

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

**ANTICIPATORY BAIL APPLICATION NO. 04 OF 2022**

Vijaya Chandrapal Iyer .... Applicant  
Versus  
The State of Maharashtra .... Respondent

Mr. Subodh Desai i/b. Rohan R. Sonawane for Applicant.  
Mr. Ajay Patil, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL, J.**  
**DATE : 04<sup>th</sup> JANUARY, 2022**  
**(through Video Conferencing)**

**P.C. :**

1. The Applicant is seeking anticipatory bail in connection with C.R.No.469 of 2021 registered at Govandi Police Station, on 11/12/2021, under sections 420, 406, 465 and 467 r/w. 34 of the Indian Penal Code (for short 'IPC').

2. Heard Shri. Subodh Desai, learned counsel for the applicant and Shri. Ajay Patil, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by one Varsha Shetty. She has stated that, informant's parents K. V. Vishwanathan and Laxmi Vishwanathan decided to

purchase a flat in Mumbai. The present applicant is sister of Laxmi Vishwanathan. Thus, she is the first informant's maternal aunt. The applicant volunteered to search for a house in Chembur area. She was in the business of real estate and working for M/s. Sameera Habitats. The applicant was acquainted with one Arun Singh.

4. In April 2017, the applicant told the informant's parents that a building by the name Simran Heights was being constructed in Chembur area and a flat was available in that building. That flat was owned by one Mustaqin Khan. She told the informant's parents that, aforementioned Arun Singh would help in bringing about the transaction. In April 2017, the informant, her husband, her parents and the applicant went to see the flat. After that, the applicant took all of them to the office of Star garage and introduced Mustaqin Khan and Arun Singh to them. At that time, Mustaqin Khan told them that he had made his garage space available to Raikar builders for approach road towards Simran Heights and in lieu thereof the builder had promised to give one 1 BHK flat and one 2BHK flat and that Mustaqin Khan wanted to sale those flats at the rate of Rs.14000/- per square feet.

Accordingly, the price for 2 BHK flat was fixed at Rs.1,42,00,000/-.

The informant's parents agreed to purchase that flat. Her parents insisted that the amount would be paid only through bank account. At that time, Arun Singh gave a proposal that the informant's parents should transfer the amount in the bank account of Arun Singh and then the amount would be paid to Mustaqin Khan. Arun Singh also asked some more amount for tax purposes. The informant and her parents agreed to that proposal.

The F.I.R. mentions that, parents of the informant, in all, transferred Rs.1,05,00,000/- in the bank account of Arun Singh.

The informant's mother used to tell the informant about the progress of the transaction. Arun Singh had obtained Rs.7 lakhs more for registration of the flat. That amount was also transferred through bank account. An MOU was executed between Mustaqin Khan and informant's parents in June 2017. It was regarding sale of flat on the 13<sup>th</sup> floor of Simran Heights, admeasuring 1015 sq.ft.

It was decided that, Mustaqin Khan was to return the allotment letter in his name to the builder, so that, new allotment letter could be issued. In the MOU, receipt of Rs.71 lakhs by Mustakin

Khan was also mentioned. A letter dated 21/07/2017 by M/s. Vikas Construction mentions that, as per letter dated 11/07/2017 of Mustaqin Khan the flat was to be transferred in the name of informant's parents. The informant's parents requested Arun Singh to register the flat in their name, but Arun Singh refused it on one pretext or the other.

5. In the year 2018, the informant's mother was diagnosed with Cancer. She succumbed to her ailment on 14/10/2019. Informant's father also passed away on 04/02/2020. Since March 2020, because of lockdown; the informant could not get the information about their flat. In December 2020, informant's husband went to Star garage to inquire about registration of that flat. At that time, he was shown a file in respect of that flat. The file was shown by one of the employees of Star Garage. He took photographs of some documents. One of the documents was a letter dated 20/07/2018 purportedly given by informant's parents mentioning that, due to personal reasons they were not interested in the allotment of the flat and that the builder was free to allot that flat to any other member as suggested by

Mustaqin Khan. The letter further mentioned that the parents of the informant had accepted that they had not paid any amount towards the flat and they had no claim whatsoever against allotment of the flat in favour of any third party. The informant was shocked to see a copy of that letter because her parents had never given such letter to anybody. The signatures on the letter were forged. She made further inquiry and she came to know that, on 10/08/2018 one flat was allotted to the applicant's son Nitin Ayer. By another letter dated 04/09/2018, Mustaqin Khan had mentioned that he had received Rs.50 lakhs through cheque in respect of that flat. It is further mentioned in the F.I.R. that, Arun Singh had paid Rs.74,15,000/- only to Mustaqin Khan and had taken back Rs.13,70,000/-. This amount was from the amount of Rs.1,05,00,000/- paid by the informant's parents. The F.I.R. mentions that the applicant was aware about allotment of that flat in the informant's parents' names and yet she along with other accused created a forged letter by forging the signatures of informant's parents and a new allotment letter was issued. Thus, this offence was committed. The amount paid by the informant's

parents was lost and flat was not given to them. On this basis the F.I.R. was lodged.

6. Learned counsel for the applicant invited my attention to the agreement for sale between applicant's son Nitin Iyer and M/s. Vikas Constructions company. The said agreement is in respect of the flat on 9<sup>th</sup> floor, bearing Flat No.904 in Simran Heights. The price of that flat was fixed at Rs.81 lakhs. Shri. Desai, therefore, submitted that the said transaction was completely an independent transaction and it has no connection with the earlier transaction between the informant's parents, Mustaqin Khan and Arun Singh. He submitted that the applicant's son had paid Rs.16,50,000/- through bank account to the builder and has raised loan to the tune of Rs.64,50,000/- from a bank for purchasing that flat. Thus, he had paid Rs.81 lakhs to the builder and this transaction is totally independent of the transaction between informant's parents and others. He submitted that, admittedly, Mustaqin Khan had received the amount paid by informant's parents and yet he is not made an accused in the F.I.R. or by the investigating agency. He further submitted that, in any case, there

is no direct role attributed to the present applicant. Learned counsel submitted that the forged letter in question is already in possession of the investigating agency and for that purpose custodial interrogation of the applicant is not necessary. She is 70 years old lady. He submitted that the evidence mainly consists of documentary evidence and bank transactions and for that purpose custodial interrogation of the applicant will not serve any purpose.

7. Learned APP, on the other hand, submitted that the transaction between the applicant's son and builder is not genuine. The investigating agency has recorded statement of the builder during investigation. That statement is important and throws light on the nature of transaction between the parties. He submitted that the forged letter created by the accused was dated 20/07/2018 and the agreement between the applicant's son and builder was dated 04/08/2018. It was entered into within a very short period which shows that there was a definite design in forging that letter and entering into transaction by the applicant's son. The applicant has played major role right from the very beginning. She was in the business of real estate and, therefore,

she was aware of the nature of transactions. Her son is the direct beneficiary. The amount shown in the transaction of the applicant's son i.e. Rs.81 lakhs is not the real transaction amount, but the price of the flat was much more. That price was adjusted by using the amount paid by informant's parents. Shri. Patil emphasized that the informant's parents had made payment of huge amount and they had neither received the flat nor the money.

8. I have considered these submissions. As rightly submitted by Shri. Patil, statement of the builder is important in this context. The builder Vikas Raikar has given details regarding the flat which was to be allotted to Mustaqin Khan in lieu of some portion of his garage which was acquired for the purpose of approach road to Simran Heights. The builder had agreed to give one 1BHK flat and one 2BHK flat to Mustaqin Khan. The builder had told Mustaqin Khan that the flat would be allotted to the persons named by Mustakin Khan and they could sell the flats further. Vikas has further stated that Arun Singh had accompanied Mustaqin Khan when he had met Vikas. On 10/07/2017 Mustaqin Khan met the builder and demanded allotment of 2BHK flat in the

name of informant's parents. After that, on 04/08/2018 the builder entered into an agreement with Nitin i.e. applicant's son. At that time, Mustaqin Khan had given a letter instructing the builder to give the allotment letter in the name of Nitin. At that time, the letter in question purportedly signed by informant's parents was also given to the builder which mentioned that the allotment in their name should be cancelled. Accordingly, when the builder gave allotment letter in favour of Nitin, at that time, the applicant was accompanied by Arun. The builder has categorically stated that allotment of the flat which was to be given to informant's parents was cancelled and thereafter based on that cancellation the flat was given to Nitin.

9. In December 2020, the applicant had approached the builder and had narrated about the amount taken by Arun Singh. At that time, the builder had questioned the applicant as to why she had not informed him about the transaction with Arun Singh.

10. This particular statement shows direct connection between allotment of flat in favour of informant's parents and allotment of flat in favour of applicant's son. Both these allotments

are interconnected. Only after first allotment in favour of informant's parents was cancelled, the flat was allotted to Nitin. Therefore, there is no substance in the submission that, both these transactions are totally independent. The fact remains that the applicant was fully aware of the earlier transaction between informant's parents and Mustaqin Khan and Arun Singh. She was involved right from the inception. In fact, she had introduced those two persons to the informant's parents. She was also aware that her sister was suffering from cancer. In spite of this, she did not help the informant's parents to get their rightful possession of the flat, but instead, based on forged letter, helped her own son to get that flat allotted in his own name. Though, it is argued that, Rs.81 lakhs were raised by the applicant's son in that transaction, the fact remains that the said flat was allotted in place of the flat which was to be allotted to informant's parents. Informant's parents had lost their money and could not get possession of the flat before their sad demise. The applicant was real sister of informant's mother who was cheated. At this stage, there is sufficient material to show that the applicant was fully aware of

the entire history, previous allotment and the subsequent allotment. She was also aware that informant's parents had not got possession neither had they received refund of the amount. Therefore, her involvement in the transaction is obvious. Though she is 70 years old lady, her custodial interrogation for explanation of all these transactions is necessary. It is, of course, expected that the investigating officer shall take all the necessary precautions to safeguard health and safety of the applicant.

11. In this view of the matter, I am not inclined to allow this application.

12. The Application is rejected.

**(SARANG V. KOTWAL, J.)**