IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1300 OF 2025

1. Niraj S/o Gunvant Kakad
2. Divya W/o Niraj Kakad
3. Sahil S/o Niraj Kakad …Applicants

V/s.

The State of Maharashtra and Anr. ...Respondents

Mr. Ashok M. Saraogi, a/w Mr. Amit Dubey a/w Adv. Kavya Smriti, Advocate for the Applicants.
Mr. R. M. Pethe, APP for the Respondent/State.
Mr. Nikhil Mengde a/w Mr. Siddhikesh Ghosalkar & Adv. Haider Papia i/b Mr. Siddhikesh Ghosalkar, Advocate for Respondent No.2.

CORAM : N.R. BORKAR, J.
DATE : 07.11.2025.

P.C. :

1. This is an application for Anticipatory Bail.

2. The applicants are apprehending their arrest in Crime No. 585 of 2025 registered at Bandra Police Station, for the offences punishable under Sections 406 & 420 read with 34 of the Indian Penal Code.

3. The applicant No.1 is the proprietor of the construction firm namely Niraj Kakkad Construction. The applicant No.2 is the

wife of applicant No.1 and applicant No.3 is the son of applicant No.1. The first informant, on 10.05.2010, invested approximately Rs.67,15,500/- towards the advance payment in respect of Flat No. 501 on the 5th Floor of Kakad Classic to be constructed by applicant No.1 at Khar. On 27.02.2012, a MOU came to be executed between the parties. The said amount was transferred towards an investment in respect of Flat No. 701 on 7th Floor in the building known as Kakad Heights, to be constructed by the applicant No.1 at Bandra. As per the said MOU, an additional amount of Rs.1,00,00,000/- was to be paid by the first informant on or before 15.03.2012. It was agreed between the parties that as and when the said Flat No. 701 would be sold, the realization of the sale consideration would be shared equally, i.e., 50:50 percent between the parties. According to the first informant, it was later discovered that the said flat was sold to a third party on 29.03.2014. The allegations against the applicants are of defrauding the first informant to the tune of Rs.1,90,00,000/-.

4. I have heard the learned counsel for the applicants, learned APP for the respondent-State and the learned counsel for the respondent No.2-first informant.

5. The learned counsel for the applicants has drawn my attention to the orders passed by the NCLT in the insolvency proceedings. In addition, the learned counsel for the applicants submits that in the year 2018 itself, the first informant had filed a suit for recovery of the amount before this Court. It is submitted that after filing of the said suit, the first informant approached the jurisdictional police station for registration of the FIR. It is submitted that as no cognizance of the same was taken, the first informant approached the jurisdictional Magistrate by filing an application under Section 156(3) of Cr.P.C. It is submitted that the learned Magistrate refused to order an investigation and directed the first informant to examine himself under Section 200 of the Cr.P.C. by treating it as complaint case. It is submitted that the complaint case was thereafter withdrawn. The learned counsel submits that thereafter the present FIR came to be registered after a delay of more than five years. It is further submitted that the applicant Nos. 2 and 3 have nothing to do with the alleged crime still they are made accused. The learned counsel submits that there is no need of custodial interrogation and that the applicants are willing to co-operate in the investigation.

6. On the other hand, the learned APP for the respondent-State and the learned counsel for the Respondent No.2-first informant submit that though Flat No.701 was sold, the said fact was suppressed with an intent to cheat the first informant. It is submitted that filing of civil suit will not absolve the applicants from criminal liability. The learned counsel for the first informant further submits that the application under Section 156(3) of the Cr.P.C. was withdrawn as assurances were given to refund the amount in question. It is further submitted that the applicant No.1 is involved in eight other crimes of similar nature and the applicant Nos. 2 and 3 are involved in two more crimes of similar nature. In support of the submission that the criminal proceedings can continue even if the allegation discloses a civil dispute also, has relied upon the decision of the Hon'ble Supreme Court in Tamil Nadu Mercantile Bank Ltd. Vs. State and Ors. reported in[1]. It is submitted that considering the nature of crime, the applicants may not be released on anticipatory bail.

7. The fact that application under Section 156(3) was filed and the learned Magistrate refused to order investigation is not in

1 (2014) 3 SCC 755

dispute. Considering the overall facts and circumstances of the case and as there is no need of custodial interrogation, I am inclined to release the applicants on anticipatory bail. In the result, the following order is passed :

ORDER

a) The Application is allowed.

b) In the event of arrest of the applicants in connection with Crime No. 585 of 2025 registered at Bandra Police Station, for the offences punishable under Sections 406 & 420 read with 34 of the Indian Penal Code, the applicants be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each with one or two sureties in the like amount.

c) The applicants shall not leave India without prior permission of this Court.

[N.R.BORKAR, J.]