

Diksha Rane

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

BAIL APPLICATION NO.3089/2022

MAHESH NARENDRA ALIMCHANDANI ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO. 4106/2022
IN
BAIL APPLICATION NO.3089/2022
WITH
INTERIM APPLICATION NO.150/2022
IN
BAIL APPLICATION NO.3142/2021**

VINAY TARACHAND CHAWLA ..APPLICANT
VS.
STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

**WITH
BAIL APPLICATION NO.3142/2021**

TULSI PARMANAND JASHNANI ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. A. M. Sachwani for the applicant in BA/3089/22.
Mr. Niranjana Mundargi a/w. Ms. Keral Mehta i/b. Mr. V. R.
Sutaria for the applicant in BA/3142/21.
Mr. Sandeep Karnik for intervener.
Mr. S. V. Gavand, APP for State.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 20, 2022.

P.C. :

- 1.** Heard learned counsel for the applicants, learned APP and learned counsel for the complainant.
- 2.** These are applications for bail. The C.R.No.32/2022 was investigated by the Economic Offences Wing (EOW) originally registered as C.R.No.346/2020 with Juhu Police Station for the offence punishable under Section 406, 409, 420, 423, 465, 467, 468, 471, 120-B read with 34 of the Indian Penal Code, 1860 (hereafter 'IPC' for short). The First Information Report (FIR) is dated October 20, 2020.
- 3.** The applicant-Mahesh Narendra Alimchandani in B.A. No.3089/2022 was arrested on October 27, 2020. He is in custody for more than two years and one month. He prays for bail mainly on the ground that the chargesheet has been filed and also on the medical ground.
- 4.** So far as the applicant-Tulsi Parmanand Jashnani in B.A. No.3142/2021 is concerned, he is the brother-in-law of the complainant. The complainant has alleged that the applicants have duped him to the tune of Rs.8,27,98,300/- in respect of a plot of land towards which he invested the

amount as per the proposal of the applicants.

5. Learned APP and learned counsel for the complainant vehemently opposed the application. They pressed into service the fact that there are/were civil proceedings where some observations have been made regarding genuineness of the documents on the basis of which the transaction in question regarding the plot of land which is allegedly sold to the complainant is made. It is contended that the co-accused Gautam Jashnani, who is the son of the applicant-Tulsi is absconding. It is pointed out that the anticipatory bail application filed by the Gautam Jashnani was rejected by this Court on January 28, 2021 and even the Supreme Court had directed him to surrender, but he is still absconding. It is submitted that some crucial documents are in the custody of Gautam Jashnani and in such circumstances releasing the applicants on bail would give a chance to the applicants to tamper with the evidence.

6. I am reproducing the facts from the order dated January 18, 2021 passed by this Court (Coram : P.D. Naik, J.) while rejecting the application of Gautam Jashnani in

Anticipatory Bail Application No.1107 of 2020.

"The case of the complainant is that he is into the business of oil and conducting his business in the name of company M/s.Kamani Foods Private Limited. He is managing director of the said company. His father is a director. The sister concern of the above company is a partnership firm M/s.Chinmaya Associates in which the complainant is the partner. The father of the complainant and his uncle had incorporated the company named M/s.Kamani Foods Private Limited. For the purpose of investment and sale/purchase of real estate partnership, M/s.Chinmaya Associates was commenced on September 1, 2010. Initially the complainant and his father were partners. The complainant's sister was married to Tulsi Jashnani. In 2006 Mr.Tulsi Jashnani was arrested in a share trading cheating case. The father of the complainant helped him by depositing the amount for his release from the offence. The complainant's father had spent about Rs.6 crores. In August 2013, Tulsi and Gautam Jashnani (applicant) brought the proposal about the plot of land situated at JVPD Scheme at

Juhu. They represented to father of the complainant that the agent Mahesh Alimchandani is known to them and a plot of land at JVPD Juhu situated at prime location is available for sale. If the said plot is taken on lease and sold or any building construction is carried out, it will fetch good profits. By making this false representations, they won the confidence of the complainant's father. It was also represented that Mahesh Alimchandani is agent for the transaction as well as facilitatory and he has all the rights in respect to the said plot of land. The said plot was described as plot No.19, admeasuring 663.3 sq. meters situated at C.S.T. No.283, Word No.K-8185 Survey No.287 Vile Parle. It was disclosed that Shri Mohan Sitaram Bhogi is the lease holder of the said property for the period of 998 years and he is transferring the lease of land for Rs.32 crores. The plot was shown to the complainant and since it was situated at prime location, it was liked by him. The transaction relating to purchase and sale of plot was commenced by Tulsi Jashnani the applicant. Gautam Jashnani (applicant) was made partner with Chinmaya Associates and Chinmaya

Estate. Chinmaya Associates was formed to deal with real estate investment and trading. The father of the complainant, applicant and the relative Gurumukh Sukhwani are the partners of the said firm. The office of the firm was situated at Natha Street, Masjid Bundar, having its account in Bank of India Mandvi Branch, RBI Bank Parel Branch and ICICI Bank BKC Branch. The capital in the said firm was invested by the complainant and his father. Since the complainant and his father were dealing with the trading of oil and were not having experience in real estate business and since Tulsi Jashnani was helped by the complainant's father in the case registered by E.O.W., the complainant felt that he would not cheat them. It was also felt that plot is situated at prime location, hence, it was decided to enter into the transaction. The said transaction was to be executed by applicant and his father Tulsi Jashnani. They provided information to father of the complainant from time to time. It was represented that the documents relating to the plot are with agent Mahesh Alimchandani and the same are verified through advocate. Complainant's father

believed the said representation and did not verify the documents. He also did not verify the identity of Mohan Bhogi. Tulsi Jashnani and Gautam Jashnani (applicant) were collecting the amount in respect to the said transaction from complainant's father. Since the applicant was partner, on trust the amount was handed over to him and Tulsi. It was decided that an amount of Rs.5 crores is to be given to Mohan Bhogi and deed of assignment was to be executed. It was also decided that on payment of Rs.5 crores to Mahesh Alimchandani being facilitator for transfer of shares, after giving balance amount to Mohan Bhogi, the plot was to be transferred in the name of the firm. On 29th January, 2014, deed of assignment was executed between Mohan Bhogi and Chinmaya Associates and it was registered with sub-registrar Andheri. Applicant has signed on behalf of M/s.Chinmaya Associates. The value of the property was shown as Rs.11,23,63,100/-, and consideration of Rs.5 crores was shown. For the purpose of obtaining the plot on lease, the amount was transferred from bank account of Ms. Chinmaya Associates to Mohan Bhogi to the tune of

Rs.2,13,50,000/-, vide cheque and RTGS. Mohan Bhogi had given power of attorney to the applicant and his cousin Varun Jashnani. The power of attorney dated 29th January, 2014, was registered with Sub-registrar Andheri for registration of the deed of assignment. Stamp duty to the tune of Rs.56,48,300/-, was paid. After executing deed of assignment for transferring shares, it was decided to pay Rs.5 crores to Mahesh Alimchandani. Document was executed with Mahesh Alimchandani on 29th March, 2014, in presence of applicant and Tulsi Jashnani. The lease rights in respect to the said plot were to be transferred in the name of M/s.Chinmaya Associates, within 18 months. In the event, the lease right were not transferred it was decided that the amount of Rs.5,89,00,000/-, was to be returned with interest amount of Rs.5,89,00,000/- was transferred into the account of Mahesh Alimchandani. Surprisingly, Mahesh Alimchandani did not demand the balance amount of consideration. Repeated request was made to Tulsi Jashnani, Gautam Jashnani and Mahesh Alamchandani for transferring the shares in the name of the partnership firm.

However, they gave excuses and borrowed time. The shares in respect of the said plot were not transferred to M/s. Chinmaya Associates. In 2018, the complainant was in financial constraints, and, it was decided to sell the said plot. In April 2018, the agent to whom the complainant had contacted, verified the documents and refused to purchase the plot. It was found that the plot is not yet transferred in the name of M/s.Chinmaya Associates and the lease rights continued in the name of Smt.Rasilaben Gokli and her family. The documents relating to transfer of lease rights i.e. the documents executed between Mohan Bhogi and M/s.Chinmaya Associates on January 29, 2014, by the applicant and Tulsi Jashnani and the documents annexed to the said documents dated June 29, 1983, with regards to transferring the shares of Smt. Rasilaben Gokli to Mohan Bhogi, power of attorney dated January 29, 2014, between Mohan Bhogi assigning rights to Gautam Jashnani and Varun Jashnani, the documents executed between Mohan Alimchandani and M/s.Chinmaya Associates and Tulsi Jashnani were found to be false. It was further revealed

that the plot is in the name and possession of Smt.Rasilaben Gokli. Mohan Bhogi had no connection with plot. Bhogi was tried to be traced at address given in executed documents, but, it was found that such person is not residing at said address. None of the parties had attached Aadhar Card while executing documents. The bank account of Mohan Alimchandani and Mohan Bhogi were in the same bank. Tulsi Jashnani, Gautam Jashnani and Mohan Bhogi had tendered false documents in relation to the said plot in the High Court in relation to the suit and utilized the said documents. The High Court had rejected the claim and directed the parties not to use the said documents. Thus, the accused had acted in connivance with each other and committed the aforesaid offences causing loss to the complainant to the tune of Rs.8,27,98,300/-".

7. Let me now deal with the present applications. The applicants are in custody for more than two years and one month. The chargesheet has already been filed. The son of applicant-Tulsi is absconding. So far as the applicant-Mahesh is concerned, there are medical reports produced

on record which reveal that his right toe has been amputated. The report dated November 30, 2022 of the Sir J. J. Group of Hospitals and Grant Medical College indicates that the applicant – Mahesh is suffering from Atherosclerotic changes are noted in all vessels of right lower limb in the form of intimal thickening and vessel wall calcification. The report further discloses that the applicant-Mahesh is suffering from pain and swelling in the foot. There is pus discharge from previously amputated right great toe region. The applicant-Mahesh is on medication.

8. Then there is a prisoner's report dated November 28, 2022 which shows the present health status of the applicant-Mahesh. It is stated that "at present his daily treatment is ongoing in prison hospital since his admission as per needed. But not proper improvement is seen, therefore, he is proposed for Sir J. J. Group of Hospital for expert doctors management & treatment". The photographs produced on record regarding the condition of the foot of the applicant-Mahesh reveals that the applicant-Mahesh may not be in a good physical health condition.

9. Considering that the trial will take a long time, coupled with the medical condition of the applicant-Mahesh who needs constant medical attention, the applicant-Mahesh could be released on bail as the investigation is complete and chargesheet has been filed. He is in custody for more than two years. Mahesh has roots in Mumbai and not likely to abscond.

10. An affidavit has been filed by the applicant-Mahesh which is taken on record and the statements made therein are accepted as an undertaking to this Court. Learned counsel for the applicant-Mahesh assures that after release of the applicant-Mahesh on bail, an attempt will be made to settle the issue.

11. So far as the applicant-Tulsi is concerned, he is the father of Gautam Jashnani. Gautam Jashnani is absconding and he is the partner of the complainant/first informant. It is alleged that there are some documents which are in the possession of Gautam Jashnani. So far as the applicant-Tulsi is concerned, he is in custody more than two years and two months. It is the contention of learned counsel for the

complainant that even on an earlier occasion, his father had helped the applicant-Tulsi who was involved in a similar kind of a case and an amount of Rs.6 crores was paid for settling the issue on behalf of the applicant-Tulsi. I do find some substance in the contention of Mr. Karnik regarding the involvement of the applicant-Tulsi and applicant-Mahesh. However, it cannot be lost sight of the fact that the trial will not commence soon so to take it to the logical conclusion. The applicants are in custody for more than two years and two months. The case is mainly based on documents. The investigation against Gautam Jashnani may proceed in accordance with law. There are no criminal antecedents against the applicants. They have roots in Mumbai and not likely to flee.

12. Considering the conduct of the applicant-Tulsi, it would be necessary and in the interest of justice, to impose some stringent conditions with a view to dissuade him from tampering with the evidence and as his presence in the Greater Mumbai will be detrimental to the present case. Hence the following order.

ORDER

(a) Applications are allowed.

(b) The applicant-Mahesh Narendra Alimchandani in B.A. No.3089/2022 and the applicant-Tulsi Parmanand Jashnani in B.A. No.3142/2021 in connection with C.R.No.32/2022 which was investigated by the Economic Offences Wing (EOW) originally registered as C.R.No.346/2020 with Juhu Police Station, shall be released on bail on their furnishing P.R. Bonds of Rs.25,000/- each with one or more sureties in the like amount.

(c) Apart from the condition for the release on bail, the applicant-Mahesh Narendra Alimchandani is permitted to furnish cash bail surety in the sum of Rs.25,000/- for a period of 6 weeks in lieu of surety.

(d) The applicant-Tulsi Parmanand Jashnani shall report to the Investigating Officer of the concerned police station once in a month.

(e) The applicant-Tulsi Parmanand Jashnani shall not enter the area of Mumbai District except for the purpose of attending the trial. He shall report to the nearest police station once a month on every Monday between 10.00 a.m. to 12.00 noon. Details be furnished to the trial Court and the Investigating Officer.

(f) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicants shall not tamper with evidence.

(g) The applicants shall surrender their passports with the Investigating Officer, if not already surrendered.

(h) On being released on bail, the applicants shall furnish their contact numbers and residential addresses to the Investigating Officer and shall keep him updated, in case there is any change.

13. The applications are disposed of.

14. The interim applications are also disposed of.

(M. S. KARNIK, J.)