

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.117 OF 2025

Nasim Faiyaz Khan

.. Applicant

Versus

State of Maharashtra

.. Respondent

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- Ms. Sushma Mishra, Advocate for Applicant.
- Mr. Sunkanta A. Karmakar, APP for Respondent – State of Maharashtra.
- Mr. B. P. Pandey, Advocate i/by Shyam K. Tripathi for Intervenor / Original Informant.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 15, 2025

P.C.:

1. Heard Ms. Mishra, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State of Maharashtra.

2. This is an Application under Section 438 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Anticipatory Bail in connection with C.R. No.I – 453 of 2024 registered with Nayanagar Police Station for offences punishable under Sections 420, 465, 467, 468 and 471 of Indian Penal Code, 1860.

3. Though in the first instance, this would be classified as a civil dispute between the parties but in view of alleged acts of Applicant before me, I am impelled to pass this order and make certain specific observations so that investigation can be proceeded in the right

direction.

4. The name of Applicant before me is Nasim Faiyaz Khan. The name of Complainant is Abdul Rehman Mohd. Sami Siddiqui. Complainant is compelled to file the present Complaint in the following facts which are admitted on record on the basis of documents presented before me. Veracity, validity and legality of some of these documents alleged by Applicant will undoubtedly be decided by appropriate Civil Court as also by the concerned Criminal Court wherein the present Complaint has been filed. Applicant, Complainant and one of their friend called Ubed Fruitwala were partners to the extent of 10%, 50% and 40% in commercial property i.e. Gala No.205 which they had purchased by registered sale deed dated 25.07.2011 in Mahesh Industrial Premises CHS Limited, Silver Park, Mira Road (East) for sum of Rs.59,00,000/-. From the years 2011 until 2022, the said Gala remained closed.

5. In the year 2020, three partners decided to realign / release their respective shares in the said Gala in favour of Complainant who agreed to pay them appropriate compensation. Thus in August – 2022 as agreed between the parties, Complainant paid an amount of Rs.72,00,000/- by RTGS to Ubed Fruitwala and Rs.18,00,000/- by RTGS to Applicant before me pursuant to which on the following day both the Applicant and Ubed Fruitwala executed a release deed dated

05.08.2022 which was registered before Sub-Registrar of Assurances, Thane.

6. Thereafter, Applicant before me appears to have filed a Civil Suit being Regular Civil Suit No.699 of 2022 in the Civil Court alleging that there was an alleged Memorandum of Understanding (for short 'MOU') dated 05.05.2021 executed between Complainant and Applicant alongwith Power of Attorney under which Complainant was required to give amount of Rs.25,00,000/- to Applicant. However, 15 days after the release deed Applicant called Complainant on his mobile phone and asked him to pay him Rs.2,00,000/-towards the balance amount as per the release deed amount coming to his share but when Complainant refused to accede to his demand Applicant approached him in person and informed him that Complainant should give him Rs.25,00,000/- under the alleged MOU dated 05.05.2021. Copy of MOU is appended at page No.62 of the Application.

7. Mr. Pandey, learned Advocate has been heard by me at his request and both Mr. Pandey and Mr. Karmakar, learned APP in unison point out the fact that if at all there was the alleged MOU between Applicant and Complainant dated 05.05.2021, there was absolutely no reason for Applicant to have accepted the amount of Rs.18,00,000/- on 04.08.2022 from Complainant and on the following day executed and got the release deed registered in respect of said Gala premises. *Prima*

facie, what Mr. Pandey and Karmakar argue before the Court and as can be seen from the release deed which is appended appears to be correct. They point out the MOU and state that Applicant has appended the photograph of Complainant and also forged his signature thereon.

8. The Applicant has not come to the Court with clean hands. This is my *prima facie* observation only. Undoubtedly right of Applicant will be tested on the basis of evidence in the Civil Suit which he has filed as also the present Complaint by the appropriate Court by taking the same to its logical end. In so far present Application is concerned, Mr. Pandey has expressed apprehension that there is possibility that the alleged MOU dated 05.05.2021 and alleged Power of Attorney which Applicant has produced *qua* the subject Gala in question may have been misused by him and in that regard investigation is required to be done which can only be sufficed by custodial interrogation. Applicant is ready and willing to co-operate as informed by Ms. Mishra.

9. In view of the above and looking at the nature of the issue involved in the present case, apprehension of Complainant can be well addressed by this Court by laying down appropriate conditions. In my opinion custodial investigation of Applicant is not required. Appropriate conditions shall be imposed on Applicant regarding

participation in investigation, disclosure and to ensure that there is no impediment caused to Complainant in the interregnum until the Civil Suit is decided and the Complaint is concluded.

10. In view of the above, Anticipatory Bail Application is allowed in terms of prayer clause (a), however subject to the following terms and conditions:-

- (i) In the event of the arrest, Applicant be enlarged on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer at concerned Police Station initially from 20.01.2025 to 24.01.2025 from 10:00 a.m to 05:00 p.m. and thereafter as and when called for by the Investigating Officer for investigation;
- (iii) Applicant shall disclose and produce before Investigating Officer all such relevant material with respect to documents which are finding place in the Complaint by Complainant as also appended to Application;
- (iv) Investigating Officer shall allow Complainant to

participate in the investigation and seek information from Complainant with respect to any impediment that may be caused due to actions of Applicant;

(v) Applicant shall furnish particulars of his address and mobile number to the Investigating Officer within one week from today;

(vi) Applicant shall not misuse his liberty in any manner or influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence or create any impediment or trouble in respect of licensee of Gala at present;

(vii) Though it is seen that Applicant is resident of Mira Road, he is prohibited from entering the Mahesh Industrial Premises CHS Limited where the said Gala is situated and create any impediment until the Civil Suit and Complaint is concluded by the respective Courts;

(viii) It is directed that Applicant shall extend complete cooperation in the investigation of the instant case;

(ix) Any infraction of the conditions shall entail
revocation of this order.

11. Parties to act on a server copy of this order.

12. Anticipatory Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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