

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2805 OF 2024

1. Karamat Ali Shaikh		
2. Dipak Popat Gaikwad @ Gaidhani		
3. Mahesh Chandrabhan Gaikhe	...	Applicants
Vs.		
State of Maharashtra	...	Respondent

Mr. Narayan Gopinath Rokade for Applicants.
Mr. Prasanna P. Malshe, APP for Respondent-State.
Mr. Aditya C. Chandak for Complainant.
Mr. Sunil Bidkar, PSI, Nashik Road Police Station.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 18, 2024

P.C. :

1. Heard Mr. Rokade, learned counsel for the applicants and Mr. Malshe, learned APP for the respondent-State. Mr. Chandak, learned counsel, having instructions to appear on behalf of the first informant, was also heard.

2. The applicants herein are apprehending arrest in connection with FIR No.0476 of 2024 dated 11.09.2024 registered with Nashik Road Police Station, District - Nashik City, for offences under Sections 420, 468, 471, 120-B read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The applicants are three of the four accused persons in the present case. The grievance of the informant is that, he became aware only on 02.03.2024 about a forged document styled as 'Sathekhat Kararnama' dated 14.09.2020 prepared by the accused persons, wherein it was depicted that the informant had agreed to sell a flat to the co-accused

person - Sarafat Asgar Ali. The document was shown as having been notarized and it was signed by the informant and the photograph of the informant was also affixed thereon.

4. The informant moved the police for registration of the offence but when appropriate action was not taken, he was constrained to file an application under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr.P.C.) before the Magistrate on 03.06.2024. Upon an order passed by the Magistrate, subject FIR came to be registered on 11.09.2024.

5. The learned counsel for the applicants submits that one of the applicants was an identifying witness, while the other two applicants were merely witnesses to the said document. They cannot be said to be the beneficiaries in any manner and since they are ready to co-operate with the investigation, physical custody ought not to be insisted upon. It is submitted that all the allegations being made by the informant would really be relevant in the context of co-accused person - Sarafat Asgar Ali, who has been shown as a purchaser in the said document.

6. On the other hand, the learned APP as also the learned counsel, having instructions to appear on behalf of the first informant, have vehemently opposed the present application. They submit that the applicants shared the common intention of executing the said forged and concocted document. It is submitted that the applicants were present before the notary and signed the document, despite the fact that there is sufficient material to show that the informant was never present and he never signed such a document. By referring to the payment schedule recorded in the said document and comparing the same with the registered sale deed, whereby the informant purchased the subject flat, it was indicated that the contents of the document itself reveal that it was a forged and concocted document. On this basis, it is submitted that the

application deserves to be dismissed.

7. Having heard the rival submissions, this Court finds substance in the contention raised by the learned APP and the learned counsel appearing for the first informant that there is sufficient material available to show that the subject document can be said to be a forged and concocted one. It is noted that as per the said document dated 14.09.2020, the informant had allegedly agreed to sell the said flat to the co-accused person. The applicants herein signed as witnesses and identifying witness to the said document. It is clear from the copy of the registered sale deed executed in favour of the informant and his wife that, the said flat was sold by a registered document in their favour only on 27.08.2020.

8. It is also found from the documents brought to the notice of this Court that the co-accused person, who is said to have agreed to purchase the said flat as per the aforesaid document dated 14.09.2020 from the informant, in an application filed before the Magistrate under Section 156(3) of the Cr.P.C. against the informant, on 19.12.2023, had referred to certain payments made to the informant in the context of a transport business. In the said application, certain allegations were made against the informant to the effect that, he had cheated the co-accused person. But what is significant is that the dates of certain payments specified in the aforesaid application are the very dates of payments mentioned in the payment schedule in the aforesaid alleged forged document dated 14.09.2020. These dates pertain to December, 2019 and February and April, 2020. It is to be noted that when the informant himself became owner of the flat by way of a registered sale deed only on 27.08.2020, there was no reason why payments would have been received by him in December 2019 and February and April, 2020.

9. Since the co-accused himself in his aforesaid application before

the Magistrate filed in December, 2023, referred to the same payments having been made in the context of the transport business, *prima facie*, the said document i.e. *Sathekhat Kararnama* dated 14.09.2020 appears to be a forged and fabricated document.

10. Once this conclusion is reached, a *prima facie* finding can be rendered that the informant was never present before the Notary Public and he never signed the aforesaid document and yet, the applicants herein signed the said document as witnesses and identifying witness. *Prima facie*, it can be said that they were parties to the aforesaid act of forgery and fabrication.

11. The applicant No.1 is the brother of the co-accused - Sarafat Asgar Ali in whose favour the alleged *Sathekhat Kararnama* was executed. In such a situation, the applicants cannot claim that since they are not the beneficiaries under the document, criminality cannot be alleged against them.

12. It is to be remembered that Section 34 of the IPC is invoked in the present case and even the co-accused person - Sarafat Asgar Ali is said to be absconding. No case is made out for granting anticipatory bail. The application is dismissed.

(MANISH PITALE, J.)

Minal Parab