

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1451 OF 2016**

Smt. Natasha Vineet Malhotra	...Applicant
<i>Versus</i>	
State of Maharashtra & Anr	...Respondents

**WITH
CRIMINAL APPLICATION NO.736 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO. 1451 OF 2016**

Surinder Vishandas Madhawani	...Intervenor
In the matter between	
Smt. Natasha Vineet Malhotra	...Applicant
<i>Versus</i>	
State of Maharashtra & Anr	...Respondents

**WITH
CRIMINAL APPLICATION NO.404 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO. 1451 OF 2016**

Sunil Hanmantrao Saste	...Intervenor
In the matter between	
Smt. Natasha Vineet Malhotra	...Applicant
<i>Versus</i>	
State of Maharashtra & Anr	...Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1452 OF 2016**

Vineet Ramesh Malhotra & Anr	...Applicants
<i>Versus</i>	

State of Maharashtra & Anr

...Respondents

WITH
CRIMINAL APPLICATION NO.735 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO. 1452 OF 2016

Surinder Vishandas Madhawani

...Intervenor

In the matter between

Vineet Ramesh Malhotra & Anr

...Applicants

Versus

State of Maharashtra & Anr

...Respondents

WITH
CRIMINAL APPLICATION NO.395 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO. 1452 OF 2016

Parag Dilip Mehta & Ors

...Intervenors

In the matter between

Vineet Ramesh Malhotra & Anr

...Applicants

Versus

State of Maharashtra & Anr

...Respondents

Mr. Omkar Mulekar, i/b Ms. Jacinta D'Silva, for the
Applicant in ABA No.1451/2016.

Mr. R.S. Jaisinghani, i/b Ms. Jacinta D'Silva, for the
Applicant in ABA No.1452/2016.

Mr. Shriram Kulkarni, i/b Mr. Chaitanya Nikte, for the
Intervenor.

Mr. Deepak Thakare, APP for the State in ABA
No.1451/2016.

Mr. S.H. Yadav, APP for the State in ABA No.1452/2016.

CORAM: T.V. NALAWADE, J

DATED: 22nd August 2017

PC:-

1. Both the Anticipatory Bail Applications are filed for relief of anticipatory bail in Crime No.15 of 2016 which is registered in Wadkhal Police Station, District Raigad, for the offences punishable under Sections 420, 409, 34 of the Indian Penal Code and Sections 3, 4, 8, 11, 13 and 14 of Maharashtra Ownership Flat Act, 1963. The papers of investigation were made available to this Court for perusal. The learned Counsel for the Applicants have also produced various documents and this Court has perused those documents also.

2. One Surinder Vishandas Madhawani has given report and the crime is registered on the report given by him. It is his contention that in the year 2007 there was advertisement published by Arrow Engineering Limited of which accused Vinit Malhotra, Accused Khanna, Natasha Malhotra, the wife of Vinit Malhotra and one more person were directors and it was represented that in Pen Tahasil this company was starting a project in which open plots and flats will be available and for that the company was making development of 1,545 acres land. According to him in the advertisement promise was given to complete the project within 24 months and give the possession of either flats or plots. According to him, under the scheme Rs.999/- was to be paid per square yard. According to him, he paid the amount as per the scheme for purchasing 500 square yard portion. According him, from time to time he paid the amount which is more than Rs.12 lakh and his relatives

and other acquaintance also booked plots under the same scheme and thus he and his relatives had paid the amount of Rs.29,91,471/- for purchasing plots. The Applicants of proceeding No.1452 of 2016 viz. Malhotra and Khanna are not disputing that these persons had paid the amount for purchasing the plots.

3. Allegations are made by the first informant and many other persons who had given amounts. Till the year 2012 they visited the company office many times but under one or other pretext possession of such property was not given. It is contended that in the year 2014 it was represented to them that plots were not available and flats can be booked. It is the contention of the first informant that he refused to sign such agreement and he insisted that open plots should be sold to him as per the agreement.

4. It is the contention of the informant and others that it was represented to them that there were some obstacles in development and accused then to make joint agreement of development. It is the case of first informant that he refused to enter into such agreement also. According to him, when he made more enquiry he realised that the property shown under project cannot be developed. There were objections including of Salt Department. According to him, the enquiry revealed that most of the portion of the property shown in the brochure was not owned by this company and company had not submitted any proposal to CIDCO when

only CIDCO was the authority which could have given permission of such development. It is contended that most properties which were not owned were shown in the advertisement and in the brochure and that is how the Applicants in Anticipatory Bail Application No.1452 of 2016 have deceived them. Admittedly the Applicant in Anticipatory Bail Application No.1451 of 2016 who is wife of Vinit Malhotra has not signed any document and so the proceeding against the said lady is not contested that seriously. There are no specific allegations against her when she is a director of the company.

5. The learned Counsel for the Applicants in ABA No.1452/2016 took this Court through various documents like the proposals made to Government for development of the property and for creation of township. Some record is also produced to show that some pieces of agricultural lands are purchased by this company. The learned Counsel for the Applicants submitted that in view of the terms and conditions of the agreements, it is open to the persons who have booked the plots to get back the money paid by them, and they can also get interest at the rate of 8% per annum as provided in the agreement. The learned Counsel for the Applicants submitted that the amounts were sent to the first informant and his relatives and they even encashed the cheques and so they cannot raise grievance of aforesaid nature. The learned Counsel for the Applicants submitted that some amounts is already deposited in this Court to see

that the dispute is resolved. The learned Counsel for the Applicants submitted that due to the change in policy of the Government the lands which were shown as project land cannot be developed as per the project and so the Applicants cannot be blamed.

6. The learned APP drew the attention of this Court to following circumstances:

- (i) In the year 2007 when the amount was accepted by the Applicants from thousands of persons, no project was in its place. Even the proposal of the project specifying the properties was not there and due to that it can be interfered that there was intention to deceive only to collect the money.
- (ii) There is no record produced by the Applicants even when interim protection was given to them to show that account of the company was opened and the money collected was deposited in the said account. On this the learned Counsel for the Applicants submitted that properties were to be purchased and so the amount was not kept in such account.

7. The Applicants had applied for getting land from the State Government which was Salt Pan Land under lease. It was not possible to get that land but in the proposal which was submitted to Government such land was shown.

8. In brochure which was prepared subsequently the total area of the land which was to be used was shown as 1545 acres but not even 10% of this amount was owned by the company. Even in the proposal considered by the concerned department of this company in the year 2009 it was shown that the land to the extent of only 5.6% was purchased. The land to the extent of 29% was to be obtained from the Government under lease which was not possible and some land was to be procured from the Government which was 22.2%. Thus when no land was fixed for the development and creation of the township, money was collected.

9. For collecting money some false contentions were made in the agreements even in the year 2010 that property was already purchased by the company for development when the property was not in existence. The attention of the Court was drawn to such contentions made in agreement dated 22nd November 2010.

10. The period for giving the possession was fixed in every document created from the year 2007, but there were no steps taken in even acquiring or purchasing the land. The period of 16 months was fixed in the first agreement of year 2007 when there was not even single inch of land with the company.

11. Even when it was clear that development of the property was not possible after the year 2013 as the CIDCO was the authority, attempt was made again to deceive the persons who had paid the amount by asking them to execute agreements of joint development.

12. The submissions made and the record show that township was to be developed and due to that representation thousands of persons booked plots in the project. Entire amount was collected from them. When it was necessary to have contiguous, in one piece land for the township no attempt was made to identify such land. The record of project shows that some land of Salt Pan was also shown in the project and most of the land which was not procured and which was not in possession of the company was shown as the project land. This circumstance leads to inference that there was intention to deceive right from beginning. Poor persons make investments due to attractive offers and the representations made by the persons like present Applicants. This money was not shown in the account of company and this circumstance again leads to inference that there was intention to deceive right from beginning. Some pieces of land are shown to be purchased by showing 7/12 extracts but a copy of only one Sale Deed is produced on record. It was submitted for the State that no land is actually in possession of the company. It was submitted that indirectly Vineet Malhotra has deceived in one more way. One property was purchased in the name of

Vinit Malhotra for the consideration of Rs.38,00,000/- in the year 2010 and the some property is shown to be sold to the company for the consideration of Rs.1.60 crore in the year 2013. This circumstance again shows that whatever money was collected from poor persons was obtained directly or indirectly by persons like Vinit Malhotra.

13. Attention of this Court was drawn to the statements of Salt Officers recorded during investigation, which show that Application was moved for getting Salt Pans on lease basis. Affidavit is filed of Police Officer to show the nature of investigation which is required to be made. There is record like super imposition of map done by Salt Department to show that Salt Pan Land was considered in the development plan. It is surprising that such kind of proposal was kept for consideration by the State Government when it was not possible to create a township of the nature projected by the Applicants. The record also shows that when the land was belonging to Central Government like Salt Pan, the State Government could not have even considered the proposal. But the processing of the matter was done by the State Government. It can be said that due to this record created at Government level more and more persons were deceived and they gave money to the Applicants. In such cases, the submissions of the accused that accused is ready to return the money, cannot be accepted for giving him relief of anticipatory bail. His intention was to deceive people and he succeed in deceiving

the people. They got the money and by using money they themselves must have made property and it can be said that they are now ready to return money. The circumstance that Applicants sent cheques of only the amount paid and not of interest also speaks loud about their intention. The contents of the agreement show that it is a clear case of fraud but the persons were attracted due to the false representations made and also due to some Acts of the State Government. This Court has no hesitation to observe that it is not possible to complete project that the accused are now representing that there can be joint agreement for development with individual persons. It appears that more than thousands such agreements made and more money is collected. There is no other way to the persons who have given money than to act as per the ways suggested by persons like accused. In such cases, no lenient view can be taken by the Court as the persons like Applicants deceived poor persons who want to invest their savings and who want to have a place in the vicinity of Mumbai. Discretionary relief cannot be given to such persons. Custodial interrogation is a must and only after custodial interrogation the amount which is collected by deceiving the persons can be recovered and that can be done even by attaching the properties of the company and the Applicants. It appears that the provisions of Maharashtra Ownership Flat Act, 1963 are also used in the present matter.

14. The learned Counsel for the Applicant placed reliance on some observations made by the Apex Court in the cases of (i) ***Siddharam Satlingappa Mhetre vs State of Maharashtra*** reported in **(2011) 1 Supreme Court Cases 694** and (ii) ***Hari Prasad Chamaria vs Bishun Kumar Surekha & Ors*** reported in **1974 Cri L.J. 352**.

15. The learned Counsel for the Applicants submitted that the persons who have made the payment to the Applicants can exercise their right by approaching Civil Court for enforcing of agreement and arrest of the accused cannot be a way for recovery of the amount. This submission is not at all acceptable in the present matter in view of the relevant acts already mentioned. Even of some persons have accepted their money that cannot help Applicants. The learned Counsel for the Applicants produced copy of order made by this Court in Writ Petition No.7393 of 2016 to show that there are obstacles in development of the lands due to in action on the part of the Government to lay down the policy in respect of coastal lands. These circumstances cannot be considered in favour of the Applicants. Facts and circumstances of the each and every case are always different. Before publishing the project and accepting the money, it was the responsibility of the persons like Applicants to anticipate all these things and then prepare project on the basis of the land which was actually available. It can be said that there is not a single

document with the Applicants to show that such procedure was followed. This circumstance shows that right from beginning they had the intention to deceive. They have actually used the public money by not showing that money in the account of company. This is nothing but misappropriation of the money entrusted to them.

16. For the reasons already given this Court holds that discretionary relief cannot be given to the Applicants in Anticipatory Bail Application No.1452 of 2016 and their Application stands rejected. Ad-interim relief, if any, granted in their favour stands vacated.

17. The Anticipatory Bail Application No.1451 of 2016 of the Applicant Natasha Malhotra is allowed. Ad-interim relief, if any, granted in her favour stands confirmed on the following conditions:

- a) In case of arrest of the Applicant, (in Anticipatory Bail Application No.1451 of 2016), in Crime No.15 of 2016 which is registered in Wadkhal Police Station, District Raigad, for the offences punishable under Sections 420, 409, 34 of the Indian Penal Code and Sections 3, 4, 8, 11, 13 and 14 of Maharashtra Ownership Flat Act, 1963, she be released on bail on furnishing P.B. in the sum of Rs.1,00,000/- (Rupees One lakh only) with one or more solvent sureties in the like

amount.

- b) The Applicant is not to tamper the prosecution witnesses.
- c) She is not to commit similar offences.
- d) She is to attend the concerned Police Station every Sunday between 9 am and 12 noon for the period of two months and she is to cooperate with the Police during the investigation.

18. The learned Counsel for the Applicants in ABA No.1452 of 2016 requests for continuation of protection in favour of the Applicants as they want to approach Supreme Court. On his request time of ten days is granted.

19. In view of disposal of the Anticipatory Bail Applications Nos.1451 of 2016 and 1452 of 2016, the Applications filed for intervention do not survive. The same are accordingly disposed of as infructuous. The Counsels were allowed to assist the learned APP.

[T. V. NALAWADE, J.]