

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

ANTICIPATORY BAIL APPLICATION NO. 964 OF 2024

(1) Faheed Mahmood Kadri,
(2) Mahmood Hasan Kadri,
(3) Mrs. Bilkis Mahmood Hasan Kadri ..Applicants

Versus

The State of Maharashtra ..Respondent

Dr. Abhinav Chandrachud a/w. Aditya Talpade a/w. Pratik Karande
for Applicants.

Ms. Rajeshree V. Newton, APP for State/Respondent.

Mr. Kamran Shaikh a/w. Mohsin Shaikh for Intervenor.

**CORAM :- SARANG V. KOTWAL, J.
DATE :- 10 APRIL 2024**

P.C. :-

1. The Applicants are seeking anticipatory bail in connection with C.R.No.1682 of 2023 registered at Bandra Police Station, Mumbai, on 25.10.2023, under Sections 406, 420 and 120-B of the Indian Penal Code.

2. Heard Dr. Abhinav Chandrachud, learned counsel for the applicants and Ms. Rajeshree Newton, learned APP for the

State. Mr. Kamran Shaikh, learned counsel appears and states that he has instructions to oppose this application by filing intervention application. He seeks reasonable time to enable him to file an intervention application. I am inclined to grant him time. Therefore, today I have heard the parties for consideration of ad-interim relief.

3. The F.I.R. is lodged by one Yasmin Saudagar. She has stated that, she was a polio patient. She used to invest the money as per the advice given by her brother Ashfaq and he used to give returns to the informant on her investment. The allegations in the F.I.R. are that, in the year 2016, she decided to purchase a flat to be constructed by the applicants in their building; for the sale price of Rs.1,30,00,000/-. The informant paid Rs.1 crore to the applicant Faheed on 29.08.2016; out of which, Rs.50 lakhs were paid in cash and Rs.50 lakhs were paid through a cheque drawn on ICICI bank, bearing Cheque No.044024 dated 29.08.2016. The rest of the amount of Rs.30 lakhs was paid in cash. The accused did not execute an agreement for sale, but instead the applicant No.1 Faheed and the Applicant No.3 Bilkis issued the allotment letter for

that particular flat No.601 on the 6th floor of that building. After that, the accused did not take any steps to construct the upper floors where the flat was to be constructed.

4. On 06.10.2020, the applicant No.1 Faheed executed an MoU, wherein, he had admitted having received Rs.1,30,00,000/- for that particular flat. It was also mentioned that, if the possession was not given before 01.09.2021, the applicant No.1 and 3 were liable to pay Rs.2,60,00,000/- in lieu of the flat. It is her case that, neither the amount was paid nor the possession was given. On this basis the F.I.R. was lodged.

5. Learned counsel for the applicants submitted that the amount given to the applicant No.1 was for the investment purpose and not for purchase of a flat. He referred to an MoU dated 29.08.2016 executed between the applicant No.1 and the informant's brother Ashfaq, wherein, it was clearly mentioned that the amount of Rs.1 crore mentioned in that MoU was for an investment and was not for purchase of flat. He further submitted that the applicants have repaid Rs.2,05,00,000/- to the informant's

brother between the period from 19.01.2017 to 05.05.2019. Therefore, no offence is made out against the applicants.

6. Learned counsel for the first informant submitted that, there was business relation between Ashfaq and the applicant No.1 Faheed since 2011-2012. The amount which was received by the informant's brother Ashfaq was in relation to those business transactions and that refund was not in connection with the amount of Rs.1,30,00,000/-; which was given for purchase of that flat.

7. Considering both these submissions, the investigating officer will have to test this claim and the counter claim by making enquiries with the informant's brother, as well as, the applicants. Therefore, for the time being, the applicants can be protected by way of ad-interim relief with directions to attend the concerned police station.

8. Hence, the following order.

ORDER

- i) In the event of their arrest in connection with C.R.No.1682 of 2023 registered at Bandra Police Station, Mumbai, till the next date, the Applicant are directed to be released on bail on their executing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- ii) This order shall operate till 06/05/2024.
- iii) The Applicants shall attend the concerned Police Station from 23/04/2024 to 25/04/2024 between 1.00p.m. to 5.00p.m. and shall cooperate with the investigation.
- iv) Stand over to 06/05/2024.

(SARANG V. KOTWAL, J.)