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THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 3245/2009

Date of Decision:06.02.2012

STATE

..... Petitioner

Through: Mr. Nitesh Rana with Mr. Tushar
Sinha, Advocates.
Ms Deepali, Adv. for investors.
Ms Jasbir Kuar, APP

Versus

SRI NIWAS SHARMA

..... Respondent

Through: Mr. M.C. Dhingra, Adv.

And

CRL.M.C. 3473/2008 & CrI.MA 12934/2008

A.K. GOVIL

..... Petitioner

Through: Mr. Nitesh Rana and Mr. Tushar
Sinha, Advocates.

Versus

STATE OF NCT OF DELHI & ORS.

..... Respondent

Through: Mr. Akram Pasha, Mr. Arvind
Kumar Singh, Advocates for
Investors/ Intervenors.
Ms. Jasbir Kaur, APP for State

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The aforesaid petition being CrI.MC 3473 of 2008 is filed by the petitioner Mr. A.K. Govil under Section 482 Cr.PC for quashing the order dated 21.10.2008 passed by learned Metropolitan Magistrate in a criminal case being FIR No. 213 of 2006 under Sections 420/406/120B IPC registered at Police Station Lodhi Colony, New Delhi. The other petition

being CrI.MC 3245 of 2009 is filed by the State under Section 439(2) Cr.PC read with Section 482 Cr.PC for cancellation of bail granted by this Court to the respondent Mr. S.N. Sharma vide order dated 13.02.2007.

2. The necessary facts churn of details are these. On the complaint of Mr. A.K. Govil (petitioner in CrI.MC 3473 of 2008) and Mr. Amit Yadav, an FIR No.213 of 2006 was registered against Mr. S.N. Sharma (respondent in CrI.MC 3245 of 2009) on 14.6.2006 at Police Station Lodhi Colony, New Delhi. The allegations against Mr. S.N. Sharma were that he cheated Mr. A.K. Govil by making false promises to him of launching a Township Project in the name of Rajshree Group coming up as an Indo-Swedish joint venture project in 280 acres of land on NH-91. On the basis of grand representations by the respondent , large number of investors invested in the said project and entered into agreements with the respondent . A payment of Rs. 71 lakhs was made by A.K.Govil in the form of two cheques dated 22.4.2006 favouring Boutanika Infrastructure and were given to the respondent at his office at 114, Jor Bagh, New Delhi. However, on the said date, the company was not in existence and it came into existence only on 11.5.2006.

3. The investors in their statements under Section 161 CrPC have stated that they were specifically told by the respondent that the company was having all the legal requirements for carrying out development projects with regard to Boutanika City proposed to be developed by M/s. Boutanika Infrastructure Pvt. Ltd. The investors were assured that the company was having sufficient area of land for developing a township. However, according to the documents obtained from the office of Housing Commissioner and Chief Town and Country Planner, Lucknow pertaining

to the development of township by private developers revealed that no registration was issued to M/s. Boutanika Infrastructure Pvt. Ltd. by the office of Housing Commissioner, Lucknow. The application in this regard was moved by the company on 21.9.2006, much after the registration of present case. As per the policy, once the private developer has been issued the registration, they were required to acquire upto 25% of the total land proposed for the development before submitting a request for development licence. The developer is authorized for sale/purchase of the land and advance receipts only after the sanction of lay out plan of first phase and execution of the development agreement with the government which is done only when 60% of the land is there in the form of sale deeds with the concerned private builder. Against the projection of 280 acres of land, the company must have been in possession at least 150 acres of land in order to become eligible for grant of development licence in order to become eligible for collection of advance money from the public. But, according to the documents seized by the investigation team, the company was in possession of only approximately 10 acres of land and hence, was not eligible to have received the advance from the various investors. No initial funding was arranged by the respondent and only the money collected from the investors was utilized for the purpose of purchasing land and running the company's affairs.

4. After completion of investigation, a charge-sheet was filed against Mr. S.N. Sharma before the trial court. Having regard to the nature of offences, the investigation was transferred to Economic Offences Wing, Crime Branch.

5. It is revealed from the investigation that there are more than 600 investors who have invested their hard earned money with M/s. Boutanika Infrastructure Pvt. Ltd. to the tune of Rs. 13 crores. As many as 32

investors have approached the investigating agency and this court with their grievances against the company along with the details of advance payments made by them. Frequent change of office addresses has been made by the respondent person in order to deceive the investors and investigating agency. The proposed site of the project i.e. Boutanika City near Dadri is lying vacant with crops growing over the land and no infrastructure development has ever been started thereon.

6. Mr. S.N. Sharma was arrested in this case on 2.7.2007 and he was released on bail vide order dated 13.2.2007. Subsequently, he filed an application on 11.2.2008 before the learned MM for return of original sale deeds which had been submitted along with the charge-sheet. In the said application, a prayer was made that he wants to sell the land in order to repay the investors/creditors. Since the undertaking that was filed was not in consonance with the said application, the request for releasing the original sale deeds was declined by the learned trial court vide order dated 13.3.2008. This order was assailed by Mr. S.N. Sharma before this Court and vide order dated 2.4.2008, this court allowed the request of Mr. S.N. Sharma in the following manner:

“I am of the view that in case the petitioner wants to sell the land to satisfy the claim of the investors, it is always open to the petitioner to file the particulars of the investors and the prospective purchasers by way of an application with the undertaking that the petitioner wants to sell the land only for the purpose of clearance of dues of the investors including in respect of the cheques issued by the petitioner for satisfaction of the dues of the creditors. In case such an application is filed naturally the trial court would consider the same in accordance with law to facilitate the satisfaction of the claims of the investors.”

7. Thereafter, Mr. S.N. Sharma filed an application under Section 451 Cr.PC for release and return of sale deeds mentioned at serial number 60 and 61 of list of documents relied upon by the prosecution in order to facilitate the refund of invested amounts to the investors as per directions of this Court. Simultaneously, an application was also filed by Mr. A.K. Govil/complainant praying therein not to release the sale deeds to Mr. S.N. Sharma. In the meanwhile, an application had also been moved by 16 other investors to be impleaded as Intervenor stating therein that they had been lured by the scheme launched by Mr. S.N. Sharma. They alleged that some of the cheques issued by Mr. S.N. Sharma on account of refund of the amounts have also been dishonoured on presentation. They objected to the release of sale deeds to Mr. S.N. Sharma in lieu of sale of lands acquired for the purpose of allotment to them. All these three applications came to be disposed of by learned ACMM vide order dated 21.10.2008.

8. The applications of 16 investors was allowed finding them to be genuine investors and consequently they were permitted to join as Intervenor in the proceedings as complainants. The request of Mr. S.N. Sharma to release the sale deeds and the objections raised by the complainants were dealt with by learned ACMM vide order dated 21.10.2008 in the following manner:

“...In the application moved by the accused, the applicant has sought the permission of the court to release and return the aforesaid “sale deed” to facilitate refund of amount to the investors as per the direction of the Hon’ble High Court whereas in the application mentioned at serial no.2, the applicant/ complainant has prayed that the sale deed may not be returned and some other

reasonable method may be adopted/ initiated to satisfy the claim of the investors. However, the applicant has suggested to other method to satisfy the claim of the investors. The only concern of the applicant/ complainant is to protect his interest. He has an apprehension that his interest may be jeopardized in case the sale deed is returned to the accused and he fled away thereafter. The accused may run away without clearing the claim of the complainant.

In my considered opinion, the grievance of the applicant/ complainant can very well be protected/ safeguarded by allowing the prayer of accused and releasing the sale deed to him for facilities of the refund of amount to the investors as per direction of the Hon'ble High Court and side by side ensuring and safeguarding the interest of investors by imposing the following additional conditions:

- 1. After release of sale deed and completing the sale proceedings from the purchase of the land and on receipt of sale proceeds, within 15 days, the accused shall deposit the claim amount of the investors i.e. total amount received and refundable by the accused to investors in the form of pay order to investors in the court in favour of District Judge, Delhi.*
- 2. Besides refunding the amount of the investor received from them, the accused shall also pay the interest to the investors at the agreed rate of interest, if any. In case there is no agreement in this regard, then he will pay the simple interest @ 8% per annum to the investors.*

3. *The accused shall also furnish the undertaking to the effect that he will not raise the question of execution and/or the genuineness of the sale deed return is sought in the application.*
4. *Before obtaining the obligation sale deed, the accused shall obtain the certified thereof, and after depositing the certified copy of the documents, he will obtain the said sale deed."*

9. This order dated 21.10.2008 of learned ACMM is assailed by the complainant Mr. A.K. Govil in CrI. MC 3473/2008 wherein this Court on 4.11..2008 stayed the operation of the said order. The further proceedings which took place in this Court shall be dealt a little later.

10. I have heard learned counsel for petitioner Mr. A.K. Govil, learned counsel for investors/interveners, learned APP for the State on the one hand as also learned counsel for Mr. S.N. Sharma on the other. Learned APP for the State outrightly submitted that it was a case of mass fraud and cheating of general public at the hands of Mr.S.N Sharma who has misused and abused the indulgence of bail granted to him and also vitiated the conditions of release of sale deeds by ACMM. She further submitted that he has dishonestly and fraudulently defrauded general public of their huge amounts on false representations. Learned counsel for the complainant Mr. A.K. Govil as also the interveners have also alleged various acts of omission and commission by Mr.S.N Sharma amounting to cheating, fraud, breach of trust, conspiracy and misappropriation. Both sets of claimants/ investors have claimed priority rights on the assets of Mr.S.N Sharma as also the deposit of Rs.60 lac lying deposited with this Court alleging hardships and losses suffered by them at the hands of Mr.S.N Sharma.

11. On the other hand, learned counsel for the respondent Mr. S.N Sharma submitted that he has the intention to repay to the investors, but he is unable to do so as he would require sufficient time for doing the needful. He submitted that the sale deeds have been executed by Mr.S.N Sharma with the intention to repay to investors, but on account of prevailing circumstances he was unable to make repayment. He submitted that intention of Mr.S.N Sharma would reflect from the fact that he has deposited Rs.60 lac in this Court and for arrangements of the balance amount, he was making necessary efforts. With regard to respondent having failed to give details of the investors, the submissions of learned counsel was that the respondent could not be forced to give the names of the investors as he could not be made to produce incriminating evidence against him in violation of Article 23 of the Constitution.

12. Before advertng to the submissions of learned counsel for Mr.S.N Sharma, it may be stated that that it is settled legal proposition of law that the court which had granted bail has also the powers to cancel the same and the discretion of grant or cancellation of bail can be exercised either at the instance of accused, public prosecutor or the complainant on finding new material or circumstances at any point of time or on account of misuse or abuse of indulgence by the accused. It is also settled proposition of law that the court which considers the bail application must try to maintain a balance between social interest vis-à-vis personal liberty while adhering to the fundamental principles of criminal jurisprudence that the accused has to be presumed to be innocent till he is found guilty by a competent court of law. More recently, in the case of ***Siddharam Satlingappa Mhetre v State of Maharashtra and others*** [(2001) 1 SCC 694, the Supreme Court observed, “*Just as liberty is precious to an individual, so is the society’s interest in maintenance of peace, law and order. Both are equally*

important”. It is also settled proposition of law that the court would be fully justified in imposing any condition that may be found to be just in the given facts and circumstances while granting bail. In **Prakash Kadam etc. Vs. Ram Prasad Vishwanath Gupta & Ors.**, 2011 (2) Crimes (SC) 279, it was held that if there are serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him.

13. Now, I may revert back to the proceedings in these cases which would demonstrate the post bail conduct of respondent Mr. S.N. Sharma. On 10.2.2009 it was informed by Mr. A.K. Govil that despite the stay of the operation of the said order, Mr. S.N. Sharma had gone ahead and sold the properties in question. Vide order dated 28.4.2009 respondent no.2 Mr. S.N. Sharma as also respondent no.3 were directed to file affidavits giving details of the total amounts collected by them pursuant to the eight sale transactions, the details of which was given by the police in the status report as also by the complainant Mr. A.K. Govil. The respondent Mr. S.N. Sharma having not filed the affidavit, was directed to remain present in the court on the next date of hearing i.e. 25.05.2009. Neither the respondent remained present nor affidavits were filed. Again vide order dated 19.8.2009, Mr. S.N. Sharma was directed to remain present.

14. It is seen that though it was being alleged that the affidavit had been filed by Mr. S.N. Sharma/ respondent, but the same in fact was filed on 9.11.2009. Since Mr. S.N. Sharma had not filed the details of the investors, vide order dated 18.10.2010, he was directed to file the same indicating the details of the investors who had invested the money in his project along with the details of the investors with dates and also list of investors who according to him, have been refunded their deposits. He was also directed

to specify as how and in what manner he was going to pay back the investors. Mr. S.N. Sharma/ respondent did file the affidavit, but the same was not taken on record on account of objections by the Registry of this Court and he neither removed the objections nor filed affidavit despite lapse of considerable time. Having taken note of this conduct of the respondents, this Court again on 27.4.2011 observed that though the sale deeds were released to Mr. S.N. Sharma subject to certain conditions by learned ACMM vide order dated 21.10.2008 and admittedly sale transactions have taken place, but seeing the conduct of Mr. S.N. Sharma, he was again directed to file an affidavit indicating the date of those transactions and the date of deposit of the amount with learned District Judge in compliance of the direction no.1 of learned ACMM which is reproduced above. Nothing was filed by respondent Mr. S.N. Sharma thereafter.

15. In the meanwhile, the State also filed a petition being CrI.MC 3245 of 2009 under Section 439(2) read with Section 482 Cr.PC for cancellation of bail of respondent no.1 Mr. S.N. Sharma on the ground that he has violated the terms and conditions of bail granted to him as well as the directions given by the learned ACMM.

16. Since the requisite details of investors as also details of the amounts pertaining to sale transactions had not been furnished by respondent Mr. S.N. Sharma despite repeated directions of this Court, the learned counsel for Mr. S.N. Sharma on 29.11.2011 stated that his client would ensure timely payment to investors and will come out with some concrete plan in this regard. Vide order dated 1.12.2011, it was ordered by this Court that before adverting to the request for cancellation of bail, it is desired that Mr.

S.N. Sharma must come out with all the details of the properties owned and possessed by him as also the companies as possessed and owned by him and his family members in which he was in any way connected or associated. He was again directed to file on affidavit the details of the investors with amount invested by them and the dates of investments. Pursuant thereto, Mr. S.N. Sharma filed an affidavit dated 5.12.2011 stating therein that he owned some land in Khasra No.565 and 467, Village Bisnuli, Tehsil Dadri, District Gautam Budh Nagar. This was apparently found to be not in consonance with the order passed by this Court directing him to file an affidavit giving details and description of the properties owned and possessed by him. It was also pointed out by learned counsel for the complainant that the affidavit filed was a false and frivolous one as it did not reveal the correct facts and list of investors since the affidavit filed neither gave the measurement nor description of the land possessed by him. As a last and final opportunity he was directed to file an affidavit in consonance with the orders of this Court. Thereafter Mr. S.N. Sharma filed another affidavit on 13.12.2011 stating therein that in the affidavit dated 5.12.2011 Khasra No.467 was inadvertently recorded in place of Khasra No.303. In this affidavit, it was stated that M/s Boutanika Infrastructure (P) Limited owned land of 7080 sq. yards in Khasra No. 303 and 2784 sq. yards in Khasra No.565. In addition, it was also stated that his parents had left behind 9 acre of agricultural land in Village Bana District Gaya, Bihar, but the partition has not taken place amongst his brothers and sisters. These facts were also alleged to be false and rightly so. It was pointed out by the complainant that the fact of respondent Mr. S.N. Sharma having started a new company in the name of Srini Infrastructure Private Limited for residential and commercial flats in Haridwar and Dehradun was suppressed by Mr.S.N Sharma. Though, initially this fact was denied

by Mr.S.N Sharma in the court that he had any association of colonizing Srini Infrastructure Private Limited except for marketing for other promoters on commission basis, but when confronted with the audit report and brochures, Mr.S.N Sharma and his counsel had no answer. The auditor's report and statement of accounts for the period ending 31.3.2011 as also the Directors' report forming part thereof would clearly demonstrate that Mr.S.N Sharma was director of M/s Srini Infrastructure Private Limited which was floated for the land projects by Mr.S.N Sharma. He had invested huge amount of money in this company showing the same as loan to it. This company was involved in bookings of plots for the public. Not only this, it was also the statement of learned counsel for the complainant that Mr.S.N Sharma had also suppressed the fact of his owning the property bearing number 329-B, Nirman Cooperative Group Housing Society, Mayur Vihar, Phase-I Extension, Delhi. This fact also could not be controverted by Mr.S.N Sharma satisfactorily. It is seen that mutation of this property was effected in the name of Mr.S.N Sharma in the office of MCD on 9.12.2010. Further, the complainant/ petitioner Mr. A.K. Govil also brought to the notice of this Court that M/s Boutanika Infrastructure (P) Ltd also owned land in Bisnuli village in Khasra No.459 vide mutation dated 16.12.2006, in Khasra No.457 vide mutation dated 9.4.2009 and also in Khasra No.190 and 565 vide mutation dated 3.12.2006. The copies of revenue records in this regard were filed by the complainant which could not be controverted by Mr.S.N Sharma.

17. Respondent Mr.S.N Sharma has apparently violated one of the fundamental and basic conditions of release of the sale deeds and cleverly managed to delay the deposit and refund of the amount to the investors for large number of years. He had diverted the sale proceeds to his other

business activities. He has intentionally and malafidely suppressed and concealed the details of his assets as also the details of the total number of investors and the amount invested by them. He has utterly not only misused, but abused the indulgence that was given to him by this court from time to time and by ACMM.

18. From the consideration of these facts, it is noted that the respondent has violated the norms laid down for the development of a township at each and every step and has dishonestly appropriated huge amounts of money from various investors.

19. Coming to question of bail of the accused, regard must be had to the settled principles on this issue. In **Panchanan Mishra Vs. Digambar Mishra & Ors.**, (2005) 3 SCC 143, the Hon'ble Supreme Court has held that the court must apply its mind and go into the merits and evidence on record and determine whether a prima facie case was established against the accused. It was held that the seriousness and gravity of the crime was also a relevant consideration and a balance has to be drawn by the court to protect fair trial and to secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in a heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically loses all its purpose and significance to the great prejudice and the interest of the prosecution. The Court summed up the principle that the ground to deny bail will be when by testing the balance of probabilities it appears that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice. It was noticed by the Court that once a person is released on bail in serious criminal cases where the

punishment is stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the victim and also create problems of law and order.

20. Further, the Hon'ble Supreme Court in **State of U.P. Vs. Amarmani Tripathi**, (2005) 8 SCC 21, held as under:

*“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see *Prahlad Singh Bhati vs. NCT, Delhi* 2001 (4) SCC 280 and *Gurcharan Singh vs. State (Delhi Administration)* AIR 1978 SC 179). While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused”.*

21. In the case of **Khushi Ram Vs. State**, 2009(2) JCC 1012, this Court cancelled the bail granted to the accused due to the reason of non-compliance of the conditions imposed on the accused at the time of granting anticipatory bail to him. In the said case, it was observed that the said conduct of the accused was inexcusable and it was a valid ground for cancellation of bail.

22. The conduct of the respondent right from the inception clearly establishes that his intention was always to dupe the innocent investors by making false claims without having any legal authority or requirement for the development of a township. Notwithstanding the fact that he was already on bail, he proceeded to dispose of the land purchased with the amount given by the investors and used the proceeds of the same for his personal gain and did not repay even a single investor.

23. Further, he was reluctant in disclosing the details of his assets and wherever he disclosed, he suppressed and concealed and wherever he was confronted or cornered, he has remained evasive and silent. It is an undisputed fact that it was after the indulgence of this court vide order dated 2.4.2008 that the request of Mr.S.N Sharma for release of sale deeds was acceded to by the learned ACMM. One of the prime conditions of release of the sale deeds was that Mr.S.N Sharma was to refund the amount to investors from the sale proceeds of the land. It was to safeguard the interest of the investors that it was ordered that after release of the sale deeds, claim amount of investors with interest @ 8% per cent per annum was to be deposited by him in favour of learned District Judge. Undisputedly, Mr.S.N Sharma had executed as many as eight sale deeds in respect of different properties starting from 3.5.2008 to 7.11.2008. The transaction that was executed on 7.11.2008 was apparently in violation of order dated 4.11.2008 whereby the order dated 21.10.2008 releasing the sale deeds was stayed. Though the plea of Mr.S.N Sharma that he was not aware of the said order of 4.11.2008 was unbelievable, but even assuming that he was not aware of the said order, the fact remains that he had executed sales after getting sale deeds released as per order of learned ACMM and had received the amount by way of cheques and encashed on

19.11.2008 and 21.12.2008. The respondent Mr.S.N Sharma had undisputedly received more than Rs.4 crore by way of sale transactions and instead of depositing the same with the learned District Judge within 15 days of effecting transactions as per the condition of release of sale deeds., he cleverly filed an application before the court on 8.12.2008 seeking directions. When the order itself was so clear that the amount was to be deposited within 15 days, no clarification or directions of any sort was called for. Respondent Mr.S.N Sharma further tried to overreach and of his own deposited Rs.60 lac with this court in January 2011 without there being any order or directions. Admittedly, no amount thereafter or the balance was either deposited or refunded to the investors. Hence, the plea that was taken by learned counsel for Mr.S.N Sharma that Mr.S.N Sharma has the intention to repay to the investors, but despite having made efforts to refund could not make arrangements, was nothing but a lame excuse. Similarly, the plea that the investors can be refunded from the deposit of Rs.60 lac is also nothing but an eyewash.

24. From the conduct of the respondent Mr.S.N Sharma, it would be seen that not only he misused and abused the indulgence of bail granted to him, but has abused the process of law. He has utterly failed to comply the condition of release of sale deeds without any justifiable reasons. His conduct during the instant proceedings was also noticed to be evasive and dishonest.

25. Now with regard to the plea of petitioner A.K. Govil as also that of the claimants/ interveners as set out, they all have sought recovery of their payments made to the respondent Mr.S.N. Sharma from his assets and also from out of the deposit of Rs.60 lac lying deposited by Mr.S.N. Sharma

with this court. The allegations of these claimants are somewhat identical in that they were lured by Mr.S.N. Sharma and have been duped of their investments. Admittedly, they are not the only investors who have been so duped and cheated by Mr.S.N. Sharma, but there are large number of other public persons who fell victim at the hands of Mr.S.N. Sharma. In fact, majority of those investors seems to be not aware of the present proceedings. Therefore, in the given factual matrix, the remedy that may be available to the present claimants /interveners including the petitioner A.K. Govil would not lie in the instant proceedings, but in some other appropriate proceedings. The amount of Rs.60 lac lying deposited with this Court, even otherwise by no means is sufficient enough to meet the claims of those claimants/ investors. Hence, in the present matter, no further proceedings can be initiated regarding recovery of their claim amounts from the immovable assets of respondent Mr. S.N. Sharma. Thus, I am constrained to disallow the petition of Mr. A.K. Govil as also the claims of claimants/ interveners, being not maintainable in the present proceedings.

26. Having regard to the foregoing facts and circumstances, the bail granted to Mr. S.N. Sharma is liable to be cancelled and the same is hereby cancelled. He is directed to surrender before the concerned SHO/IO, Economic Offences Wing, Crime Branch, New Delhi forthwith.

27. Both the above petitions stand disposed of accordingly. No costs.

M.L. MEHTA
(JUDGE)

FEBRUARY 06, 2012/akl/rd