

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

ANTICIPATORY BAIL APPLICATION NO. 2523 OF 2023

Ms. Nameera Sultan Shaikh and ors. ...Applicants
Versus
State of Maharashtra ...Respondent

Mr. Shirish Shigwan, i/b Ali Kaashif Khan Deshmukh a/w
Snigdha, for the Applicants.
Mrs. Geeta Mulekar, APP for the State/Respondent.
Mr. Santosh Pawar, a/w Aman Kothari, for the Complainant.

CORAM: N. J. JAMADAR, J.
DATED: 11th SEPTEMBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicants and the learned APP for the State.
2. This is an application for pre-arrest bail in connection with CR No.414 of 2023, registered with Bangar Nagar Police Station, Mumbai, for the offences punishable under Sections 381, 406 and 420 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").
3. The first informant is the son of Dr. Mohammad Asif Khan, who operated a clinic at Goregaon. Applicant No.1 Ms. Nameera Shaikh and applicant No.2 Prem Galfade were working as compounders in the said clinic. Dr. Mohammad

Asif Khan had gone to Haj pilgrimage. He passed away during the course of the pilgrimage on 24th June, 2023.

4. The first informant alleged that the applicants, after having learnt about the death of Dr. Mohammad Asif Khan, entered into the clinic on 24th June, 2023 and again on the night intervening 24th and 25th June, 2023 and dishonestly removed cash amount of Rs.7,00,000/- valuable securities, fixed deposit receipts, passbook and cheque book and subsequently on 30th June, 2023 and 1st July, 2023 fraudulently withdrew sums of Rs.2,00,000/- and 2,50,000/- respectively from the account of the deceased. It was further alleged that the applicants had stolen the key of the car and dishonestly moved Ertiga Car bearing No.MH-04-LE-2405.

5. The learned Counsel for the applicants submitted that, in fact, Dr. Mohammad Asif Khan had solemnized marriage with the mother of applicant No.1 and applicant No.1 was treated by Dr. Mohammad Asif Khan as his daughter. He had acted as guardian in the marriage (Nikah) of applicant No.1. On account of the disputes which arose after the demise of Dr. Mohammad Asif Khan over succession to the estate of Dr. Mohammad Asif Khan, the first informant has lodged a false and fabricated report. An endeavour was made by the

learned Counsel for the applicants to show that during his lifetime Dr. Mohammad Asif Khan used to send money to applicant No.1 frequently and the deceased had a thick bond with the applicants.

6. The learned APP submitted that there is material to show that on the night following death of the deceased the applicants had removed the valuables from the clinic of the deceased and the applicants had also withdrawn the amount from the accounts of the deceased. Attention of the Court was invited to the statements of the witnesses.

7. It is true that the documents annexed with the application, *prima facie*, indicate the proximity between the deceased and applicant No.1 and her family. However, there is positive material to show that the applicants had been to clinic on the very day of the death of the deceased, during Haj pilgrimage. They entered into the clinic and carried the belongings and even restrained the neighbours and persons, who tried to enter into the clinic to ascertain as to what the applicants were then doing. The applicants allegedly again visited the clinic during the night intervening 24th and 25th June, 2023. The statement of the official at the bank indicates that on 30th June, 2023, applicant No.1 had

withdrawn a sum of Rs.2,00,000/- in cash and upon being enquired about the purpose of the said withdrawal made a note overleaf the cheque that the said amount was withdrawn to pay the fees of Mohammad Basit Khan, the first informant herein. Likewise, applicant No.1 again withdrew a amount of Rs.2,50,000/- on 1st July, 2023.

8. The allegations against the applicants are required to be considered in the light of the fact that under a week's time the applicants allegedly removed the cash and valuable from the clinic of Dr. Mohammad Asif and also withdrew the amount which stood to the credit of his account. A strong *prima facie* case is thus made against the applicants. Custodial interrogation of the applicants is warranted to unearth the fraud and identity of the persons who were privy to the offences and also ascertain the money trail.

9. I am, therefore, not inclined to exercise the discretion in favour of the applicants.

10. Hence, the following order:

: O R D E R :

(i) Application stands rejected.

- (ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]