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

## Anticipatory Bail Application No.1361 of 2024

Shahnaz Bano Shoukat Ali Sayed
Aged : 50 years, Occ : Housewife,
Residing at House No.153, Room No.2,
CTS No.23, Christian Village
Kurla West, Mumbai 400 070. … Applicant.

Vs.

The State of Maharashtra
At the instance of Sr.Inspector of
Police, Vinoba Bhave Police Station
Vide their FIR No.38 of 2024 …. Respondent.

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Mr Rahul Arote, for the applicant.
Ms Rajeshree Newton, APP for the respondent/State.
Mr Sufian Qureshi, for the intervenor.
PSI Sunil Meher, VB Nagar Police Station, Mumbai, present.

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**Coram : R.N. Laddha, J.**
**Date : 11 June 2024.**

**P.C.:**

Heard Mr Rahul Arote, the learned Counsel for the applicant, Ms Rajeshree Newton, the learned APP for the respondent/State, and Mr Sufian Qureshi, the learned Counsel for the intervenor.

2. This is an application for pre-arrest bail filed by the applicant, apprehending arrest in CR No.38 of 2024,

registered at Vinoba Bhave Nagar Police Station, Mumbai, for the offences punishable under Sections 420, 465, 467, 471 r/w 34 of the Indian Penal Code.

3. According to the prosecution case, the first informant was searching for a house in Kurla. His friend, Ibrahim Shaikh, introduced him to co-accused Shaukat Ali, the husband of the applicant. On 30.10.2023, Shaukat Ali offered to sell his room to the first informant and took him to the room where he resided, introducing his wife, the applicant. They finalised the room sale transaction at a price of Rs.40,00,000/-. The applicant instructed the first informant to pay the amount in cash, citing that paying through an account would result in deductions due to a bank loan. Consequently, the first informant paid a token amount of Rs.1,51,000/- to the applicant and her daughter. Subsequently, until April 2019, the first informant made payments totalling Rs.40, 00,000/- as per the agreement. On 10 April 2019, Shaukat Ali executed a General Power of Attorney and a sale agreement in favour of the first informant. Following this transaction, Shaukat Ali requested the first informant to rent the room to him. Accordingly, they executed a leave and license agreement. Furthermore, the prosecution contends that the electric meter for the room was registered in the

applicant's name. On 13 April 2019, both the applicant and Shaukat Ali executed an affidavit and no objection certificate to transfer the electric meter to the first informant's name. The first informant paid the remaining amount of Rs.4,10,000/- and requested the original room documents. However, the applicant failed to provide the documents, claiming they were missing. In August 2019, the electric meter was officially transferred to the first informant's name and bills have been issued. Shaukat Ali, however, defaulted on electricity payments, prompting the first informant to issue a notice and request the electricity supplier to disconnect the service. Upon further investigation, it was discovered that the room was indeed in the applicant's name, but the sale agreement had been executed by her husband, Shaukat Ali. When questioned, Shaukat Ali admitted that he falsely claimed ownership of the room due to financial need and assured the first informant that he would transfer the room to his name. However, he failed to do so and did not repay the consideration amount to the first informant.

4. Learned Counsel for the applicant submits that an amount of Rs.5,00,000/- was transferred online with the remark 'personal loan'. Consequently, the transaction between the parties was not a sale of the room but rather a

hand loan. The signature appearing on the affidavit-cum-NOC of the applicant is a forged one. All these documents are in possession of the first informant, making the custody of the unwarranted.

5. The learned APP and the learned Counsel for the intervenor, in unison, submit that the applicant's signature on the sale agreement clearly demonstrates the accused person's intent to commit the offence of cheating. According to their argument, the applicant's husband prepared the disputed documents, posing as the owner, and the applicant signed them as a witness. Furthermore, they acknowledge that the first informant provided consideration for the transaction. During the investigation, three additional individuals came forward, alleging that the applicant and the co-accused employed the same modus operandi to sale the room and deceived them.

6. After reviewing the records, it appears that the affdavit-cum-NOC dated 13 April 2019, bears applicant's signature. In this document, she expressed no objection for transferring maintenance, electricity bills and other documents in the name of the first informant. that her husband Shaukat Ali is the absolute owner of the subject room and she had no

objection in transferring, assigning all the ownership rights and title in the name of first informant. The same document state that her husband is the absolute owner of the subject room, and she consents to transferring all ownership rights and title to the first informant. *Prima facie, t*his document bears the applicant's thumb impression as well as her signature. Despite the applicant's claim that the first informant forged her signature, no formal complaint has been filed regarding this alleged forgery. The recitals in the document, particularly, the agreement for sale *prima facie* supports the first informant's case. It appears that the applicant was well aware of the transaction between her husband and the first informant. Although she asserts absolute ownership of the subject room, her participation in the transaction and execution of documents by her husband, who posed as the room's owner *prima facie* undermines her claim. Given these circumstances, the discretion u/s 438 CrPC cannot be exercised in favour of the applicant, and the application stands rejected.

**[ R. N. Laddha, J. ]**