

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2332 OF 2023
WITH
INTERIM APPLICATION NO. 3201 OF 2023

Shoeb Nabiullah Khan ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. M. Zaid Siddique, for the Applicant
Mrs. A.A. Takalkar, APP, for the Respondent/State.
Ms. Noorseema Baig a/w. Mr. G.P. Khan, for the Intervener.
Mr. B.D. Ghadigaonkar, PI, Kurla police station present.

CORAM : N. J. JAMADAR, J.
DATE : SEPTEMBER 4, 2023

P.C.:

1. This is an application for pre-arrest bail in connection with C.R. No. 240 of 2023 registered at Kurla police station for the offences punishable under sections 120-B, 420, 465, 466, 467, 468, 471, 472, 473 read with 34 of Indian penal Code, 1860.

2. The indictment against the applicant and the co-accused is that the first informant who was in need of a flat was induced to part with a sum of Rs. 55 lakhs on the pretext that a flat under Mhada scheme would be made available at an economical rate. On 15th July, 2020 the co-accused Hussain Khan allegedly took the first informant to a place at Kalina where the applicant and co-accused Ramesh Pawar, Vishnu Tripathi and Nilesh Therde were present.

Over a period of time, the first informant was induced to part with various amounts. In most of the meetings when the money was handed over to the co-accused, the applicant was present. Some of the co-accused introduced persons as the high ranking officials of Mhada. A farce of getting the form of the first informant filled was also made. On 4th September, 2021 the co-accused Ramesh Pawar, Vishnu Trimpathi and Nilesh Therde passed a receipt of having received a sum of Rs. 55 lakhs.

3. The first informant alleged that the applicant and the co-accused induced his second wife Nasreen to part with an amount of Rs. 18 lakhs over a period of time for allotment of Mhada flat at Vikroli-Kannamvar Nagar. Amounts were paid in cash and through banking channels, to the applicant as well. A false and forged allotment letter was delivered to the wife of the first informant. Eventually, it was realized that the first informant and his wife were deceived. Hence, the informant lodged the report.

4. Mr. Siddiquie, the learned counsel for the applicant, submitted that initially the applicant was shown as a witness and his statement was recorded by the investigating officer. Later on, with a view to avoid the payment of money, which the wife of the first

informant had borrowed from the applicant, he has been falsely roped in. It was further submitted that the first informant having realized that he was duped of a sum of Rs. 55 lakhs would not have went ahead with the alleged transaction to have a flat allotted in the name of his wife. The entire case against the applicant is false and concocted, submitted learned counsel for the applicant.

5. In opposition to this, the learned APP submitted that the allegations in the first information report indicate that the applicant was present in each of the meetings where the inducements were made and the first informant was made to part with money. Taking the Court through the statements of witnesses and the affidavits cum undertakings given by co-accused Ramesh Pawar, Vishnu Sharma and Nilesh Therde, to which the applicant is allegedly a witness, the learned APP submitted that the applicant is very much privy to the crime. Reliance was also placed on the extract of bank account which indicate that a sum of Rs. 1,50,000/- was credited to the account of the applicant.

6. Mr. Siddique, learned counsel for the applicant joined the issue by submitting that the said payment was in relation to a different transaction between the applicant and Mrs. Nasreen, the

wife of the first informant wherein she has acknowledged the receipt of sum of Rs. 18 lakhs and executed receipt cum undertaking.

7. The material on record prima facie indicates that the first informant was induced to part with a huge amount by making a representation that the Mhada flat would be allotted to him. The allegations in the first information report show that various meetings were held, numerous promises were made and persons were introduced as Mhada officials. The fact that the co-accused had acknowledged the receipt of a sum of Rs. 55 lakhs is also prima facie borne out by the record. Prima facie a purported allotment letter came to be issued in the name of the wife of the first informant. It is imperative to note that in the first information report, specific roles of having induced the applicant to pay the amount to the co-accused, being present in most of the meetings wherein false representations were made and the first informant was induced to part with the amount have been made so far as the proposed allotment of the Mhada flat to the first informant. As regards the wife of the first informant, there is material to show that a sum of Rs. 1,50,000/- was credited to the account of the applicant.

8. The submissions on behalf of the applicant that initially the applicant was shown as a witness does not carry the matter any

further. There are statements of witnesses apart from the first informant and his wife to show that the applicant introduced the co-accused and had induced the first informant to part with the amount. The person who introduced the first informant to the accused has specifically named the applicant as the person who had showed the room which was offered to be allotted and attended the meetings in which amounts were paid.

9. In the totality of the circumstances, there is prima facie material to show that the applicant was part of the racket and privy to the crime. The custodial interrogation of the applicant, therefore, seems to be warranted to facilitate further investigation to unearth the fraud in all its facets, ascertain the money trail and also unmask the identity of the persons who were involved in the alleged impersonation as the officials of Mhada. Hence, the application deserves to be rejected.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)