IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.745 OF 2022

Manmohan Dilipsingh Ailsinghani ...Applicant
Versus
The State of Maharashtra ...Respondent
....
Mr. Abad Ponda, senior counsel with Ms Shweta R. Rathod i/b. M/s. Elixir Legal Services for the Applicant.
Ms S.V. Sonawane, APP for Respondent-State.
Ms Supriya Kak, for the original Complainant.
Mr. Sanjay Kulkarni, for the other four investors- Ms Pooja Chugh, Harsha Chugh, Mukta Chugh and Mr. Ashok Walanj.
Mr. Jagdish Panhale, API, EOW, Crime Branch Thane City, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 20th APRIL, 2022.

P.C.:-

1. Not on board. Upon mentioned on the ground of urgency, taken on board.

2. This is an application under Section 439 of Cr.P.C. filed by the Applicant, who was arrested in C.R. No.403 of 2021 registered with Central Police Station, Ulhasnagar-3, District-Thane, for offences punishable under Sections 406, 409 and 420 r/w 34 of the IPC and Section 3 of the Maharashtra Protection of Interest of Depositors Act,

1999 (‘MPID Act’).

3. The aforesaid crime was registered pursuant to the FIR lodged by Kishor Dadlani. It is the case of the Complainant that the Applicant and other co-accused induced him and others to invest money in flats / shops in proposed development project undertaken by Sadguru Developers with assurance that the investors willing to invest in the project could opt for a flat or shop, consideration in respect of which would be adjusted from the amount invested by them. The investors seeking refund of money would get the money upon completion of 50% of the construction. Total 43 investors invested an amount of Rs.6,21,50,000/- in the said project. The Complainant alleged that the Applicant and the other co-accused did not return the money as assured and thereby cheated him and the other investors.

4. Mr. Ponda, learned senior counsel for the Applicant, Ms Supriya Kak, learned counsel representing 39 investors, Mr. Sanjay Kulkarni, learned counsel for remaining 4 investors and Ms S.V. Sonawane, APP for Respondent-State submit that the parties have amicably settled the matter. They have placed on record two sets of consent terms, one set signed by the Applicant and the 39 investors and

the second set signed by the Applicant and the other 4 investors and their respective counsel. The first set of consent terms, which is signed by 39 investors reads thus:-

> “
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> 4. After the filing of the Bail Application before this Hon’ble Court, the parties concerned negotiated terms for settlement and have agreed upon terms as under:
>
> **a.** The Complainants do hereby consent for grant of conditional Bail to the present Applicant and also consent for grant of conditional Anticipatory Bail to other co-accused in Crime No. I403 of 2021, on terms and conditions appearing hereinafter
>
> **b.** The consent is limited to only grant of bail to the present Applicant and grant of Anticipatory Bail to other co-accused in Crime No. I-403 of 2021.
>
> **c.** The Accused do hereby undertake to pay an Amount of Rs.5,54,50,000/- (“**Agreed Amount/ Secured Obligation**”) to the Complainants as and by way of full and final settlement according to the payment schedule annexed herewith as **<u>Annexure A</u>**.
>
> **d.** It is hereby agreed between the parties that the payment to be made by the Accused to the Original

Complainant will be made jointly and severally from the individual accounts of the Partners on behalf of Satguru Developers. Each present partner of Satguru Developers namely 1) Shri Sunder Satramdas Bajaj, 2) Lal Satramdas Bajaj, 3) Pheru Pessumal Lulla, 4) Nand Pheru Lulla, 5) Hirasingh Girdharsingh Ailsinghani, 6) Manmohansingh Dilipsingh Ailsinghani (present Applicant) even after their retirement, if any as well as any incoming partner (if any) are jointly and severally liable to pay the Agreed Amount to the Original Complainant. Pursuant to the payment of the entire Agreed Amount and realization of the same by the Original Complainant, no parties shall have any liability against each other either individually or through Satguru Developers.

e. It is agreed by and between the Parties that after realization of the entire Agreed Amount by the Original Complainant, no parties shall claim any liability against each other or on Satguru Developers and all claims amongst the parties and Satguru Developers is declared as settled.

f. The Memorandum of Understanding dated 19th October 2020 ("**MOU**") executed between the Parties is valid, binding and subsisting on the Parties and the same forms part of the present Consent Terms. In case of any conflict or inconsistency between the provisions of these Consent Terms and the MOU, the terms of these Consent Terms shall prevail to the extent of such inconsistency.

The Accused have paid an amount of Rs. 1,34,50,000/- by way of Demand Draft to the respective Complainants according to the list at **Annexure A** upon execution of this Consent Terms.

g. The Accused undertake to pay the balance amount of Rs. 4.20 Crores according to the schedule annexed at **Annexure A.** Toward the payment of the aforesaid amount of Rs. 4.20 crores, the Accused have issued post-dated cheques as according to **Annexure B**

h. The payment of the Secured Obligation shall be secured by way of first and exclusive charge over:

1. All rights, title and interest of the partners of Satguru Developers with respect to the piece and parcel of land bearing Survey No. 68/1, 68/3 located at Mouje Tisgaon, Chakki Naka, Village Netivali, Kalyan East 421306 ("**First Property**"),

2. All rights, title and interest of the partners of Satguru Developers with respect to all that piece and parcel of land, Plot bearing Survey No. 69A/2A/1, located at Mouje Tisgaon, Chakki Naka, Village Netivali, Kalyan East 421306 ("**Second Property**").

3. All rights, title and interest of the partners of Satguru Developers with respect to the development

potential of the First Property and Second Property along with all present and future FSI/TDR, structures / units constructed thereto and all other rights, entitlements and interest in respect thereof. The First Property and Second Property are together referred to as the "**said Property**".

i. With respect to the security created hereinabove, the Accused have represented and warranted to the Original Complainant that:

1. Save and except the attachment of the said Property by Economic Offence Wing under MPID Act the said Property is free from /charges / mortgages/ lien/s or any encumbrance of any nature;
2. One partnership firm named 'Aryaman Enterprises' consisting of the partners of Satguru Developers and one Shri Girish S. Bajaj and Manohar M. Ramchandani are absolute owners and are otherwise entitled to the said Property. The partners of Satguru Developers (Accused) in aggregate hold 70% right, title and interest in the said Property.
3. All the Partners of 'Aryaman Enterprises' have given their consent and no-objection for the creation of first and exclusive charge over the said Property (70% share of Partners of Satguru Developers in Aryaman Enterprises) and all the benefits and rights arising therefrom by the partners of Satguru Developers, in favor of the Original Complainant on terms and conditions set

out herein.

4. Until the Secured Obligation is discharged by the Accused, none of the partners of 'Satguru Developers' shall deal with or dispose of any of its interest in the said Property (70% share of Partners of Satguru Developers in Aryaman Enterprises) or any part thereof or otherwise and shall hold the same unto and to the use absolutely acting for and on behalf of and for the benefit of the Complainant.

5. The security created hereinabove is in addition to, and shall neither be merged in, nor in any way exclude or prejudice, or be affected by any other security, right of recourse or other right whatsoever which the original Complainant have including the right to file proceedings under Negotiable Instrument Act, 1881 or continue the proceedings / file fresh proceedings under MPID Act only against the partners of Satguru Developers.

6. The Accused have represented and warranted to the Original Complainant that the Accused have the capacity and power to enter into, perform and deliver, and have taken all necessary permission, consents (if and whatever required) for creation of security hereinabove and to enter into the present Consent Terms.

5. In the event, the Accused fails to make the payment of the entire Agreed Amount to the Original Complainant in the manner set out hereinabove, the Original

Complainant will be entitled to avail all legal remedies to enforce the charge and security created under these present terms including the right to enter upon and take possession of the said Property and cause sale, transfer, appropriation and disposal of the said Property to the extent of the rights and interest of Satguru Developers therein, for consideration, which consideration shall be first paid towards liability of the Original Complainant towards their payment to the extent of the unpaid portion of the Agreed Amount.

6. The Complainants do hereby confirm that subject to the realization of the entire Agreed Amount, all their grievances are settled vide this Consent Terms and they shall have no Complaints or any grievances in future, subject to terms of this Consent Terms. The Complainants also confirm that upon realization of the entire agreed amount, the Charge created on the said Property (70% share of Partners of Satguru Developers in Aryaman Enterprises) shall stand discharged.

7. The Complainants do also hereby undertake that upon realization of the entire Agreed Amount, the Complainants will not initiate any further Civil or Criminal Proceedings in relation to the realization of the Agreed Amount.

8. Upon realization of the entire Agreed Amount, the Complainants do also hereby undertake to drop Civil or

Criminal proceedings that may have been initiated against the Accused, in relation to the Agreed Amount, subject to the terms of this Consent Terms.

9. It is agreed by and between the Parties that the consent aforesaid granted by the Original Complainant is subject to compliance of the terms and conditions of these Consent Terms and in the event of default or non-compliance of any Terms of these Consent Terms including failure to make the payment of any installment / part of the Agreed Amount, these Consent Terms will be rendered invalid in its entirety, as if the same has never executed and in such an event, the conditional consent granted as aforesaid, will stand withdrawn / revoked and the original proceedings initiated against the Accused will stand revived. It is expressly agreed between the Parties that any violation or non- compliance of the terms and conditions of these Consent Terms will be a violation of Bail.

10. The Petitioners have arrived at these terms at their own free will, being of sound mind, without any force, pressure or coercion from anyone.

11. The present Consent Terms are binding on all Partners of Satguru Developers (including incoming partners, if any) and/or their respective heirs, executors, administrators, successors in title and/or assigns.

12. All the statements made by the Parties herein are recorded as an undertaking to this Hon'ble Court.

13. The parties have read over these terms and after having fully understood the meaning thereof have affixed their respective signatures to the said Consent Terms."

5. The Second set of consent terms, which is duly signed by four investors and their respective counsel reads thus:-

4. After filing of the Bail Application before this Hon'ble Court, the parties concerned negotiated terms for settlement and have agreed upon terms as under:

a. The Lenders do hereby consent for grant of conditional Bail to the present Applicant and also consent for grant of conditional Anticipatory Bail to other partners of Satguru Developers in Crime No.I 403 of 2021

b. The present consent is limited to only grant of bail to the present Applicant and grant of Anticipatory Bail to other partners of Satguru Developers in Crime No.I403 of 2021 and will be applicable for Petition for quashing of FIR filed by the Accused only after payment of the entire agreed amount as agreed herein.

c. The Accused do hereby undertake to pay an Amount of Rs.67,00,000/- (Sixty Seven Lakhs only) to the Lenders as and by way of full and final settlement according to the payment schedule annexed herewith as **Annexure "A"**.

d. It is hereby agreed between the parties that the Payment to be made by the Applicant to the Lenders from the individual accounts of the Partners on behalf of Satguru Developers and pursuant to the aforesaid payment as agreed amount, as per Annexure "A" hereinabove.

e. It is agreed by and between the parties that after payment of the entire amount as agreed herein, no parties shall claim any liability against each other or on Satguru Developers and all claims amongst the parties herein and Satguru Developers is declared as settled.

f. The Applicant has paid an amount of Rs.16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) by way of Demand Draft to the respective Lenders according to the list at Annexure "A" outright at the execution of this Consent Terms.

g. The Applicant undertakes to pay balance amount of Rs.50,50,000/- (Fifty Lakhs Fifty Thousand only) as according to the schedule annexed as Annexure "A".

h. The Lenders on signing of this Consent Terms have agreed to handover issue previously Promissory Notes initially issued as security against the money received from the Lenders hereinabove.

5. The Lenders do hereby confirm that all their grievances have been settled vide the present Consent Terms and they shall have no Complaints and/or any grievances in future subject to compliance terms of the present Consent Terms.

6. The Lenders do also hereby undertake to not to initiate any further Civil and/or Criminal Proceedings whatsoever in future subject to the terms of this Consent Terms.

7. The Lenders do also hereby undertake to drop Civil or Criminal proceedings that may have been initiated against the Applicant and other Partners of Sadguru Developers subject to compliance the terms of this Consent Terms.

8 It is agreed between the parties herein that in the event of non-compliance or default by the Applicant of any of the terms of this Consent Terms, the same shall render the present Consent Terms invalid and the condition of the bail shall be deemed to be violated.

9. The Lenders hereby agree, declare and confirm that only after receipt of the aforesaid amount of Rs 16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand Only) by the Applicant and other Partners of Satguru Developers, they shall not have any objection for granting bail to the present Applicant as well as the anticipatory bail to the other partner of Satguru Developers.

10. The Lenders have arrived at the present terms and conditions at their own free will, being of sound mind, without any force, pressure or coercion from anyone.

11. The parties herein have read over these terms and after having fully understood the meaning thereof have affixed their respective signatures to the present Consent Terms."

6. Both the Consent Terms are taken on record and marked as 'X1' and 'X2' for identification. An affidavit is filed stating that the Applicant, who is lodged in jail will sign the consent terms within three days of his release on bail.

7. Learned APP states that properties of the firm have been attached and in the event there are other victims, other investors, if any, are duly secured. Since the Applicant and the victims/investors have entered into a settlement, the Application is allowed on the following terms and conditions:-

(i) The Applicant be released on conditional cash bail in the sum of Rs.50,000/- for a period of four weeks;

(ii) The Applicant shall within the said period of four weeks, furnish PR bonds in the sum of Rs.50,000/- with one or two sureties to the like amount;

(iii) The Applicant shall sign the consent terms within three days from the date of his release on cash bail;

(iv) The Applicant shall attend the trial on each and every date;

(v) The Applicants shall keep the Trial Court informed of his current address and mobile contact number, and/or change of residence or mobile details, if any, from time to time.

(vi) In the event the Applicant does not fulfill any of the conditions, the bail shall stand cancelled without further reference to the Court.

8. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)