

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

BAIL APPLICATION NO.3364 OF 2021

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Hussain Abbas Boxwala Applicant
Vs.
The State of Maharashtra & Ors. Respondents

**ALONGWITH
BAIL APPLICATION NO.3253 OF 2021**

Amit Ramesh Agarwal Applicant
Vs.
The State of Maharashtra Respondent

Mr. S.T. Pandey a/w Arvind Singh, Mr. Ashif Husain, Ms. Deepika Ostwal, Mr. J.M. Patel, Ms. Ramsha i/by SBG Law for Applicant in BA 3364 of 2021.

Mr. Niranjana Mundargi a/w Rashmi S. Dandekar i/by Masuma Merchant for Applicant in BA 3253 of 2021.

Mrs. Rutuja Ambekar, APP for State in BA 3364 of 2021.
Mr. A.R. Kapadnis, APP for State in BA 3253 of 2021.

PSI, Mr. Atul Navale, Waliv Police Station, present

**Coram : NITIN W. SAMBRE, J.
Date : 6th OCTOBER, 2021**

P.C.:

1. The applicants are seeking regular bail in Crime No. 1265 of 2019, registered at Waliv Police Station, for the offence punishable under Sections 420 read with 34 of the Indian Penal Code, Sections 3, 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 (MPID Act) and Sections 13 and 14 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA).
2. I am informed that investigation in the matter is already complete as the charge-sheet is filed.
3. The commencement certificate for the Project in question was issued on 21st May, 2015 against which the applicant has accepted booking amount. It appears that Project ran in rough weather in view of order of injunction passed in PIL No. 87 of 2013 in relation to Wetland. It is further claimed that revised Commencement Certificate was issued on 5th April, 2021 after the Project was cleared as same was not within the ambit of Wetland areas.

4. In the aforesaid background, the contentions are, the delay caused in execution of the Project is beyond control of the applicants and as on today also the applicants have every bonafides to complete the Project and handover the structures to the concerned parties.

5. As far as Bail Application No. 3253 of 2021 is concerned, the fact that the applicant herein was impleaded as Partner in the Project on 15th January, 2019 and he himself has booked two flats in the year 2016 is not disputed by the learned APP. As such, it would be inferred that the applicant was not party to the promise of delivering the flats earlier.

6. Be that as it may, the fact remains that the said applicant has already entered into M.O.U. and assured to complete the project at the earliest. The aforesaid statement made on behalf of the applicants that they shall complete the Project if ordered to be released on bail, in any case by 31st December, 2023 is accepted as an undertaking to this

Court. Further statement that the applicant shall not part with the Project to third party is also accepted as an undertaking.

7. The applicant shall furnish an affidavit after their release to this Court within a period of two weeks from today so also copy thereof to the I.O. about the schedule of development / completing the Project in question in tune with deadline of 31st December, 2023, pursuant to the commencement certificate issued. In that view of the matter, the applications are allowed on following terms and conditions :

ORDER

(i) The applicants be released on bail in Crime No. 1265 of 2019, registered at Waliv Police Station, for the offence punishable under Sections 420 read with 34 of the Indian Penal Code, Sections 3, 4 of MPID Act and Sections 13 and 14 of MOFA, on furnishing P.R. bonds in the sum of Rs.25,000/- each with one or more sureties in the like amount.

(ii) The applicants shall neither influence the prosecution witnesses in any manner nor tamper with the evidence.

(iii) Needless to clarify that if the applicant fails to honour the above undertaking, the aggrieved party shall be at liberty to move for contempt of order of this Court and bail granted shall automatically ceased to operate for violation of bail conditions.

(NITIN W. SAMBRE, J.)