

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

Anticipatory Bail Application No.2788 of 2024

1. Priya Nitin Kotkar

Age: 60 years,
An adult, Indian Inhabitant,
Having address at:
Hariom Plaza, B/24, MG Road,
Borivali East, Mumbai

2. Nitin Ramesh Kotkar

An adult, Indian Inhabitant,
Having address at:
Hariom Plaza, B/24, MG Road,
Borivali East, Mumbai

... Applicants

versus

The State of Maharashtra

At the instance of

Vile Parle Police Station

... Respondent

Mr Shashikant Chaudhary, i/b. Prashant Tadlapurkar, for the applicants.

Mr Arfan Sait, APP, for the respondent/ State.

Mr Kunal Phooole, for the intervenor.

PSI Omase, Vile Parle Police Station, Mumbai, is present.

Coram: R.N. Laddha, J.

Date: 18 December 2024

P.C.:

By this application, the applicants seek pre-arrest bail in connection with CR No.719 of 2024, registered at Vile Parle

Police Station, Mumbai, for offences punishable under Sections 406, 420, 465, 468, 471 and 474 read with 34 of the Indian Penal Code.

2. The prosecution alleges that the applicants and the co-accused persuaded the informant to pay him Rs.1,80,00,000/- by promising allotment of four shops and a flat in SRA projects at a concessional rate and issuing fabricated letters to that effect. Instead of delivering possession of the premises or refunding the collected amounts, the applicants misappropriated the funds and deceived the informant.

3. Mr Shashikant Chaudhary, the learned Counsel appearing on behalf of the applicants, contends that as the informant did not pay the full consideration, the flats were sold to someone else. After deducting service charges, the applicants issued a cheque to refund the accepted amount. However, the informant altered this cheque by increasing the amount, leading to liability under Section 138 of the Negotiable Instruments Act, 1881, for the cheque's dishonour. Later, the informant threatened the applicants to pay the altered sum or face dire consequences. The applicants reported this incident on 3 November 2023 by filing a complaint with the Kasturba Police Station. Further, the learned Counsel, emphasising the applicants' innocence,

submits that they have been falsely implicated in the present crime, and their custody is unwarranted.

4. Mr Arfan Sait, the learned Additional Public Prosecutor representing the respondent/ State, along with Mr Kunal Phoole, the learned Counsel appearing for the informant, jointly submit that the offence is serious. They emphasise that the applicants assured the informant an allotment in the SRA projects and accepted significant sums. The consideration amount was accepted partly in cash and partly through banking channels. Further, to pressurise the informant, the applicants filed a complaint against him. The learned APP highlights that the investigation is ongoing. The applicants' custody is required to uncover the fraud, ascertain those involved in the crime, and find the money trail.

5. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the records.

6. The applicants are accused of deceiving the informant into paying Rs.1,80,00,000/- by falsely promising to allot premises in SRA projects at a discounted rate. The records, *prima facie*, indicate that the applicants received these funds both in cash and through banking channels, thereby benefiting from it. Admittedly, the applicants have no legitimate connection to the

allocation of premises in the SRA projects. Furthermore, the investigation is ongoing. In such cases, custodial interrogation becomes essential to unearth the fraud in all its facets and find the money trail. The possibility of there being similarly circumstanced victims is also imminent. Release of the applicants on pre-arrest bail would jeopardise the course of an effective investigation. Given these aspects, this Court is not inclined to exercise its discretion in favour of the applicants. As a result, the application stands rejected.

(R.N. Laddha, J.)