

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

ANTICIPATORY BAIL APPLICATION NO. 2675 OF 2023

1. Muralidharan Kesavan Nair	
2. Mrs. Vilasini Muralidharan Nair	
3. Sujeet Nair	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr. Prem Tanna, a/w Elton George, i/b Dharmendra
Damani, for the Applicants.
Mr. Shrikant Yadav, APP for the State/Respondent.
Dr. Abhinav Chandrachud a/w Dipen Furia i/b M/s. Shah
and Furia Asso., for the Intervner.
PSI C. D. Dalvi, Malad Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 29th SEPTEMBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicants and the learned APP for the State.
2. This is an application for pre-arrest bail in connection with CR No.487 of 2023, registered with Malad Police Station, Mumbai, for the offences punishable under Sections 120-B, 406, 420, 447, 463, 464, 465, 467, 468, 471 and 506 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

3. Chinappa Anthony, the first informant, is a builder. In the year 2015, applicant No.1 Muralidharan approached the first informant with a proposal to sell his land situated at Kandivali. A Memorandum of Understanding (MoU) was executed on 12th February, 2015, whereunder the first informant agreed to transfer five flats bearing Nos.202, 302, 402, 502 and 602 in Shree Balaji Aashirwad Building and cash amount of Rs.1,11,00,000/- in consideration of the land to be sold by applicant No.1 Muralidharan. As it transpired that applicant No.1 had given incorrect description of the property to be sold, the parties negotiated further and it was agreed that only four flats would be transferred. Flat No.202 would not be transferred.

4. The first informant alleged, while executing the Deeds of Conveyance, at the instance of applicant No.1 Muralidharan, he had executed a special Power of Attorney only to tender for registration the instruments in respect of Flat Nos.202, 302 and 402. Applicant No.1 Muralidharan had at that time obtained the signatures of the first informant on two Deeds of Conveyance in respect of Flat No.302 and one in respect of Flat No.402. It was later revealed that by misusing the custody of the special Power of Attorney, the applicants had

got the Sale Deed in respect of Flat No.202 also registered in favour of Sujeet Nair – applicant No.3, the son of applicant Nos.1 and 2, on 11th January, 2016. The first informant alleged it was never agreed that Flat No.202 would be conveyed. Nor he had executed any instrument to convey Flat No.202. Upon scrutiny of the instruments, it transpired that the applicants had forged the agreement by making apparent interpolations and also by forging the other documents got the instrument in respect of Flat No.202 registered in favour of applicant No.3. In the FIR the first informant has furnished the details, which according to the first informant, clearly point out the forgery.

5. The applicant approached the Court of Session. As the learned Additional Sessions Judge declined to exercise the discretion in favour of the applicants, they have approached this Court.

6. I have heard Mr. Tanna, the learned Counsel for the applicants, Mr. Yadav, the learned APP for the State and Dr. Chandrachud, the learned Counsel for the first informant – intervener, at some length.

7. The learned Counsel for the applicants submitted that suppressing the developments in the intervening period

including the proceedings before the State Consumer Commission and the Civil Court, the first informant has lodged a false report. Attention of the Court invited to the pleadings before the Consumer Commission and the notices exchanged between the parties. It was submitted that initially it was the stand of the first informant that even Flat No.202 was transferred to the applicants. In the wake of the dispute, the first informant has lodged a false report. As the alleged offences revolve around the documents, over the existence and execution of which there is no dispute, the custodial interrogation of the applicants is not warranted, submitted the learned Counsel for the applicants.

8. Mr. Yadav, the learned APP and Dr. Chandrachud, the learned Counsel for the first informant took pains to take the Court through the instrument in question to bolster up the submission that the apparent discrepancies and inconsistencies betrayed a clear case of forgery. Dr. Chandrachud laid emphasis on the intrinsic evidence of the alleged forged instrument to urge that an open and shut case of forgery is made out.

9. Evidently, the allegedly forged instrument was executed and registered in the year 2016. *Prima facie*, there is no

dispute about the execution and registration of the special Power of Attorney on 2nd November, 2015 in favour of the applicants. The special Power of Attroney authorised the applicants even to tender the instrument in respect of Flat No.202. In addition, the letters dated 21st November, 2016 and 5th December, 2016 *prima facie* advert to the transfer of Flat No.202 as well. Dr. Chandrachud endeavoured to impress upon the Court that even those two letters are forged as the applicants had the custody of blank signed letterheads.

10. The submission is required to be appreciated in the light of the fact that the first informant claims to be a builder by profession. Secondly, in the notice dated 18th August, 2016 and the written statement in the Complaint No.479 of 2018 lodged by applicant No.1 before the Consumer Commission, there is reference to the transaction pertaining to Flat No.202 also. Indeed, the said documents also contain allegation of fraud in respect of Flat No.202. However, at this stage, if a broad view of the matter, upon consideration of the cumulative effect of the documents, is taken, *prima facie* it appears that there was a tacit understanding between the

parties as regards Flat Nos.202 as well and documents were executed.

11. In any event, the allegations revolve around execution of the instruments. Those instruments have been executed prior to seven years. At this length of time, to facilitate further investigation custodial interrogation does not seem to be warranted. I am, therefore, impelled to grant interim protection while directing the applicants to join in the investigation.

12. Hence the following order:

: O R D E R :

(i) In the event of arrest of the applicants in CR No.487 of 2023, registered with Malad Police Station, Mumbai, the applicants be released on bail on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, each.

(ii) The applicants shall cooperate with the investigation and attend Malad Police Station on 6th 7th and 9th October, 2023 in between 10.00 am. to 1.00 pm. and thereafter as and when directed by the Investigating Officer.

(iii) The applicants shall produce the original instruments, which are in their custody, as may be directed by the Investigating Officer and furnish the specimen of their hand writing and signatures.

(iv) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any person acquainted with the facts of the case.

(v) Stand over to 27th October, 2023.

[N. J. JAMADAR, J.]