

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

**ANTICIPATORY BAIL APPLICATION NO. 2748 OF 2022
WITH
INTERIM APPLICATION NO.3666 OF 2022**

Siddik Mohammed Hafizi

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Sr. Counsel Mr. Ashok Mundargi a/w. Hrishikesh Mundargi, Abhilesh Chitre and Ms. Sonali Dalvi i/b. Adv. Mr. Roihan Hogle for the Applicant.

Mr. Aniket Nikam a/w. Vivek Pandey for the Intervenor.

Mr. S.V.Gavand, APP for the State.

CORAM : ANUJA PRABHUDESSAI ,J.

DATED : 8th MARCH, 2023.

P.C.

1. This is an application under Section 438 Cr.P.C. filed by the aforesaid applicant apprehending his arrest in C.R.No. 1208 of 2022 registered with Oshiwara Police Station for offences under Section 465, 466, 467, 468, 471, 474, 406 and 420 of Indian Penal Code.

2. Heard Shri Mundargi, learned Sr. Counsel for the Applicant and Shri Gavand, learned APP for the State and Shri Nikam, learned Counsel for the Intervenor. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

3. The records reveals that one Shri Abdul Nabi Khan had purchased

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property under Survey No. 28/7/8 and 11 in Village Bandivali, Taluka Andheri, District Mumbai. Said Abdul Nabi Khan was married to Asmat Begum and Hawa Begum. The legal representatives of Asmat Begum and partners of S.K.Builders had entered into an oral agreement for development of said property. The Complainant, who is the grandson of Asmat Begum lodged the FIR alleging that the Builder had not allotted two bedroom flats in E Wing to the legal representatives of Asmat Begum as per the oral agreement. It is also further alleged that though Sultan Muhammad Abdul Nabi Khan, who was one of the heirs and owners of the plot had expired in 2008, a false declaration was made that all the executants of the Power of Attorney, which was registered before the Sub Registrar on 16.01.1996, are alive. It is stated that on the basis of the said Power of Attorney the Applicant has entered into sale deed with 40 tenants. It is on this basis, it is stated that the Applicant has cheated the legal representatives of Asmat Begum and that he has prepared false documents and committed other offences as stated in the FIR.

4. A plain reading of the FIR prima facie reveals that the Development work had commenced in the year 1996. It is stated that in the year 2002, the Applicant had given flat No.502 to the Complainant and that in the year 2003 he had given possession of one of the flats to his sister Dildaroz in lieu of tenanted premises. Though it is alleged that the Applicant had agreed to give another flat to Asmat Begum, the

records prima facie indicates that her grandson Dilaram Khan, in whose favour said Asmat Begum had executed Power of Attorney, had instituted a civil suit seeking direction against S.K.Builders to execute the agreement by reducing all the terms and conditions for the development of the subject property. The records reveal that the Notice of Motion filed in the said suit was dismissed and the suit was allowed to be withdrawn. The construction of the building was completed in the year 2016. The sale deeds in favour of the tenants on the basis of the alleged forged Power of Attorney were also executed in the year 2016. The FIR has been lodged in the year 2022. Having gone through the FIR, prima facie, the offence of cheating, forgery and preparing false documents are not made out.

5. Considering this aspect, particularly the delay in lodging the FIR, in my considered view, this is not a case which would justify custodial interrogation. Moreover, the Applicant is a permanent resident of the State and there are no chances of the Applicant absconding or thwarting the course of justice. Under the circumstances, the application is allowed on the following terms and conditions:-

(i) In the event of arrest of the Applicant in Crime No.C.R.No. 1208 of 2022 registered with Oshiwara Police Station, the Applicant be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) with one or two sureties in the like amount,

to the satisfaction of the Investigation Officer.

(ii) Applicant shall report to the Investigating Officer as and when required by the Investigating Officer for the purpose of investigation and interrogation.

(iii) Applicant shall provide his permanent as well as temporary address, if any, and his contact details to the Investigating Officer.

(iv) Applicant shall not change his residential address without prior intimation to the Investigation Officer.

(v) Applicant shall not interfere with the complainant and the other witnesses in any manner.

(ANUJA PRABHUDESSAI, J.)