



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

ANTICIPATORY BAIL APPLICATION NO. 625 OF 2023

Mihir Ashok Jethwa

..Applicant

v/s.

The State of Maharashtra .

..Respondents

**WITH
INTERIM APPLICATION NO. 921 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 625 OF 2023**

Jitendra Bhupati Solanki

..Applicant

v/s.

The State of Maharashtra .

..Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 629 OF 2023**

Ashok A. Jethwa

..Applicant

v/s.

The State of Maharashtra .

..Respondents

**WITH
INTERIM APPLICATION NO. 922 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 625 OF 2023**

Jitendra Bhupati Solanki

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Bhavesh Parmar a/w. Reshma Nair , Rajesh Sahani, Vivekanand Akshali i/b. Adv. Devmani Shukla for the Applicant.
Mr. S.V.Gavand, APP for the State.
Mr. Jilesh Sanghvi for the Intervenor.
PSI Sudhir Korgaonkar from Kasturba Marg P. Stn.

CORAM : ANUJA PRABHUDESSAI , J.
DATED : 18th AUGUST, 2023.

P.C.

1. It is stated that parties have settled the matter, hence leave is sought to implead the intervenors as Respondent Nos.2 to 5. He further seeks leave to implead Kavita Jethwa, as party Respondent No.6. Leave granted. Cause title be amended forthwith.

2. The applicant Kavita Jethwa, who is the mother of Applicant Mihir Jethwa and wife of Ashok Jethwa, has been impleaded as party, since she has issued a cheque in favour of Respondent Nos.2 to 5. She is present before the Court. Learned Counsel Shri Parmar states that he will also be representing Respondent No.6.

3. Learned Counsel Mr. Sanghvi waives service on behalf of Respondent Nos.2 to 5.

4. The applicants apprehend arrest in C.R.No. 108 of 2023, registered with Kasturba Marg Police Station, Mumbai for the offences

punishable under Section 406, 420 r/w. 34 of the Indian Penal Code and Section 3, 5, 13 and 14 of MOFA.

5. In the course of hearing , learned APP Shri Gavand was requested to assist the parties in arriving at settlement. Learned Counsel for the Applicant as well as learned Counsel for the Intervenor state that they have settled the matter with assistance of Shri Gavand. They have placed on record consent terms signed by the first informant as well as the Intervenor and the mother of of the first informant (Respondent No.6). The said consent terms read thus:-

CONSENT TERMS

- 1. Whereas the original/complainant had lodged the FIR No.108 of 2023 under section 420, 34 of Indian penal code at Kasturba Police Station Mumbai against the Applicants alleging that the Triveni Developer” and its partners the Applicants Accused Mr. Mihir Jethwa and Mr. Ashok Jethwa, have accepted an amount of Rs. 1,66,84,036/- from the intervenors / Respondent No. 2 to 5 for sale of two flats bearing No. 1201 and 1202 situated at New Shivkrupa CHS, Triveni Contour, Kulup Wadi, Near Western Express Highway, Borivali (East) Mumbai and the same was through two separate allotment letters both of which were issued on 1/8/2014 to Respondent No. 2 and 3 for Flat No. 1201 and to Respondent No. 4 & 5 for Flat No. 1202 and also that the applicants could not complete the transaction either by handing over the said flats*

to the Respondent No. 2 to 5 or by returning back the amount invested by the Respondent No. 2 to 5.

2. *Whereas the Applicants have filed applications for anticipatory bail in the Hon'ble High Court and during pendency of the said application there were settlement talks between the parties and with the assistance of mediator APP Shreekant Gavand, both the parties have decided to amicably resolve all the pending dispute between them, which arose out of the aforesaid transaction. The Applicants states that the Applicants are required to issue cheques to the Respondent Nos. 2 to 5 and due to personal difficulties of the Applicants, Mrs. Kavita Jethwa the wife of Ashok Jethwa and mother of Mihir Jethwa has agreed to issue cheques on behalf of the Applicants to the Respondent No. 2 to 5, she has been added as Respondent No.6 in the present Applicants. The parties have entered into following terms and conditions:*

(i) *Subject to the complete compliance of the present consent terms in letter and spirit, the applicant Accused Mr. Mihir Jethwa in ABA No. 625 of 2023 and Applicant Accused Mr. Ashok Jethwa in ABA No. 629 of 2023 have amicably settled their disputes and differences arising out of FIR No. 108 of 2023 dated 07.02.2023 registered with Kasturba Marg Police Station with Mr. Jitendra Solanki, Respondent No. 2 / the First Informant/ Complainant and Mr. Ashish Solanki, Respondent No. 3 in whose favour Flat No 1201 was allotted vide letter of allotment dated 01.08.2014 and Mr. Bhupat Solanki, Respondent No. 4 and Mr. Kalpesh Solanki,*

Respondent No. 5, in whose favour Flat No 1202 was allotted vide letter of allotment dated 01.08.2014.

- (ii)** *The Applicants has refunded an amount of Rs. 46,00,000 (Rupees Fourty Six Lakhs Only) to the Respondent No. 2 to 5 before the registration of the aforesaid FIR and the Respondent No. 2 to 5 accept and acknowledge the receipt of the same.*
- (iii)** *Over and above the aforesaid amount of Rs. 46,00,000 (Rupees Fourty Six Lakhs Only), the Applicants hereby agrees to pay an amount of Rs. 1,80,00,000/- (Rupees One Crore Eighty Lakhs only) to the Respondents No. 2 to 5 as and by way of full and final settlement of the disputes between the parties hereto and the said amount of Rs.1,80,00,000/- shall be inclusive of all pending principal amount, interest, penalty, compensation, damages, litigation cost, and all other charges and claims, in case the present applicants follow the schedule of payment in letter and spirit.*
- (iv)** *The Applicants/Accused abovenamed agree to pay an amount of Rs. 1,80,00,000/- (Rupees One Crore Eighty Lakhs only) over a period of 12 months in equal monthly installments of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) each starting with effect from 15.09.2023 and ending on 15.08.2024 vide postdated cheques drawn on Kotak Mahindra Bank Bank, from the bank account of Kavita Ashok Jethwa (the wife of the Applicant Ashok Jethwa and*

the mother of Applicant Mihir Jethwa) in the various names as mentioned bellow:

Sr.	Cheque No.	Cheque Date	Amount in Rs.	In the name of
1	000017	15.09.2023	7,50,000	Jitendra B. Solanki
	000018	15.09.2023	7,50,000	Kalpesh B. Solanki
2	000019	15.10.2023	15,00,000	Ashish B. Solanki
3	000020	15.11.2023	15,00,000	Bhupat bhai P. Solanki
4	000021	15.12.2023	15,00,000	Jitendra B. Solanki
5	000022	15.01.2024	15,00,000	Kalpesh B. Solanki
6	000023	15.02.2024	15,00,000	Ashish B. Solanki
7	000024	15.03.2024	15,00,000	Bhupat bhai P. Solanki
8	000025	15.04.2024	15,00,000	Jitendra B. Solanki
9	000026	15.05.2024	15,00,000	Kalpesh B. Solanki
10	000027	15.06.2024	15,00,000	Ashish B. Solanki
11	000028	15.07.2024	15,00,000	Bhupat bhai P. Solanki
12.	000029	15.08.2024	15,00,000	Jitendra B. Solanki

The Applicants further undertakes that both the applicants as well as Respondent No.6 shall be jointly and severely responsible for ensuring the compliance of the above payment schedule. Similarly since the above cheques are issued by Mrs. Kavita Ashok Jethwa for and on behalf of the Applicants in discharge of their liability, she personally undertakes to ensure that these cheques shall be honoured as per assurance given in present Consent Terms. The Applicants further undertakes that in any circumstances, the Applicants shall not give any excuse for any default in payment that cheques were issued by Respondent No.6. The Applicants shall take all possible steps to ensure that in any

circumstances whatsoever, the actual payment is made to the Respondent No.2 to 5 as per the dates given in the above schedule.

- (v)** *The Applicants and Respondent No.6 hereby agrees and undertakes that all the cheques as mentioned hereinabove shall be honoured by the bankers of the applicant, upon the presentation of the said Cheques by the respective Respondent in their bank account and none of the aforesaid cheques shall be dishonoured on any ground whatsoever, attributable to the applicants or their bankers.*
- (vi)** *The Respondent No. 2 to 5 agrees and undertakes that upon receipt of the entire amount of Rs. 1,80,00,000/- (Rupees One Crore Eighty Lakhs only) as mentioned above, strictly in accordance with the given schedule, the Respondent No. 2 to 5 and their heirs, successor, shall have no claim whatsoever against the partnership firm “Triveni Developer” and its partners the Applicant Accused Mr. Mihir Jethwa and Mr. Ashok Jethwa in relation to any legal rights including monetary claims or otherwise arising out or relating to letter of allotments dated 01.08.2014 for Flat No.1201 and Flat No.1202 and after receipt of the entire amount of Rs. 1,80,00,000/-, the said allotment letters and entire dispute between the parties arising out of said allotment letters, shall stand terminated/cancelled/revoked immediately after payment of last*

instalment. The Applicants also agrees that, the Applicants shall also not pursue any pending litigation against the Respondent No. 2 to 5 during the period when the present consent terms are being complied with. Both parties shall withdraw all pending litigation against each other after payment of last instalment as per present consent terms.

(vii) *It is further agreed by and between the parties hereto that as long as the applicants are complying with the terms of the present consent terms by paying the instalments as per the given schedule and as such the present consent terms continues to remain in force, the Respondent No. 2 to 5 shall not file any fresh litigation and/or pursue the pending litigation if initiated and shall not make use of any previous cheques, undertaking, letter, assurance in the custody of the Respondent No. 2 to 5 given by the applicants/accused, prior to execution of the present consent term for initiating / continuing / pursuing any civil or criminal litigation against the applicants in respect of the subject matter of the present consent terms;*

(viii) *It is further agreed by and between the parties, that in case of breach of the present consent terms by the applicants in any manner and more particularly any default in payment of any instalments, then the Respondent No. 2 to 5 shall be at liberty to initiate civil or criminal litigation as per their original claim notwithstanding the averments made in the present consent terms,*

against the applicants as permissible in law and the applicants shall not raise any issue of law of limitation for objecting such litigation;

(ix) *On the basis of assurances given by the Applicants to the Respondent No. 2 to 5 in the present consent terms and upon payment of last instalments i.e. upon complete payment of the said amount of Rs. 1,80,00,000/- the Respondent No. 2 to 5 including the First informant shall withdraw the allegations made by him/them against the applicants and upon filing of a petition for quashing of FIR and / or charge sheet by the applicants, the Respondent No. 2 to 5 including the First informant, shall appear before the Hon'ble High Court and give their no objection for quashing of FIR and / or charge sheet against the applicants or in the alternative in case any application for compounding of the offence is filed before the appropriate court, then full co-operation and assistance shall be extended by the Respondent No. 2 to 5 including the First informant by executing necessary documents such as no objection / affidavit for compounding of the offenses.*

3. *On the basis of assurances given in the present consent terms, by both the Applicant to the Respondent No. 2 to 5 including the First Informant, the Respondent No. 2 to 5 have no objection for granting anticipatory bail to the Present Applicants. It is further agreed by and between the parties that the anticipatory bail granted to the Applicants upon execution of present consent terms, shall be liable to be cancelled in case of breach of the*

present consent terms by the applicants by making any default in given schedule of payment;

- 4. That it has also been agreed between the parties that they will adhere to the terms and conditions of this consent terms and will do all acts necessary for the expeditious compliance of the same and shall cooperate with each other in the interest of both the parties.*
- 5. That the contents of this consent terms have been read over and explained to all the parties i.e. Applicants, Respondent No.2 to 5 and Respondent No.6 and they have understood the same to be true and correct and all the parties have executed this consent terms bonafide, voluntarily and out of their own free will and consent, without any force, pressure, duress, threat, fraud, coercion, misrepresentation, collusion or undue influence, whatsoever.*
- 6. That all the parties to the present consent terms undertake that they shall duly perform and abide by all the terms and conditions as contained in the present Consent terms and in case of breach of any of the terms and conditions as envisaged hereinabove, the party committing default shall be liable to be punished under the provisions of Contempt of Courts Act, 1971.*
- 7. That all the parties hereby agrees that upon due compliance of present consent terms, both the parties and / or anybody claiming through them, their legal heirs, relatives, their assigns shall not file any future civil or criminal litigation against either side in respect of the subject agreement*

referred to in the present consent terms”.

6. The consent terms are agreeable to the parties. The same are taken on record and marked “X” for identification. The respondent No.6 has handed over to the Advocate for the Respondent Nos.2 to 5, 13 cheques towards payment of the amount as mentioned in the consent terms. Copies of the said cheques are placed on record.

7. Since the parties have settled the matter amicably and have agreed to file quashing proceedings upon receipt of the money as per the schedule, in my considered view, this would be a fit case to exercise discretion under Section 438 of Cr.P.C. Hence the applications are allowed on the following terms and conditions:

- (i) In the event of arrest of the Applicants in Crime No.108 of 2023, registered with Kasturba Marg Police Station, Mumbai, the Applicant sbe released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) each with one or two sureties in the like amount;
- (ii) The Applicants shall report to the Investigating Officer as and when required.
- (iii) The Applicants shall keep the Investigating Officer informed of

their current address and mobile/contact details, and/or change of residence or mobile/contact details from time to time.

(iv) The Applicants are put to notice that since the application is not decided on merits, in the event the Applicant or the Respondent No.5 fail to abide by the consent terms, the order of bail shall stand revoked. shall not interfere with the Complainant and the other witnesses, or tamper with the evidence in any manner.

. This Court places on record its great appreciation of the assistance rendered by learned APP Shri Gavand, in assisting the parties in arriving at an amicable settlement.

. **Applications stand disposed of. Interim applications stand disposed of.**

(ANUJA PRABHUDESSAI, J.)