

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

ANTICIPATORY BAIL APPLICATION NO. 990 OF 2024

(1) Majid Saeed Khan,

(2) Yasmeen Khan.

..Applicants

Versus

The State of Maharashtra

..Respondents

WITH

INTERIM APPLICATION NO. 1626 OF 2024

Mohd. Khalik Khan

..Intervenor.

In the matter between:

(1) Majid Saeed Khan,

(2) Yasmeen Khan.

..Applicants

Versus

The State of Maharashtra

..Respondents

Mr. Sunil R. Pandey a/w. Raju S. Mandal i/b. Priyanshu S. Mishra
for Applicants.

Mr. Avinash A. Naik, APP for State/Respondent.

Mr. Anvay Homkalas i/b. Mayank Mishra for Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 19 APRIL 2024

P.C. :

1. The Applicants are seeking anticipatory bail in
connection with C.R.No.245 of 2024 registered at Kherwadi Police

Station, Mumbai, on 23.03.2024, under sections 420, 465, 467, 468, 471, 474 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Sunil Pandey, learned counsel for the applicant, Mr. Avinash Naik, learned APP for the State and Mr. Anvay Homkalas, learned counsel for the Intervenor.

3. The F.I.R. is lodged by one Mohammad Khalik Rajjab Khan. He has stated that, he was married to Nazma Khan who had passed away on 18.05.2020. They have two daughters. The F.I.R. goes on to mention the names of the family members of the informant's deceased wife. She had three brothers and five sisters. The applicant No.1 was one of the brothers. The applicant No.2 is his wife. The allegations are in respect of the shop No.7 and Stall No.30 at Pakmodia street. The gist of the F.I.R. is that, both these applicants submitted the false documents with MHADA and claimed themselves to be the sole owners of the property. There are allegations that Nazma's mother Zahida Begum had passed away in the year 2009. Thereafter all the brothers and the sisters were the legal heirs to that property, but that property was

usurped by the present applicants. There are allegations that, they had shown as if Nazma Khan was still alive in the year 2014 and submitted some applications before the MHADA and Saifi Burhani Upliftment Trust (SBUT). It is alleged that, from 2012 to 2019 they prepared forged documents in collusion with MHADA officers and the Trustees of SBUT to usurp that property. On these allegations the F.I.R. was lodged.

4. Learned counsel for the applicants submitted that the deceased Zahida i.e. the applicant No.1's mother was residing with the Applicant Nos.1 and 2. They were taking care of Zahida. The rent receipts were issued in the Applicant No.1's name and this was to the knowledge of the other sisters and brothers. Learned counsel submitted that the Applicant No.1 has already filed R.A.D. Suit No.508 of 2023 against the SBUT, his brothers and sisters and even against the first informant and his two daughters as the legal heirs of the deceased sister of the applicant No.1. He submitted that the said suit is specifically for the declaration that the Applicant No.1 be declared as the lawful tenant in respect of the suit property i.e. Shop No.7, Parsi chawl. This suit was filed on

03.04.2023. After this, the F.I.R. was lodged on 23.03.2024 to pressurise the applicants.

5. Learned APP produced the investigation papers before the Court and he relied on the letter dated 26.11.2019 addressed to the Vice President of MHADA. The letter was purportedly sent in the name of Zahida on 26.11.2019, but she had passed away in the year 2009. The said letter bears a forged signature of Zahida. Learned APP, therefore, submitted that this clearly shows that the forged documents were created and used. There are other documents in respect of the Stall No.30 wherein the Applicant No.2 had made applications to the authorities claiming ownership of that particular Stall No.30. Learned APP also relied on the report of MHADA authorities in respect of the inspection conducted in the year 2014, wherein it is mentioned that Zahida herself was present on the premises. He submitted that all these documents show that forged documents were created and used by the Applicant Nos.1 and 2.

6. Learned counsel appearing for the first informant

supported all these contentions. He submitted that the offences of forgery and cheating are clearly made out.

7. Learned counsel for the applicants submitted that the Stall No.30 was an unauthorised stall and it was demolished, therefore, that is not an important issue. His only contention is about the Applicant No.1's right as the tenant in shop No.7 mentioned herein above, which is also the subject matter of the civil suit filed by the Applicant No.1.

8. I have considered these submissions. Zahida had passed away in the year 2009. From that point onwards there does not appear to be serious effort taken by the informant or the other brothers and sisters of the applicant No.1 for claiming that property. They have not filed any civil suit claiming their rightful ownership or the declaration that they were the tenants in the said shop No.7 at the time of passing away of Zahida. The report of the MHADA authorities is from the year 2014. There are some documents tendered in the year 2019. More than five years have passed. Some of the documents are in English and some of the

documents were prepared by MHADA. In this background, after about 10 years from the report of the MHADA and about 5 years after the documents were allegedly used, there is a long gap. Apart from that, the documents are in English and in the legal format. Therefore, learned counsel for the applicants is right in submitting that the applicants may not be aware of the contents because they are not educated. It is also important to note that the applicant No.1 has already approached a competent Court to establish his rights. Therefore, his right as a tenant in respect of the said premises is an issue which will be decided by the competent civil court. Considering all this background, after all these years, the applicants' custodial interrogation is not necessary. The documents are already in possession of the investigating officer; they can continue with their investigation. The applicants will have to co-operate with the investigation by remaining present before the investigating agency and by giving their hand-writing samples. It is made clear that, this order is restricted only for consideration of this anticipatory bail application. The rights of the parties in respect of that shop cannot be and are not decided by this order.

9. Hence, the following order :

ORDER

- i) In the event of their arrest in connection with C.R.No.245 of 2024 registered at Kherwadi Police Station, Mumbai, the applicants are directed to be released on bail on their executing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- ii) The Applicants shall attend the concerned Police Station as and when called and shall cooperate with the investigation.
- iii) The Application is disposed of.
- iv) With disposal of the main application, the Interim application No.1626 of 2024 is also disposed of.

(SARANG V. KOTWAL, J.)