

3. The applicant No.1 is 67 years of age. The applicant No.2 is the wife of applicant No.1 who is 61 years of age. The applicant No.1 has averred that in the year 2018 he met with an accident and the right side of his body is partially disabled which prevents him from standing up normally. He further stated that in February 2021 he suffered a heart attack. The applicants are suffering from old age ailments. So far as the FIR is concerned, it is the case of the complainant that the applicants agreed to transfer the tenancy of the flat which is the subject matter of the complaint for a consideration of Rs.3,25,00,000/-. Of the said amount, an amount of Rs.61,16,000/- was paid. The memorandum of understanding dated 17/04/2016 was entered into between the applicants and the complainant.

4. Learned counsel for the applicants on instructions submits that they are willing to transfer the tenancy of the said flat to the complainant as stated in the memorandum of understanding.

5. The complainant alleged that the applicants have cheated him and committed criminal breach of trust by not

transferring the tenancy in the name of the complainant and handing over the possession of the said flat. From the record it appears that there is a dispute between two landlords. The rent receipts which are issued to the applicants are signed by the landlord Kamlesh Singh Chouhan who is a co-owner. The other co-owner is Ishwarsingh Chouhan. There is a dispute between Kamlesh Singh and Ishwarsingh as a result of which the transaction could not proceed.

6. Learned counsel for the applicants reiterated that they are willing to complete the transaction and it is because of the other co-owner Ishwarsingh who is not co-operating, that the transaction could not be completed. It is submitted that Ishwarsingh has refused to sign the transfer deed. The dispute between Kamlesh Singh and Ishwarsingh had reached up to the Hon'ble Supreme Court when the order passed by the Division Bench of this Court was upheld. Ishwarsingh as well as Kamlesh Singh are declared to be co-owners of the trust property where the flat is situated.

7. Learned counsel for the intervenor submitted that the

applicants should return the hard earned money of the complainant. It is for the complainant to resort to appropriate proceedings for recovery of the money which are paid to the applicants if they do not want to proceed with the transaction. This cannot be a ground to prolong the custody once the applicants have shown their willingness to abide by the agreement. Suffice it to observe that the applicants are in custody since 15/12/2021 for a period of more than 1 year and 2 months. Considering their age, medical ailments and the nature of the accusations, no fruitful purpose will be served by prolonging the custody of the applicants as the trial is not likely to commence anytime in the near future. There are no criminal antecedents reported against the applicants as of date. The applicants are therefore enlarged on bail.

8. Hence, the following order :-

ORDER

- (a) Application is allowed.
- (b) Applicant-Marjaban Keki Elavia and Ruksana Marjaban Elavia shall be released on bail in connection with FIR No.541 of 2021 registered with Matunga

Police Station, on their furnishing P.R. Bond of Rs.25,000/- each with one or more sureties in the like amount.

(c) The applicants are permitted to furnish cash bail surety in the sum of Rs.25,000/- each for a period of 4 weeks in lieu of surety.

(d) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicants shall not tamper with evidence.

(e) The applicants shall report to the Investigating Officer as and when called.

(f) On being released on bail, the applicants shall furnish their contact numbers and residential addresses to the Investigating Officer and shall keep him updated, in case there is any change.

9. The Bail Application is disposed of.

(M. S. KARNIK, J.)