2024:BHC-AS:40829



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**ANTICIPATORY BAIL APPLICATION NO.3360 OF 2023**

Rahim Lateef Kapadia ... Applicant
versus
The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.4675 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.3360 OF 2023

Mohammad Ayaz Jafar Kapadia … Applicant
versus
Rahim Lateef Kapadia … Applicant
versus
The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.4672 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.3360 OF 2023

M/s. Poonam Realties … Applicant
versus
Rahim Lateef Kapadia … Applicant
versus
The State of Maharashtra … Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.729 OF 2024

Abdul Aziz Abdul Latif Kapadia … Applicant
versus
The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION (ST) NO.6087 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.729 OF 2024

Mohammad Ayaz Jafar Kapadia … Applicant
and
Abdul Aziz Abdul Latif Kapadia … Applicant

versus
State of Maharashtra … Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1962 OF 2023

Amina Usman Dada … Applicant
versus
State of Maharashtra … Respondent

WITH

INTERIM APPLICATION NO.2730 OF 2023

IN

ANTICIPATORY BAIL APPLICATION NO.1962 OF 2023

M/s. Poonam Realties … Applicant
and
Amina Usman Dada … Applicant
versus
State of Maharashtra … Respondent

WITH

INTERIM APPLICATION NO.2571 OF 2023

IN

ANTICIPATORY BAIL APPLICATION NO.1962 OF 2023

Mohammad Ayaz Jafar Kapadia … Applicant
and
Amina Usman Dada … Applicant
versus
State of Maharashtra … Respondent

Mr. Rizwan Merchant with Mr. Sagar Shete, Ms. Ruchika Ghag, Ms. Rashi M., for Applicant in ABA 3360 of 2023.
Mr. Arshad Shaikh, Sr. Advocate with Mr. Prashant i/by Mr. Sugat Ingle, for Applicant in ABA 1962 of 2023
Mr. Abdul Aziz Kapadia, Applicant in person in ABA No.729 of 2024.
Mr. H.J.Dedhia, APP for State.
Mr. Aabad Ponda, Sr. Advocate with Mr. Gunjan Mangala, Mr. Sahil Mahajan, Mr. Umang Thaker i/by Desai and Diwanji, for Intervener in IA No.2571 of 2023 and for Respondent No.2 in ABA 1962 of 2023.
Ms. Gunjan Mangla i/by Desai and Diwanji for Intervener in IA 4675 of 2023 and IAST 6087of 2024 and for Respondent No.2 in ABA 3360 of 2023 and 792 of 2024.

**CORAM: N.J.JAMADAR, J.**

**DATE : 8 OCTOBER 2024**

**P.C.**

1. Heard the learned Counsel for the parties.

2. These applications are for pre-arrest bail in connection with C.R.No.17 of 2023 registered with EOW, Unit III, Mumbai (initially registered as C.R.No.196 of 2023 with N.M.Joshi Marg Police Station), for the offences punishable under Sections 120-B, 420, 423, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860.

3. Mr. Ayub Haji Jafar had two sons, namely, Abdul Latif Kapadia and Mohammad Jafar Kapadia. Abdul Aziz Kapadia – Applicant in ABA No.729 of 2024, Rahim Latif Kapadia – Applicant in ABA No.3360 of 2023, Mallik Latif Kapadia, Amina Usman Dada – Applicant in ABA No.1962 of 2023 and Abida Jafar Ismail (A4) are the children of Abdul Latif Kapadia (Abdul Latif Branch). Mohammad Ayaz Jafar Kapadia – first informant and his siblings Amin, Farzana Adam, Rehana Furniturewala, Ruksana Kapadia, Mahezabeen Razzak, Anwar M. Jafar are the children of Mohammad Jafar Kapadia. (Mohammad Jafar Branch).

4. Ayub Haji Jafar had acquired four properties i.e. CTS No.1045, ,Delsile Road, Lower Parel, Mumbai, CTS No.256, Tardeo, Mumbai, CTS No.824, Delsile Road, Lower Parel Mumbai and CTS No.828, Zia Masoom Chawl,

Delsile Road, Lower Parel, Mumbai. The first informant alleged, Abdul Latif Kapadia, father of the Applicant in ABA No.729 of 2024 and Mohammad Jafar Kapadia, father of the first informant, had jointly purchased a Plot bearing CTS No.829/3, Delisle Road, Lower Parel, Mumbai. The father of the first informant and the father of the applicant/accused had ½ share each in the aforesaid properties. Abdul Latif Kapadia, father of the applicant/accused passed away on 12 July 1969. Mohammad Jafar Kapadia, father of the first informant passed away on 6 December 1991. The first informant asserts, the Abdul Latif Branch and Mohammad Jafar Branch succeeded to ½ share in the aforesaid properties.

5. The first informant alleged, the applicants and co-accused with fraudulent intention, claimed that Mohammad Jafar Kapadia, father of the first informant, was unmarried and died without any legal heir. On the strength of such blatant false representation, on 31 March 2022, Amina Usman Dada – Applicant in ABA No.1962 of 2023, and the other co-accused executed a Deed of Conveyance in favour of Big Tree Developers in respect of properties bearing CTS Nos.828 and 829/3 at grossly undervalued consideration. The applicants 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, representing Mohammad Jafar Branch, succeeded to the estate of Mohammad Jafar and they had 50% share in the

subject properties and thereby the applicants and co-accused allegedly defrauded the first informant and the persons who represented Mohammad Jafar branch to the tune of Rs.48,67,02,887/-.

6. I have heard Mr. Arshad Shaikh, learned Senior Advocate for the Applicant in ABA No.1962 of 2023, Mr. Rizwan Merchant, learned Counsel for the Applicant in ABA No.3360 of 2023, Mr. Abdul Aziz Kapadia – Applicant in person in ABA No.729 of 2024, Mr. Dedhia, learned APP for the State, Mr. Ponda, learned Senior Advocate for the Intervener in IA No.2571 of 2023 and Ms. Gunjan Mangla for Interveners in IA 4675 of 2023 and IA(ST) No.6087 of 2024.

7. Mr. Shaikh, learned Senior Advocate for the Applicant, submitted that the investigation is complete and the chargesheet has been lodged. In fact, the transactions in question were assailed by Farzana Adam, who represents Mohammad Jafar branch in Suit No.56 of 2023 before this Court. Initially, interim reliefs were granted therein. In the wake of prosecution, the applicants and co-accused had shown willingness to concal the sale deeds. Subsequently, the developer also agreed for cancellation of the Sale Deed. By an order dated 4 April 2024, on an application of Big Tree Developers – transferee and Defendant No.5 in Suit No.56 of 2023, the suit came to be partly decreed, and the Conveyance Deed dated 31 March 2022 stood annulled. In view of the aforesaid developments, at this stage, the custodial

interrogation of the applicants is not warranted.

8. Mr. Merchant, learned Counsel for the Applicant in ABA No.3360 of 2023 submitted that the applicant was not present in India when Deed of Conveyance was executed. Not a single rupee has been credited to the account of the applicant. He is not a beneficiary of the alleged fraudulent transactions. The applicant had simply executed Power of Attorney in favour of Amina U. Dada.

9. Mr. Abdul Aziz Abdul Latif Kapadia - applicant in person, also submitted that he is not a signatory to the said Deed of Conveyance. Nor any money has been transferred to the account of the applicant.

10. Learned APP resisted the prayer for pre-arrest bail, particularly that of Amina U. Dada.

11. Mr. Ponda, learned Counsel for the Interveners, also strongly opposed the prayer for pre-arrest bail of Amina U. Dada. It was submitted that the transaction was entered into with an oblique motive to defraud the first informant and the members of Mohammad Jafar branch by showing absurdly low consideration. Substantial unaccounted amount was accepted by the accused in cash. Attention of the Court was invited to the valuation report which indicates that the properties are valued in excess of Rs.80 Crores and Rs.17 Crores, respectively. A clear case of preparation of false documents has been made out. The entire transaction was executed in a pre-planned

manner despite acknowledgment of the interest of the members of Mohammad Jafar Branch. Therefore, though chargesheet has been lodged and the Applicant Amina Dada is of advanced age, she does not deserve the relief of pre-arrest bail as the consideration of being a woman and sick and infirm, do not inform the exercise of discretion under Section 438 of the Code of Criminal Procedure, 1973.

12. Ms.Gunjan Mangala also supplemented the submissions of Mr. Ponda. An endeavour was made to draw home the point that Abdul Aziz still continued to assert exclusive title to the suit properties, in derogation of the share of the members of Mohammad Jafar Branch.

13. I have carefully perused the material on record and given anxious consideration to the submissions canvassed across the bar. Evidently, the genesis of the alleged offences is in the dispute over the succession to the properties of Abdul Latif and Mohammad Jafar. The applicants claimed that Mohammad Jafar died as a bachelor and the first informant and the other members representing Mohammad Jafar Branch are not his children. This false proclamation to the knowledge of the applicants is stated to be the linchpin of the alleged offences.

14. On first principles, raising a dispute as to entitlement of the first informant and the others members, who represent Mohammad Jafar Branch, may not have an element of criminality, unless it is a fraudulent

representation. From the perusal fo the allegations in the FIR, it becomes evident that in the year 2011 itself, Abdul Aziz – applicant in ABA No.729 of 2024, had addressed a letter to the first informant and his siblings claiming that Mohammad Jafar did not marry and the first informant and his siblings were not the children of Mohammad Jafar.

15. Undoubtedly, the said assertion was confronted by the members of Mohammad Jafar Branch by addressing a legal notice. However, what is of significance, at this stage, is the fact that the legal character and status of the first informant and his siblings was questioned in the year 2011 itself. It is also imperative to note that, in the FIR itself, it is further alleged that even during the lifetime of Mohammad Jafar, the applicants Abdul Aziz and Rahim Kapadia had stopped paying Mohammad Jafar’s share in the rent collected from the tenants to Mohammad Jafar. Therefore, the aspect as to whether there is an element of criminality in the assertion of the applicants that they were the owners of the subject properties, to the exclusion of the members who represents Mohammad Jafar Branch, would be a matter for adjudication at the trial.

16. In any event, in view of the orders passed by this Court in Suit No.56 of 2023, the Deed of Conveyance has been annulled by a decree of admission. Even otherwise, the offences revolve around the documents. The custodial interrogation of the applicants, who are of advanced age, does not seem

warranted at this stage, as the investigation is complete and the charagesheet has been lodged. The applicants appear to have roots in society. Possibility of fleeing away from justice appears to be remote.

17. I am, therefore, persuaded to exercise discretion in favour of the applicants.

18. Hence, the following order :

ORDER

(i) The Applications stand allowed.

(ii) In the event of arrest of the Applicants – Rahim Latif Kapadia, Abdul Aziz Abdul Latif Kapadia and Amina Usman Dada, in connection with C.R.No.17 of 2023 registered with EOW, Unit III, they be released on bail on furnishing a PR bond in the sum of Rs.30,000/- each with one or two sureties in the like amount.

(iii) The Applicants shall report to EOW, Unit III, as and when directed.

(iv) The Applicants shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses and the persons acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer..

(v) The applicants shall regularly attend the proceedings before the jurisdictional Court.

(vi) The applicants shall not leave India without prior permission of the trial court.

(vii) All Interim Applications also stand disposed.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for pre-arrest bail only.

**( N.J.JAMADAR, J. )**