buttress the allegation that the bogus and fabricated Sale Deed has been executed in May, 2019 and ante dated to 28th January, 2019 is substantiated by the letter bearing No.300/RTI/Hyd/2018 dated 22nd August, 2019 addressed by the Joint Sub-Registrar-I, R.O. (O.B.) Hyderabad, wherein he has categorically stated that the bogus and fabricated Sale Deed bearing registration No. 1791 of 2019 was presented on 21st May, 2019 before the Sub-Registrar-I for registration and, thereafter, the same was registered on 22nd May, 2019.

23 According to complainant until such time that the entire shareholding of Respondent No.2 was acquired by Agarwal Reality, Respondent No.2 and Aashi were alter egos of Sukesh Gupta. The same is evident from the following :

(i) In FIR No. 367 of 2019 dated 19th September, 2019 registered at Worli Police Station, Mumbai and subsequently transferred to Economic Office Wing, Unit IX, Mumbai and numbered as C.R. No.82 of 2019 (FIR) Respondent No.2 has stated that, at the relevant time, Aashi was a sister company of Respondent No.2.

(ii) The fact that the Trust gave a Power of Attorney to Mr.Sukesh Gupta, on its behalf to register the Sale Deed dated 30th May, 2011.

(iii) Mr.Sukesh Gupta was a director of Respondent No.2 during the period starting from 1st April, 2012 and ending on 1st October, 2012.

(iv) The wife of Sukesh Gupta was a director of Respondent No.2 during the period starting from 1st June, 2012 and ending on 1st October, 2012.

(v) The fact that Gopalkrishnan Biyani and Sunil Biyani on the instructions of Mr.Sukesh Gupta transferred their entire shareholding in Respondent No.2 to Agarwal Reality. The same is substantiated by the Complaint dated 13th December, 2019 filed by Sukesh Gupta.

(vi) The above mentioned statement of Sukesh Gupta in the complaint dated 13th December, 2019, even substantiates and corroborates the fact that, since, at the time of acquisition, Respondent No.2 was a debt ridden company having huge liabilities, the entire shareholding of Respondent No.2 was acquired by Agarwal Reality for an amount of Rs.1,00,000/-.

(vii) Mr.Sukesh Gupta is a habitual offender. The present FIR is not the only criminal case registered against him. A total of 27 criminal cases are registered against him.

24 Thus, apart from the FIR and the documents placed for consideration by the complainant, the investigation conducted by the officer has prima facie disclosed the complicity of the applicants in the crime. The affidavit–in–reply filed by investigating agency prima facie disclosed involvement of applicants. The investigation indicate that the documents are false and fabricated. It is the creation of the accused. In the light

of the facts, as stated above, custodial interrogation of the applicants is necessary. They are not entitled for relief under Section 438 for Cr.P.C. Hence, the applications deserves to be rejected.

25 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Anticipatory Bail Application Nos.935 of 2020, 936 of 2020 and 937 of 2020, stand rejected;

(ii) All interim applications stand disposed of.

(PRAKASH D. NAIK, J.)

At this stage learned counsel for the applicants submit that the applicants were on interim protection for a long period of time and to enable them to challenge this order before the Apex Court, interim protection granted by this Court may be extended by a period of four weeks. This submission is objected by learned APP as well as by learned counsel for the complainant. Since the applicants propose to approach the Apex Court, interim protection shall continue for a period of four weeks from today.

(PRAKASH D. NAIK, J.)