IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4217 OF 2023
WITH
INTERIM APPLICATION NO.10 OF 2024
WITH
INTERIM APPLICATION NO.178 OF 2024

Abida Zafar Ismail ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Jatin Sehgal a/w. Mr. Ankush Garg, Mr. Yash Badkur, Ms. Labdhi Vejani, for the Applicant.
Mr. S.R. Agarkar, APP, for the Respondent/State.
Mr. Aabad Ponda, Senior Advocate a/w. Mr. Gunjan Mangala, Mr. Sahil Harjani, Ms. Aradhana More i/b. Desai & Diwanji, for the Intervener in IA No. 10 of 2024.
Ms. Sapna Krishnappa, for the Applicant in IA No. 178 of 2024.
Mr. Vishal Aroskar, PI, EOW Mumbai.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 17, 2024

P.C.:

1. Heard the learned counsel for the parties.

2. The applicant who is arraigned along with her siblings in C.R. No. 196 of 2023 registered with N.M. Joshi Marg police station for the offences punishable under sections 120-B, 420, 423, 465, 467, 468 and 471 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. The gravamen of indictment against the applicant and the co-accused is that the father of Mohd. Ayyaz Jafar Kapadia, the first informant, namely, Mohd Jafar Kapadia and latter's brother Abdul

Rahim Kapadia succeeded to the estate of first informant's grandfather Ayub Haji Jafar. The first informant and six other represent Mohd Jafar Branch and the applicant Abida Ismail and four others represent Abdul Latif Branch. Mohd Jafar, the father of the first informant and Abdul Latif jointly owned the properties bearing City Survey Nos. 828, 829/3 and 1045 at Lower Parel, Mumbai.

4. The applicant and the co-accused with a fraudulent intention claimed that Mohd Jafar, the father of the first informant, was unmarried and died without leaving any legal heir. Making such blatant false representation, the applicant and the co-accused entered into a Deed of Conveyance in respect of the aforesaid properties with Big Tree Developers. The applicant and the co-accused fraudulently claimed that they were 100% absolute owners of the said properties despite having fully known that the first informant and six others succeeded to the estate of Mohd Jafar and they had 50% share in the subject properties. Thereby the applicant and co-accused allegedly defrauded the first informant and the person who represent Mohd Jafar Branch to the tune of Rs. 48,67,02,887/-. Hence, the report.

5. The learned counsel for the applicant submitted that the applicant has been falsely roped in on the basis of motivated

accusations. In fact, the applicant is not the executant of the instrument in question. She had executed POA in favour of her sister Amina. In any event, Farzana Adam who represents Mohd Jafar Branch had instituted a Suit No. 66 of 2023 against Rahim Kapadia and others. In the said Suit the applicant and the co-accused consented to a decree. Even the developer “Big Tree Developers” has clearly stated that he is willing to cancel the transaction evidenced by the instrument executed in its favour.

6. The learned counsel for the applicant further submitted that the applicant has already returned the amount of Rs. 4 lakhs which was paid to the applicant under the said Conveyance. Thus, at this stage, when the investigation is complete and charge sheet has been lodged, further detention of the applicant, who is in her late 50s, is not at all warranted.

7. The learned APP fairly submitted that the investigation is complete and supplementary charge sheet has been lodged.

8. Mr. Ponda, learned senior Advocate for the Intervener, resisted the prayer for bail. Mr. Ponda would urge that the applicant has made an endeavour to oversimplify the matter and it is not the amount of Rs. 4 lakhs only, which the applicant has received in the transaction in question. There is a statement of a witness which indicates that a sum of Rs. 25 lakhs was paid to the applicant in

cash. On account of the failure on the part of the executant of the said instrument to repay the entire amount to the builder, the later is not willing to cancel the said transaction. It was submitted that a clear case of fraud has been made out. Mr. Ponda further submitted that the property was sought to be sold under the instrument at a gross undervalue by obtaining huge consideration in cash.

9. I have given anxious consideration to the rival submissions. As noted above, the gravamen of indictment against the applicant and the co-accused is that they falsely proclaimed to be absolute owner of the subject property though the persons who succeeded to the estate of Mohd Jafar, had an interest in the subject property. The applicant and the co-accused allegedly had only 50 % share in the subject property.

10. The declaration made by Big Tree Developers inter alia indicates that a sum of Rs. 4 lakhs was paid to the applicant on 9th March, 2022 and 2nd June, 2022 and the said amount has been repaid. The question as to whether any further amount was paid in cash, in the circumstances of the case, appears to be a matter for adjudication at the trial.

11. Evidently, a member representing Mohd Jafar Branch namely Farzana Adam has instituted Suit No. 66 of 2023. Certain orders have been passed therein. Undoubtedly, the same act in respect of

one and the same transaction may give rise to both civil and criminal liability. However, the fact that in the instant case, the alleged offence essentially revolves around documents cannot be lost sight of.

12. The applicant is in custody since 12th October, 2023. The investigation is complete for all intent and purpose. Supplementary charge sheet has been filed. Thus, the applicant, being a woman, is entitled for the exercise of discretion.

13. The learned APP submitted that since the applicant is the resident of Karnataka, appropriate conditions be imposed to secure the presence of the applicant for the trial.

14. The apprehension on the part of the prosecution can be taken care of by imposing certain conditions.

Hence, the following order.

ORDER

1] The application is allowed.

2] The applicant be released on bail in C.R. No.196 of 2023 registered with N.M.Joshi Marg police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.

3] The applicant shall mark her presence at N.M.Joshi Marg police station on the first Monday of every alternate month in between 11 am to 1 pm for a period of two years or till conclusion of the trial, whichever is earlier.

4] The applicant shall not leave the country without prior permission of the jurisdictional Magistrate.

5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

6] The applicant shall furnish her contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

9] Application disposed.

10] In view of disposal of the bail application, the Interim Applications also stand disposed.

(N. J. JAMADAR, J.)