

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3022 OF 2021

1) UZZAIR ISHRAQUE KHAN)
2) REHANA MOHAMMAD ISHRAQUE KHAN)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Umesh Mankapure, Advocate for the Applicants.

Smt.PP.Shinde, APP for the Respondent – State.

Mr.Abdul Hafeez Kotwala, Advocate for the First Informant.

CORAM : V. G. BISHT, J.

**RESERVED ON : 21st DECEMBER 2021
PRONOUNCED ON : 23rd DECEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 438 of the Code of Criminal Procedure apprehending arrest under Sections 420, 406, 464, 467, 471, 34, 120B, 181, 201, 419, 465, 468 of the Indian Penal Code (IPC)

AVK

1/6

registered vide Crime No.176 of 2021 with Police Station Bund Garden, Pune.

2 It is the case of prosecution that Taboot Inam Endowment Trust which is registered with Wakf Board owned 8 Hectare 57.1 R land bearing Gat No.335/1, Mouje Maan, Taluka Mulshi, District Pune. Out of the said land, the government acquired 5 Hectare 51 R land and accordingly award of Rs.9.64 crore came to be passed. The prosecution alleges that accused Imtiyaz Mohammad Hussain Shaikh and Chand Mulani in collusion with each other represented themselves to be the Chairman and Secretary of the said Trust and by furnishing forged no objection certificate purportedly issued by said Wakf Board and by misguiding the government officials, secured compensation to the tune of Rs.7,76,98,250/- and instead of depositing the said amount in the account of Trust, deposited the same in their account and thereby misappropriated the said amount. The informant, accordingly, lodged the First Information Report (FIR).

3 Mr.Umesh Mankapure, learned counsel for the applicants, submits that the amount in question was disbursed after passing of the order of the Collector. Main accused have been enlarged on regular bail by the trial Court. Moreover, the entire amount has been deposited in the account of Trust and the said account has been freezed by Bund Garden Police Station. Investigation is completed and charge-sheet has been filed. There are no criminal antecedents and in such circumstances, the applicants deserve to be enlarged on bail.

4 It appears from the record that during the course of investigation it transpired that applicants along with other accused conspired with each other and committed the offence in question and that is how the applicants came to be arraigned as accused.

5 Smt.PP.Shinde, learned APP, on the other hand, opposed the submissions by contending that the present applicants were part of conspiracy and thus facilitated the

commission of offence. The learned APP also invited my attention to the tabular form given in the charge-sheet from which it is seen that an amount of Rs.28,60,000/- is yet to be recovered from the applicants. There being no merit in the application, the same is liable to be rejected.

6 Perused the investigation papers including the charge-sheet. Admittedly, at the time of lodging the FIR the main role in the alleged offence is attributed to accused Imtiyaz Mohammad Hussain and Rehana Mohammad Ishrakh Khan. It may not be out of place to mention here that both of them have been enlarged on bail by the learned trial Court. As far as the present applicants are concerned, there is an omnibus statement in the charge-sheet that these applicants entered into a conspiracy with other accused and thus facilitated misappropriation of Rs.7,76,98,250/-.

7 The learned APP, during the course of arguments, also invited my attention to the various bank statements filed in the

compilation and presented today and forcefully submitted that the amounts shown in the accounts of the applicants are indicative of the fact that they were very much part of the conspiracy. In my view, merely statement of bank accounts will not allow me to draw an inference as to the angle of conspiracy. At the same time, it is also to be noted from the statement of learned counsel for the applicants that the amount has been returned by cheque and the cheque (Exh. B) is filed on record which shows that an amount of Rs.7,76,98,250/- was given to Special Land Acquisition Officer, Pune. This fact is not disputed by the learned APP. As far as the remaining amount of Rs.28,60,000/- is concerned, as already stated, although no quality evidence is forthcoming, despite that care can be taken by imposing certain conditions on the applicants.

8 In view of above, I am inclined to allow the application. Hence, I pass the following order :

ORDER

1 The application is allowed.

- 2 In the event of his arrest in Crime No.176 of 2021 with Police Station Bund Garden, Pune, for the offences punishable under Sections 420, 406, 464, 467, 471, 34, 120B, 181, 201, 419, 465, 468 of the Indian Penal Code (IPC), applicant no.1 Uzzair Ishraque Khan and applicant no.2 Rehana Mohammad Ishraque Khan be released on bail on executing P.R.Bond in sum of Rs.25,000/- each and on furnishing 1 or 2 surety/s in like amount, by each of them.
- 3 The applicants shall attend the concerned police station twice a week on every Monday and Friday, in between 11.00 a.m. to 2.00 p.m., till the filing of charge-sheet.
- 4 The applicant shall not tamper the prosecution evidence.
- 5 The application stands disposed off accordingly.

(V. G. BISHT, J.)