

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 525 OF 2018**

Gaurav Balwant Khanna

..Applicant

v/s.

The Senior Inspector of Police,
Wadkhal Police Stn. & Anr.

..Respondents

**WITH
CRIMINAL APPLICATION NO. 288 OF 2018
IN
BAIL APPLICATION NO. 525 OF 2018**

Mrs. Lakshmy Mandhawani and Anr.

..Applicants

In the matter between

Gaurav Balwant Khanna

..Applicant

v/s.

The Senior Inspector of Police
Wadkhal Police Stn. & Anr.

..Respondents

**WITH
CRIMINAL APPLICATION NO. 685 OF 2018
IN
BAIL APPLICATION NO. 525 OF 2018**

Mr. Surinder Mandhawani

..Applicant

In the matter between

Gaurav Balwant Khanna

..Applicant

v/s.

The Senior Inspector of Police
Wadkhal Police Stn. & Anr.

..Respondents

WITH

CRIMINAL APPLICATION NO.1010 OF 2018
IN
BAIL APPLICATION NO. 525 OF 2018

Mr. Francis Pellissery and Anr.	..Applicants
In the matter between	
Gaurav Balwant Khanna	..Applicant
v/s.	
The Senior Inspector of Police	
Wadkhal Police Stn. & Anr.	..Respondents

WITH
CRIMINAL APPLICATION NO. 1058 of 2018
IN
BAIL APPLICATION NO. 525 OF 2018

Mr. Krishna Kumar and Anr.	..Applicants
In the matter between	
Gaurav Balwant Khanna	..Applicant
v/s.	
The Senior Inspector of Police	
Wadkhal Police Stn. & Anr.	..Respondents

WITH
CRIMINAL APPLICATION NO. 1071 OF 2018
IN
BAIL APPLICATION NO. 525 OF 2018

Mr. Padmaja Mahesh Wagle	..Applicant
In the matter between	
Gaurav Balwant Khanna	..Applicant
v/s.	
The Senior Inspector of Police	
Wadkhal Police Stn. & Anr.	..Respondents

**WITH
BAIL APPLICATION NO. 752 OF 2018**

Vineet Ramesh Malhotra	..Applicant
versus	
The State of Maharashtra	..Respondent

**WITH
CRIMINAL APPLICATION NO. 448 OF 2018
IN
BAIL APPLICATION NO. 752 OF 2018**

Mrs. Lakshmy Mandhwani & Anr.	..Applicants
In the matter between	
Vineet Ramesh Malhotra	..Applicant
versus	
The State of Maharashtra	..Respondent

**WITH
CRIMINAL APPLICATION NO. 686 OF 2018
IN
BAIL APPLICATION NO. 752 OF 2018**

Mr. Surinder Mandhwani	..Applicant
In the matter between	
Vineet Ramesh Malhotra	..Applicant
versus	
The State of Maharashtra	..Respondent

**WITH
CRIMINAL APPLICATION NO. 1011 OF 2018
IN
BAIL APPLICATION NO. 752 OF 2018**

Mr. Francis Pellissery & Anr.	..Applicants
In the matter between	

Vineet Ramesh Malhotra
versus
The State of Maharashtra

..Applicant

..Respondent

**WITH
CRIMINAL APPLICATION NO. 1059 OF 2018
IN
BAIL APPLICATION NO. 752 OF 2018**

Mr. Krishna Kumar & Anr.
In the matter between
Vineet Ramesh Malhotra
versus
The State of Maharashtra

..Applicants

..Applicant

..Respondent

**WITH
CRIMINAL CIVIL APPLICATION NO. 1070 OF 2018
IN
BAIL APPLICATION NO. 752 OF 2018**

Ms. Padmaja Mahesh Wagle
In the matter between
Vineet Ramesh Malhotra
versus
The State of Maharashtra

..Applicant

..Applicant

..Respondent

Mr. Rajiv Chavan, Senior Advocate a/w Ms Priyanka Chavan a.w Ms Anuparnaa Pawar a/w Ms Neelam Kaintura a/w Ms Sumangla Yadav a/w Mr Aaditya Jadhav a/w Ms Chaitali Rajput i/b Mr. S. G. Rajput in BA No.752/2018

Mr.Robin Jainsinghani a/w Ms. Jacinta D'Silva for the applicant in BA No.525/2018
Mr. Ajay Patil APP for the State.

Mr. Shriram Kulkarni a/w Mr. Chaitanya Nikte for intervener in APPP Nos. 448/2018, 686/2018, 288/2018, 685/2018

Mr. Samarth S Karmarkar alw Ms Supriyanka Maurya a/w Mr Rajkumar Chavan for intervener in APPP 1011/2018 & APPP 1010/2018.

Mr Samarth S. Karmarkar I/b. Gauri G. Joglekar for intervenor in Appp/1058/2018 and APPP/1059/2018

Dr.Samarth S.Karmarkar a/w Adv. Gaurangi Patil a/w Mr Chintan Bhuva i/b GP Associates for intervener in APPP No.1070/2018,and APPP 1071/2018

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 08 FEBRUARY, 2019.**

P.C.

1. These applications are filed under Section 439 of Cr.P.C. by the aforesaid applicants who have been arrested in Crime No. 15 of 2016 registered at Wadkhal Police Station, District Raigad, and are facing trial for the offences under Section 420, 409 r/w. 34 of the Indian Penal Code, r/w. Section 3, 4, 8, 11, 13 and 14 of MOFA Act and Section 3 of MPID Act, 1999.

2. The aforesaid crime was registered pursuant to the first information report dated 20th March, 2016 lodged by Surendra

Wadhwani. The case of the prosecution in brief is that the applicants who were the Directors of Arrowcity Engineering had made dishonest representation by issuing advertisements in newspapers, internet etc that they were the owners of plot admeasuirng 1545 acres which was being developed as a special Township. It is alleged that the Company was not the owner of the plot admeasuring 1545 acres and that in fact 700 acres of the land belongs to the salt department. The charge against the Company and the Directors is that they intentionally deceived the first informant and several other purchasers to believe that they are the owners of the property and thus dishonestly induced them to enter into agreements for purchase of flats/ units and to advance money for the same.

3. Heard Shri Jaisinghani and Shri Rajiv Chavan, Sr. Advocate for the applicants and Shri Patil, the learned APP for the State.

4. The crux of the argument of the learned Counsel for the applicants is that the FIR does not disclose essential ingredients of the offence of cheating and misappropriation. They have submitted

that the company had obtained permission from the Revenue Department to purchase agricultural land and had thereafter purchased 375 acres of agricultural land and executed several agreements for purchase of more than 200 acres of land. They have further submitted that the Company had also sought permission from the Electricity Department, Water Department, for supply of electricity and water to the Special Township Project. The Town Planning Authorities had also issued no objection for giving location clearance. The learned Counsel for the applicants have submitted that at the time of grant of permission for acquiring Agricultural land, it was permissible to develop Special Township on the land Green Zone-2. They have submitted that the Company did not have intention of cheating. They contend that it was not possible for the Company to develop the Special Township in Green Zone-2 land in view of subsequent notification dated 1.1.2014. They have submitted that the agreement with the complainant was executed prior to this notification. In view of the subsequent development, the applicants offered alternative option of either to take refund or to enter into a Joint Development Agreement. The learned Counsel for

the applicants submit that even prior to filing of the FIR, the Company had issued a cheque in favour of the first informant towards refund of the amount invested by him.

5. The learned Counsel for the applicants submitted that the Company has refunded Rs.1,53,00,000/- to 39 investors. They have deposited an amount of Rs.2.68 Crores in the Court at the time of grant of interim bail, and that they are ready to deposit the balance amount of Rs.51 lakhs. The learned Counsel for the applicants have further submitted that the chargesheet has already been filed for the offences which are punishable with imprisonment for a maximum period of 7 years. Relying upon the decision of the Apex Court in *Arneshkumar vs. State of Bihar 2014 (8) SCC 273*, as well as the decisions of this Court in *Dilip Kanal & Anr. vs. State of Maharashtra 2010 (3) Bom.C.R. (Cri.) 498*, *Sudeepkumar Ganesh Khanna vs. State of Maharashtra (Bail Application No.398 of 2013)* , *Umesh Bhargav vs. State of Maharashtra (Bail Application 2188 of 2013)*, *Lalit Soni vs. The Union Territory (Cri. Application NO.514 of 2013 with 515 of 2013)*, *Umesh Brit*

vs. State of Maharashtra & Anr. (Cri. Bail Application No. 389 of 2013), they urge that further detention of the applicants is unwarranted.

6. While vehemently opposing the applications, the learned APP contends that the applicants who were the Directors of Company had issued advertisement indicating that the Company was the owner of land admeasuring 1500 acres, when the material on record clearly indicates that the land admeasuring 700 acres was covered by salt pan and was owned by the Salt Department. The learned APP has further submitted that the Company had not obtained permission to sell the land. No notification was published notifying the said land. It is submitted that statements of 107 investors, who have been deceived by the applicants have been recorded. He contends that these investors have been cheated to the tune of Rs.8.50 crores. He further contends that the applicants are pressurizing the other purchasers to enter into joint venture agreement to develop the said township project. The learned APP contends that the investigation revealed that over 1000 investors have been cheated and accordingly

subsequent to filing of the chargesheet Section 3 of MPID came to be added. He submits that release on bail would enable the applicants to tamper with the evidence. He further submits that the gravity of offence would not justify grant of bail.

7. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

8. The records prima facie indicate that Arrowcity Engineering Ltd. through its Directors had issued advertisement that the Company had planned to develop a township with all amenities on the land admeasuring 1545 acres at Kandlepada, Taluka Pen, District Raigad. The said project was to be completed within 24 months. The first informant, his relatives and several other purchasers entered into agreements with the Company to purchase flats/plots and paid money towards the price of the flats/plots in the said township, which was proposed to be developed. The records reveal that the Company did not commence the construction and thus failed to hand over possession of the plots/flats to the purchasers within the time

stipulated in the agreement.

9. Though the records indicate that the Applicants have committed breach of agreement, it is well settled that mere breach of agreement or failure to perform obligation under the agreement would not constitute offence under Section 420 of IPC. The gravamen of the offence punishable under Section 420 of IPC is the fraudulent or dishonest intention from the inception.

10. In the instant case, the records prima facie indicate that the Company had obtained permission under Section 63 (1)(a) of the Maharashtra Tenancy and Agricultural Land Act, 1948 to purchase agricultural land in Pen Taluka for the purpose of special township. The Company was granted permission to develop a special township on the agricultural land. The Company thereafter purchased agricultural land for the purpose of Special Township.

11. It is the case of the prosecution that the land which was proposed to be developed as township includes 700 acres of saltpan.

Primarily, this is a disputed question, which will have to be decided on merits at the stage of trial. Furthermore, the records indicate that the FIR lodged by the salt department has been quashed by the Apex Court. It is also to be noted that even after excluding the area of 700 acres, allegedly covered by saltpans, the Company was still in possession of more than 100 acres of contiguous land, which is the minimum requirement for development of township.

12. The records also prima facie indicate that the Company had applied for no objection certificate relating to water supply, electricity supply and location clearance etc. No objection was given by the Director of Town Planning Pune for location clearance for 327 acres of land. The Suptd. Engineer, CIDCO had also stated that it was in position to supply water to the Special Township from Hetvane Water Supply Scheme. The Company had also received a letter from the Chief Engg. Maharashtra State Electricity Distribution Company Ltd. granting him approval for supply of electricity. The aforesaid records prima facie indicate that the Company did have an intention of developing a township.

13. It is alleged that part of the land purchased by the Company for developing the township was within G-2 Zone. As on the date of purchase, it was permissible for the Company to develop the land in G-2 Zone. However, on 1.12.2012 the State Government issued a draft notification under Section 20(3) of MRTP Act excluding land within G-2 Zone from being developed as Special Township. The said draft notification was finalized on 1.1.2014. In view of this notification, it was not permissible to develop a Special Township in the land in G-2 Zone.

14. The records prima facie indicate that in the month of February, 2014 the Company had addressed e-mails to the purchasers giving them an option of refund of money or to have the land conveyed in their favour on as is where is basis or to enter into joint development agreement with the Company. The records further indicate that several purchasers have opted to enter into joint development agreement with the Company to develop the land as NAINA Project under CIDCO Plans and Regulations, subject to sanction of the

development plan and in accordance with Development Regulation issued by CIDCO. The records also indicate that the Company had also refunded an amount of Rs.29 lakhs to the first informant and others on 4.1.2016, which was prior to filing of the FIR.

15. The aforesaid facts and circumstances, prima facie rules out the possibility of intention to deceive or cheat the purchasers, from the inception. The fact that the Company had addressed e-mails to all those persons who had entered into an agreement and had given them an option either to take back the money, or to have the land conveyed in their favour on as is where is basis or to enter into joint development agreement with the company, prima facie indicates that the company did not had any intention to cheat or to mis-appropriate the money. Prima facie there does not appear to be any element of criminality in the transaction.

16. Shri Chavan, the learned Sr. Counsel has also brought to my notice letter dt. 10.3.2017 addressed by S.I.Swami, Police Sub-Inspector, EOW, Raigad, Alibag, to one Tilotama Kulte stating that

this Court has directed the Company to pay back investors money with 18% simple interest. The learned APP was not able to point out any such order passed by this Court directing the company to refund the money with interest at the rate of 18% per annum. It is evident that the Investigating Officer has by making false representation tried to recover the money from the Company/applicants. Needless to state that criminal law cannot be set in motion to enforce the civil rights of the parties, and the Investigating Officer certainly cannot act as a recovery officer/agent to recover the money due.

17. Be that as it may, the records reveal that the applicant Khanna was arrested on 15.09.2017 whereas the Applicant Malhotra was arrested on 16.09.2017. They are presently in judicial custody. The charge sheet having been filed, their detention is no longer necessary. The Applicants have already shown their bonafides by refunding an amount of Rs.1.53 crores, depositing Rs. 2.68 crores at the time of hearing of the anticipatory bail application and further by undertaking to deposit an amount of Rs.51 lakhs. Releasing the Applicants on bail would enable them to make necessary

arrangements for payment of the aforestated amount. Hence, it would be in the interest of justice to enlarge them on bail.

18. Considering the above facts and circumstances and keeping in mind the well settled principles governing grant of bail, in my considered view this is a fit case for grant of bail. Hence, the following order.

(i) The Bail Application Nos. 525 of 2018 and 752 of 2018 are allowed.

(ii) The Applicants Gaurav Balwant Khanna (BA/525/2018) and Vineet Ramesh Malhotra (BA/752/2018) who have been arrested in Crime No. 15 of 2016 registered at Wadkhal Police Station, shall be enlarged on bail on furnishing bail bonds of Rs.1,00,000/- (Rupees One Lakh only) each with two sureties to the like amount.

(iii) The Applicants shall deposit Rs.51,00,000/- (Rupees Fifty One Lakhs) before the trial Court within a period of six weeks from the date of the order.

(iv) The Applicants shall attend the Economic Offence Wing at Alibaug on 1st Monday of every month between 11.00 a.m. to 12.00

p.m. until further orders.

(v) The Applicants shall deposit their passport, if any, with the investigating agency.

(vi) The Applicants shall furnish their permanent address and temporary address, if any, to the investigating agency. The Applicants shall not change their residential address without prior intimation to the Court and the investigating agency.

(vii) The Applicants shall not directly or indirectly interfere with witnesses or tamper with evidence in any manner.

. Both the Bail Applications are disposed of in above terms. The observations made in the order shall not be construed as an expression on the merits of the case. Parties to act on an authenticated copy of this order.

. All intervention applications are disposed of in view of disposal of the Bail Applications.

(ANUJA PRABHUDESSAI, J.)