

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

CRIMINAL BAIL APPLICATION NO.269 OF 2023

Nasim Sarvat Khan	 Applicant
versus	
State of Maharashtra	 Respondent

**WITH
INTERIM APPLICATION NO.1134 OF 2023
IN
CRIMINAL BAIL APPLICATION NO.269 OF 2023**

Sadashiv Balaram Patil	... Applicant/ Intervenor
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IN THE MATTER BETWEEN :

Nasim Sarvat Khan	 Applicant
versus	
State of Maharashtra	 Respondent

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- Mr. Ganesh K. Gole i/b. Aarif Ali M. Ali, Advocate for Applicant.
- Smt. M. H. Mhatre, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 12th APRIL, 2024**

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.82/2022, dated 28/03/2022, registered with NRI Sagari Police Station, Raigad, under sections 420, 465, 467, 468, 471, 201, 120-B r/w 34 of the Indian Penal Code.

2. Heard Mr. Ganesh K. Gole, learned counsel for the Applicant and Smt. M. H. Mhatre, learned APP for the State.
3. There is an Intervention Application preferred by the first informant. Nobody had appeared for the informant on 18/03/2024, when the matter was called out. The matter was listed on 08/04/2024. But it was called out after the Court time was over and therefore it was directed to be placed on the supplementary board. But on that day, nobody had appeared for the informant and therefore to give him one more opportunity, I have placed the matter today. Even today, nobody appears for the informant. Therefore, I have heard the parties for consideration of application for bail, since the Applicant is in jail for almost two years.
4. The Applicant is in custody since his arrest on 27/04/2022. The trial is pending before the Court of J.M.F.C. Panvel and it has not progressed beyond framing of the charges. The Applicant is already in custody for almost two years.

5. The prosecution case, mentioned in the charge-sheet based on the FIR lodged by the first informant Sadashiv Patil, on 28/03/2022, is as follows :

The informant's father had 9 acres of land at village Wahal, Taluka Panvel. That land was acquired by CIDCO in the year 1970. The compensation was given in 1987. Similarly in the scheme known as 12.5 %, the CIDCO had given plot No.177, Sector 23 at Ulwe admeasuring 1349.77 sq.meter in the year 2007 to the informant's father. The informant and his father had executed a development agreement on 06/04/2010 with M/s. R.S. Home Builders and Developers. One Hidayat Khan and Sanjay Gupta were the partners of the said firm. The Applicant is the brother of Hidayat Khan. As per the agreement, the constructed portion was to be divided in equal shares. According to the first informant, Hidayat had given the power of attorney to the present Applicant, vide the document dated 22/02/2016 for transferring the informant's share. Accordingly, in March 2016, the Applicant as a power of attorney holder of Hidayat

had transferred 28 flats and 2 Galas in the name of the informant and his father.

The informant's father passed away on 23/09/2016. The informant got the property of his father as a legal heir as per the heirship certificate. The informant distributed those flats in the name of his sons and wife. He had kept three flats and two Galas in his own name. In December 2021, some bank officers came to the informant's building for making enquiries about some loan transactions. At that time, the informant came to know that some of the flats and the Galas were sold to the third person, which actually belonged to the informant. There are allegations that though the informant's father had passed away in 2016, one Sadik Inamdar got one power of attorney executed in the year 2021 in his name. Based on that forged power of attorney, Sadik transferred flats and Galas, which belonged to the informant, to those third persons.

6. Apart from these allegations against the other accused, the allegations against the present Applicant are that he had

transferred flat Nos.B/101 and B/102 to one Priti Tabrewal and accepted money from her, though he was fully aware that those flats belonged to the first informant. On this basis, the FIR is lodged by the first informant and the investigation is carried out.

7. The aforementioned Hidayat is absconding and the charge-sheet is filed against the present Applicant and others.
8. Learned counsel for the Applicant made the following submissions.

The main accused Hidayat is not in India. Therefore, to pressurize him to return to India and face the trial, the Applicant is needlessly roped in. The Applicant has not committed any offence. The Applicant had only taken part in the registration of the agreement executed by Hidayat in favour of Priti. The Applicant himself had not received any amount in his account and there is nothing to show that he himself had received any cash amount. Therefore, the Applicant is not the beneficiary under those transactions. The allegations about the forgery of

power of attorney in favour of Sadik are totally different allegations than those against the present Applicant. That particular part of the offence is committed by Sadik, who is not an employee of the Applicant, but is the employee of the Applicant's brother Hidayat. During the entire investigation, there is nothing found to show that the Applicant was a beneficiary in any of these transactions.

9. Learned counsel for the Applicant invited my attention to a copy of the agreement between Hidayat and Priti. That document is signed and executed by Hidayat. The Applicant had only gone for registration of that document subsequently. He had not accepted any money from Priti.

10. Learned APP submitted that, though there is nothing to show that the Applicant had received any amount from Priti, the investigation has revealed that the Applicant has received Rs.24 lakhs in connection with the transaction between Hidayat and all the other parties. She further submitted that the Applicant's involvement is shown in the charge-sheet.

11. Learned counsel for the Applicant countered these submissions on the ground that the investigation itself shows that the amount of Rs.24 lakhs has gone to his account as it was paid by Hidayat and not by any of the purchasers of the flats. There are no allegations that the informant himself had paid any amount to the Applicant.

12. I have considered these submissions. From the discussion above, some facts are undisputed. The document with Priti, was executed by Hidayat himself. The Applicant had only gone for registration of that document. The amount of Rs.24 lakhs which he had received was given to him by his brother Hidayat. The investigation has not indicated as to from which of the customers or flat purchaser that amount was received by the Applicant directly or indirectly.

13. The Applicant has not created the forged power of attorney. That act is committed by the co-accused Sadik. Learned APP accepted the fact that the investigation has not revealed any

direct connection between the Applicant and Sadik. The Applicant is already in custody for about two years on these allegations. The investigation is over. Considering this background, the Applicant's further custody as an undertrial prisoner is not necessary, particularly in the light of the fact that the trial has not progressed at all. The charges were framed in 2023 and not a single witness is examined as of today. In this view of the matter, the Applicant deserves to be released on bail on certain conditions.

14. Hence, the following order :

ORDER

- (i) In connection with C.R.No.82/2022, dated 28/03/2022, registered with NRI Sagari Police Station, Raigad, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.
- (ii) Before being released on bail, the Applicant shall deposit his passport, if any, with the Investigating Officer.

- (iii) The Applicant shall cooperate in the early disposal of the trial.
- (iv) The Bail Application is disposed of.
- (v) With disposal of the Bail Application, the Interim Application is also disposed of.

(SARANG V. KOTWAL, J.)