

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2865 OF 2019**

1. Vasant Bhambhanian	
2. Dhiren Savla	...Applicants
Versus	
State of Maharashtra	...Respondent

**ALONGWITH
CRIMINAL BAIL APPLICATION NO. 2568 OF 2019**

Sitapathy Dikshitgu Chavali	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr. Swaraj Jadhav a/w Mr. V.R.Garad, Jagdish A. Dagade for the Applicants in BA No. 2865 of 2019.

Mr. Abhishek Yende for the applicant in BA No. 2568 of 2019.

Mr. S.V.Gavand, A.P.P for the Respondent-State.

Mr. A.K. Baxi for the complainant.

CORAM : REVATI MOHITE DERE, J.
DATE : 12th MARCH, 2021

P.C. :

1. The aforesaid application i.e. Bail Application No. 2865 of 2019 has been assigned to this Court pursuant to the Administrative Order passed by the Hon'ble Chief Justice dated 4th March, 2021 and hence, the

said bail application is heard alongwith the aforesaid Criminal Bail Application No. 2568 of 2019.

2. By these applications, the applicants seek their enlargement on bail in connection with C.R.No.9/2019 registered with the Koparkhairane Police Station, Navi Mumbai, for the alleged offences punishable under Sections 420, 409 r/w 34 of the Indian Penal Code; under Sections 3,4 and 13(1) of the Maharashtra Ownership Flats Act; and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors Act, 1999.

3. Learned Counsel for the applicants do not press this application on merits, but on the premise that they have settled the dispute with some of the flat purchasers/investors and are ready and willing to settle the dispute with all the other flat purchasers/investors. On 08/03/2020, learned Counsel for the applicants tendered affidavits-cum-undertaking of the applicants and other co-accused to show that they had settled the matter with some of the flat purchasers/investors. The said affidavits-cum-undertaking dated 08/03/2021 were taken on record. It appears from the said affidavits-cum-undertaking that the applicants alongwith co-accused have settled their dispute with three families i.e. 8 flat purchasers/investors and that they have paid the said persons an amount of Rs.1,75,00,000/-.

The complainant as well as some of the flat purchasers/investors were present in the Court on the last date i.e. 09/03/2021 and four Demand Drafts were handed over to some of the flat purchasers/investors i.e. one Demand Draft of Rs.4,00,000/- drawn in the name of Surendra Mangatram; two Demand Drafts drawn in the name of Kavita Surendra Malhotra for a sum of Rs.16,00,000/- and Rs.4,00,000/-; and one Demand Draft drawn in the name of Sunil Harbanslal Kapoor (complainant) for Rs.5,00,000/-.

4. Today, learned Counsel for the applicant states that all the Demand Drafts and post dated cheques, as mentioned in the affidavits-cum-undertaking have been handed over to the learned Counsel for the complainant and seven flat purchasers/investors. Learned Counsel for the complainant does not dispute having received the Demand Drafts and PDCs as per the affidavits-cum-undertakings of the applicants dated 08/03/2021.

5. Apart from the aforesaid eight persons with whom the dispute has been settled, there are 16 more flat purchasers/investors. It is not in dispute that the Economic Offences Wing has attached the properties of the applicants, the valuation of which is about 3,58,68,441/-. Learned APP informs that if the charge on the said properties is deducted, the valuation

of the properties would be Rs. 2,07,68,441/-. According to the learned APP, the applicants are required to deposit an additional amount of Rs. 2,25,07,089/-, to secure the principal amount involved in the said case.

6. Pursuant to the order dated 09/03/2021, the applicants agreed to file another affidavit-cum-undertaking of theirs as well as of other co-accused stating therein, that they would deposit the balance amount of Rs.2,25,00,000/- in the Registry of the Trial Court in tranches, without prejudice to their rights and contentions. Accordingly, learned Counsel for the applicants have tendered additional affidavits of the applicants and other co-accused. The same are taken on record. In the said affidavits, it is stated that they have entered into Consent Terms dated 08/03/2021 settling the dispute with 8 flat purchasers/investors out of 19 flat purchasers/investors mentioned in the chargesheet; that they have mutually agreed and paid an amount of Rs.1,78,83,370/- as and by way of full and final settlement to the said 8 flat purchasers/investors and that the said 8 flat purchasers/investors have agreed to withdraw all proceedings including proceedings under Section 138 of the Negotiable Instruments Act and the complaint, after receiving the entire amount. The applicants and other accused have, in the additional affidavits, further stated that the applicants and other co-accused, without prejudice to their rights and contentions are

ready to deposit an amount of Rs.2,25,00,000/- so as to secure the interest of the remaining flat purchasers/investors, according to the following schedule;

Amount	Date
Rs. 25,00,000/-	01/06/2021
Rs. 25,00,000/-	01/09/2021
Rs. 25,00,000/-	01/12/2021
Rs. 25,00,000/-	01/03/2022
Rs. 25,00,000/-	01/06/2022
Rs. 25,00,000/-	01/09/2022
Rs. 25,00,000/-	01/12/2022
Rs. 25,00,000/-	01/03/2023
Rs. 25,00,000/-	01/06/2023
Total :	2.25 Crores

7. It is further stated in the said additional affidavit that the aforesaid amounts will be deposited in the Registry of the Trial Court or with the concerned Police Station or the Registry of this Court, as may be directed by this Court. It is further stated by the applicants and other co-accused that they would give their no objection to the investors/flat purchasers for withdrawing their amounts as per their valid claim, on the said flat purchasers/investors making an appropriate application before the Trial Court. The applicants and other co-accused have undertaken to abide by their affidavits by making payments as stated therein (reproduced hereinabove); and that in the event of failure to do so, the bail granted by

this Court shall stand cancelled. It is stated that the said additional affidavits would also apply to the two Directors i.e. Pradeep Swami and Prasad Swami, who have not filed their respective bail applications, but have signed both the affidavits. It is also stated by the applicants and other co-accused that they would give their consent to sell the properties attached by the Economic Offences Wing with the permission of the Court and of the Investigating Officer, and that an endeavor would be made to sell the properties, so that the proceeds thereof, would be deposited in the Registry of the Trial Court, to secure the interest of the flat purchasers/investors. It is further stated that the said additional affidavits shall not be construed as an admission of their guilt and that they were filing the said affidavits on their own free will and without any coercion or undue influence.

8. It is not in dispute that the applicants, to show their bonafides, had already settled the dispute with 8 flat purchasers/investors, as is evident from the affidavits-cum-undertaking dated 08/03/2021 for a sum of Rs.1,78,83,370/-. The Demand Drafts as well as PDCs have already been handed over to the learned Counsel for the complainant. The additional affidavits also set out the manner in which, the deposits would be made with respect to 16 other flat purchasers/investors. The properties of the applicants have also been attached.

9. Considering the aforesaid, without going into the merits of the applications, the applications are allowed having regard to the affidavits-cum-undertaking dated 08/03/2021 and the additional affidavits tendered today and the applicants are enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicants be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- each with one or more sureties in the like amount;
- (ii) The applicants shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 12:00 noon, until further orders;
- (iii) The applicants shall deposit the amounts as stated in the additional affidavits filed today on the dates mentioned therein, in the Registry of the Trial Court;
- (iv) The applicants shall inform their latest places of

residence and mobile contact numbers immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicants to cooperate in the conduct of the trial and attend the trial Court on all dates, unless exempted;

(vi) The applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vii) The applicants shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;

(viii) The applicants shall deposit their passports, if not deposited in the Trial Court, before their release;

(ix) If there is a single default in depositing the amounts as stated in the additional affidavits of the applicants, the bail of the applicants shall stand cancelled.

10. The applications are allowed in the aforesaid terms and are accordingly disposed of.

11. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

12. Matter to be listed for recording compliance of the first deposit on 07/06/2021.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.