

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

ANTICIPATORY BAIL APPLICATION NO. 2486 OF 2024

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2025.01.03
17:31:39 +0530

Rahiman Sayyed Sheikh ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Vaibhav Ugle, i/b Rajesh Katore, for the Applicant.
Mr. P. H. Gaikwad Patil, APP for the State.
PSI Sandesh Ingale, Talegaon Dabhade Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED : 2nd JANUARY, 2025

PC:-

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with CR No.504 of 2023, registered with Talegaon Dabhade Police Station, for the offences punishable under Sections 420, 419 and 406 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").
3. By an order dated 3rd October, 2024 interim protection was granted to the applicant observing *inter alia* as under:

"3. By an order dated 6th August, 2024 in ABA/3495/2023 this Court has protected Nafisa Rahiman Shaikh, the wife of the applicant and co-accused.

4. On the previous date, a statement was made on behalf of the prosecution that the applicant has deceived other victims in a similar fashion.

5. The learned Counsel for the applicant submits that the transaction with Mehboob Irfan Kasimsab Chaudhary has since been cancelled. The learned Counsel for the applicant

tenders copy of the agreement entered into between the applicant and the said Mehboob Irfan Kasimsab Chaudhary for the perusal of the Court.

6. In view of the aforesaid submission, at this stage, the liberty of the applicant can be protected while directing him to join in the investigation.”

4. So far as the transaction with the first informant, the FIR itself makes it clear that the transaction was cancelled and a sum of Rs.5,80,000/- was returned to the first informant – Manda Khandare.

5. The learned APP, however, submitted that during the course of the investigation, the Investigating Officer has recorded statements of witnesses which indicate that the applicant had agreed to sell one and the same plot to a number of persons and induced them to part with the amount. Statements of those persons have been recorded before the learned Magistrate under Section 164 of the Code of Criminal Procedure. The learned APP tendered the statements of the first informant – Manda Mhatre and witness Kasim Rajesab Chaudhary, Pankaj Arun Dixit and Ali Ibrahim Sayyed for the perusal of the Court.

6. The learned Counsel for the applicant joined issue by canvassing a submission that the transaction with Kasim Chaudhary was also cancelled and an agreement to that effect

was executed on 6th February, 2024. Copy of the said agreement is tendered for the perusal of the Court.

7. While releasing the co-accused Nafesa Shaikh, the wife of the applicant, this Court had recorded that having regard to the fact that the transaction with the first informant stood terminated and a sum of Rs.5,80,000/- was returned to the first informant, it appeared debatable whether an offence punishable under the Penal Code can be said to have been made out. The submission on behalf of the applicant that the transaction between the applicant and Kasim Chaudhary was also cancelled is *prima facie* substantiated by the copy of the agreement executed between the applicant and Kasim Chaudhary. The Court is not informed that the other victims have lodged any report.

8. In any event, the offence under Section 420 entails punishment which may extend to seven years. In view of the cancellation of the transaction with the first informant and refund of the part of the consideration, which was allegedly parted with by the first informant, the question as to whether an offence punishable under Section 420 of the Penal Code can be *prima facie* said to be made out, appears debatable.

Therefore, I am inclined to make the order of interim bail absolute.

9. Hence, the following order:

: O R D E R :

- (i) Order of interim bail dated 3rd October, 2024 is made absolute on the terms and conditions incorporated therein.
- (ii) In addition, the applicant shall henceforth appear before the investigating officer as and when directed.
- (iii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

[N. J. JAMADAR, J.]