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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 5034 OF 2024

Mihir Deepak Shah	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
INTERIM APPLICATION NO. 258 OF 2025
IN
CRIMINAL BAIL APPLICATION NO. 5034 OF 2024

Kamlesh Ghanshyam Lohia	.. Intervenor / Orig. Complainant
IN THE MATTER OF:	
Mihir Deepak Shah	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
CRIMINAL BAIL APPLICATION NO. 5473 OF 2024

Gangji Dharamshi Gothi	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
INTERIM APPLICATION NO. 819 OF 2025
IN
CRIMINAL BAIL APPLICATION NO. 5473 OF 2024

Kamlesh Ghanshyam Lohia	.. Intervenor / Applicant
IN THE MATTER OF:	
Gangji Dharmashi Gothi	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Abad Ponda, Senior Advocate a/w. Mr. Sahil Mahajan, Advocate for Applicant in Bail Application No.5034 of 2024.
- Mr. Rishi Bhuta a/w. Mr. Dilip Mishra, Ms. Ankita Bamboli, Mr. Ashish Dubey, Advocates for Applicant in Bail Application No.5473

of 2024.

- Mr. Subhash Jha a/w. Mr. Siddharth Jha, Mr. Sumeet Upadhyaya, Mr. Ashish Saxena and Ms. Dhrisekha Rao, Advocates i/by Law Global for Intervenor in Interim Application Nos.258 of 2025 and 819 of 2025.
- Ms. Mahalakshmi Ganapathy, APP for Respondent – State.
- Mr. Balasaheb Todkar, API – Santacruz Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 26, 2025.

P.C.:

1. Heard Mr. Ponda, learned Senior Advocate for Applicant in Bail Application No.5034 of 2024; Mr. Bhuta, learned Advocate for Applicant in Bail Application No.5473 of 2024; Mr. Jha, learned Advocate for Intervenor in Interim Application Nos.258 of 2025 and 819 of 2025 and Ms. Ganapathy, learned APP for Respondent – State.

2. Bail Application No.5034 of 2024 is filed by Applicant namely Mihir Deepak Shah, a partner of 'Heena Lifestyles' registered partnership firm carrying business of construction and development. He is arraigned as Accused No.1 in C.R. No.343 of 2024 for offences punishable under Sections 420, 465, 467, 468 and 471 read with Section 34 of the Indian Penal Code, 1860 (for short "**IPC**") and Sections 4 and 13 of the Maharashtra Ownership Flats (Rules of the Promotion of Constructions Sale, Management and Transfer) Act, 1963 (for short "**MOFA**") registered at Santacruz Police Station.

3. Date of the First Information Report (for short "**FIR**") is 20.03.2024. Applicants surrendered on 17.07.2024. Charge-sheet has been filed by the prosecution in October, 2024.

4. Briefly stated, according to prosecution case, it is alleged by First Informant – Complainant that in 2015 he alongwith his family members desired to purchase a flat in the development and construction undertaken by 'Heena Lifestyles' (for short '**the Developer**'). At that time, partners of 'Heena Lifestyles' were Deepak Shah, Heena Shah and the Applicant (Mihir Shah). First Informant and his family members booked one flat in their redevelopment project at Vile Parle (West), Mumbai and paid consideration of Rs.1,10,00,000/- to the Developer. After sometime it is alleged that there was a representation from the Developer to the First Informant and his family members that due to difficulty the said redevelopment project could not be started and they were informed to invest in another project of the Developer for another flat which cost Rs.3,83,00,000/-.

5. According to First Informant and his family members, they paid an amount of Rs.1,70,00,000/- to the Developer. First Informant and his family members sought refund of the amounts paid to the Developer and to that effect cheques were issued by the Developer to them. It is seen that some of the cheques were dishonored. Summary

Criminal Cases were filed.

6. First Informant and his family members filed three Summary Case Nos.3346/SS/2019, 3347/SS/2019 and 3348/SS/2019 before the Metropolitan Magistrate 63rd Court, Andheri, Mumbai for dishonour of the cheques. The said cases were transferred to the Court of Metropolitan Magistrate 33rd Court, Ballard Pier, Mumbai and thereafter to the 54th Court, Mazgaon, Mumbai.

7. First Informant simultaneously filed Application under Section 143-A of the Negotiable Instruments Act, 1881 (for short "**NI Act**") seeking deposit of 20% of the cheque amount in Court. By order dated 02.06.2022, learned Magistrate directed the Developer to deposit 20% of the cheque amount as interim compensation. It needs to be noted that by this time the configuration of the Developer firm changed because the original partner Deepak Shah, father of Applicant and husband of Heena Shah who had dealt with the First Informant and his family members regarding the above transactions had in the interregnum during the COVID-19 pandemic period expired. The business of Developer thereafter was managed by Applicant and his mother as partners. In default of payment of 20% interim compensation, First Informant filed Application under Section 421 of the Code of Criminal Procedure, 1973 (for short "**Cr.P.C.**") seeking issuance of warrant of attachment in respect of Flat No.404 situated on the 4th Floor of Dev Gukul Mohan Building, Plot No.71, Santacruz (West), Mumbai which was allowed by order dated 08.02.2023.

8. The above order was notified by Tahasildar to the Sub-Registrar pertaining to attachment of the subject flat. However, despite this it is prosecution case that the Developer sold the subject flat to Mr. Gangji Dharamshi Gothi, Proprietor of Ambika Developers in violation of the order of attachment dated 08.02.2023 passed by the Magistrate in respect of the subject flat in order to circumvent the right of the First Informant and his family members in the subject flat. During arguments, it is also alleged that this was possible only with the connivance of the office of the Sub-Registrar of Assurances and they conspired with the Applicants.

9. The principal allegation of the First Informant and the prosecution is that in doing so the Developer through Applicant committed forgery and created a false document viz; MOFA extension of registration of present certificate to effectuate the sale of the subject flat in favour of Mr. Gangji Dharmashi Gothi and such act of the Applicant stood in contempt of the order of attachment in respect of the subject flat. In the aforesaid background, present C.R. was filed on 20.03.2024.

10. Case of prosecution is that Applicant deceived and defrauded the First Informant – Complainant and his family members to the tune of Rs.1,67,50,000/- which they had paid to the Developer but in lieu thereof the subject flat which was agreed to be sold to them was surreptitiously sold to Mr. Gangji Dharmshi Gothi (the new purchaser). In the present crime, both Applicants are incarcerated in custody since 17.07.2024.

11. The entire prosecution case is primarily based upon the act of forgery of a MAHA RERA certificate required to be issued by the RERA Authorities which is appended at page No. 56 of the Application. By virtue of the said date in the said certificate the Developer gained an undue advantage for effectuating the sale of the said flat in favour of the new purchaser i.e. Gangji Dharmshi Gothi to the detriment and exclusion of the First Informant and his family members despite an Agreement of Sale with them and they having persuaded the Developer for purchase of the flat since 2015 onwards and having paid him substantial amounts. Applicant is arraigned as Accused No.1 and his mother is arraigned as Accused No.2 in the present crime. Accused No. 2 is released on Anticipatory Bail by this Court on certain conditions of deposit of amounts as provided by her which she has partly deposited.

12. Bail Application No.5473 of 2024 is filed by Mr. Gangji Dharamshi Gothi, the new purchaser of the subject Flat No.404 who is arraigned as Accused No.3 in the charge-sheet filed by prosecution before the Metropolitan Magistrate 71st Court, Bandra, Mumbai after investigation. Mr. Bhuta, learned Advocate appears for Mr. Gothi. He would submit that in so far as the right of the new purchaser in the flat is concerned, there is a Registered Sale Deed dated 10.05.2023 executed by the Developer through its partners i.e. Applicant and Heena Shah with the new purchaser. He would submit that the new purchaser is a civil contractor who was engaged by the Developer for providing all civil and development works in the projects of the Developer, one of which was the Gokul Mohan project in Santacruz. He would submit that in that regard in 2017 the Developer and new purchaser entered into a MOU whereby it was agreed that the Developer would transfer one flat in each of the project wherein the new purchaser undertook work as a contractor in lieu of he completing the works in the said project apart from the other terms agreed between the parties.

12.1. He would submit that in that regard the subject Flat No.404 was sold to the new purchaser by virtue of the registered Sale Deed executed and registered between the parties on 10.05.2023, but this was mutually agreed by the parties including the Complainant as the Developer being the common denominator wanted to pay off the first informant with his balance amount. He would submit that there is no reason as to why the Applicant has to being incarcerated in prison in view of the entire gamut of the present dispute being in existence and depending upon mutual contracts executed between all parties. He would submit that disputes arose and his client has file Suit for specific performance in regard to the subject flat against the Developer on the basis of his registered agreement.

12.2. He would persuade the Court to consider the fact that because of the gamut of the aforesaid pre-existing rights and subsequent execution of the registered agreement between parties in respect of the subject flat, there are number of litigations pending in several forums, *inter se,* between the parties. He would fairly submit and argue that the new purchaser does not have a direct nexus with the First Informant – Complainant, but merely because of his substantive right in the subject flat the new purchaser has been dragged into the present litigation between the Developer and First Informant and despite he having paid the entire amount to the Developer on his part, he has been falsely implicated as an accused in the present crime.

12.3. To this submission of Mr. Bhuta, Mr. Ponda, learned Senior Advocate has vehemently objected by informing the Court on instructions that the entire consideration of the subject Flat No.404 has not been paid over by the new purchaser till date to the Developer. He would fairly inform the Court that because of the humongous delay which occurred, the Developer acted in absolute good faith on professional advise received and executed and registered the Sale Agreement in respect of the subject flat in favour of the new purchaser with the genuine intention of returning back the balance money to the First Informant and his family members in view of the impending proceedings under the NI Act initiated by them and this was the consent and knowledge of the first informant.

12.4. In the above background, Mr. Ponda would submit that the Agreement for Sale with the new purchaser was executed and registered at the behest and with the full knowledge of the First Informant – Complainant and his family members only to amicably settle the dues of the First Informant which was arrived at in a joint meeting held on 05.05.2023 at Star Bucks, Andheri during which it was mutually decided that the proceeds on sale of the subject Flat No.404 would be used to pay off the balance debts of the First Informant and his family members. He would submit that pursuant to the said meeting, the new purchaser failed to pay the amount of sale consideration of Rs.1,82,77,000/- approximately to the Developer, resultantly leading to the default on the part of the Developer and filing of the present FIR.

12.5. On the issue of amounts received by the First Informant and his family members from the Developer, he has placed before me a detailed chart of the amounts which were received by them. According to the Developer, First Informant and his family members had paid an amount of Rs.1,25,00,000/- to the Developer in the following manner:-

Sr. No.	Name	Amount and Date of payment (Rs.)	Total Amount (Rs.)
1.	Kamlesh Lohia	i) 30,00,000/- on 24.08.2015 ii) 20,00,000/- on 24.08.2015 iii) 2,50,000/- on 02.09.2016 iv) 2,00,000/- on 02.09.2016 v) 2,00,000/- on 02.09.2016 vi) 2,00,000/- on 02.09.2016 vii) 1,50,000/- on 03.09.2016	60,00,000/-
2.	Shweta Lohia	21,00,000/- on 24.08.2015	21,00,000/-
3	Sulochana Lohia	i) 10,00,000/- on 24.08.2015 ii) 30,00,000/- on 25.08.2015 iii) 2,00,000/- on 02.11.2016 iv) 2,00,000/- on 02.11.2016	44,00,000/-
		Total Amount	1,25,00,000/-

12.6. Next he would submit that as against the aforesaid an amount of Rs.92,35,000/- was paid back by the Developer to the First Informant and his family members on various dates. Further the amount of Rs.6,29,200/- is deposited by the Applicant in Contempt Petition filed by the First Informant in this Court and another amount of Rs.10,00,000/- is deposited by the Developer which the First Informant and his family members have received in the Anticipatory Bail Application matter of the mother of Applicant.

13. He has placed before me the date wise table of the money paid to the First Informant and his family members which is as under:-

Sr. No.	Date	Party Name	Payment Mode	Amount
1	09.08.2018	Sulochana Lohia	BOI – Bank Transfer	10,00,000/-
2	05.09.2018	Sulochana Lohia	HDFC – Bank Transfer	1,35,000/-
3	05.11.2018	Shweta Lohia	HDFC – Bank Transfer	7,50,000/-
4	27.04.2018	Kamlesh Lohia	BOI – Bank Transfer	5,00,000/-
5	04.06.2019	Kamlesh Lohia	HDFC – Bank Transfer	3,00,000/-
6	18.07.2019	Shweta Lohia	HDFC – Bank Transfer	6,00,000/-
7	18.07.2019	Sulochana Lohia	HDFC – Bank Transfer	7,00,000/-
8	18.07.2019	Kamlesh Lohia	HDFC – Bank Transfer	7,00,000/-
9	04.03.2020	Sulochana Lohia	HDFC – Bank Transfer	50,000/-
10	06.03.2020	Sulochana Lohia	HDFC – Bank Transfer	50,000/-
11	29.01.2021	Sulochana Lohia	HDFC – Bank Transfer	2,00,000/-
12	21.08.2021	Sulochana Lohia	BOI – Bank Transfer	28,50,000/-
13	25.08.2021	Shweta Lohia	BOI – Bank Transfer	14,00,000/-
14	11.12.2023	Shweta Lohia	Pay Order 489925	6,29,200/-
15	09.05.2024	High Court	ABA 1055 of 2024 DD	10,00,000/-
				1,08,64,200/-

14. In the aforesaid background, he would submit that once investigation is complete, complicity and alleged crime of the Applicant can be proved by the prosecution at the time of trial. In view of the aforesaid bonafides, he would persuade the Court to consider the case for grant of bail on the ground that Applicant is young alleged offender in the present crime who is a highly educated person, rather he is an MBA from a prestigious University from the United States of America and was thrown into the gamut of managing the development / business run by his father who had initiated the entire project of redevelopment and negotiations with the first informant and his family in the year 2015. He would submit that there is no element of fraud or deceit or ill-intention on the part of the Applicant since inception which is the alleged prosecution case since admittedly on the basis of the prosecution case the entire dealing was done by the father of Applicant who dealt with the First Informant and his family members. He would fairly submit that it is an admitted position that Applicant also a partner of the Developer firm. He would submit that the Developer was a close family owned partnership firm of the husband, wife and son. He would submit that no case of offence punishable under Section 420 of the IPC has been made out in the present case. He would submit that investigation is complete and all documents are in the custody of the Investigating Officer.

15. Mr. Bhuta, learned Advocate for Applicant in Bail Application No.5473 of 2024 is arraigned as as Accused No.3. He would submit that claim and charge of the First Informant that the Developer and the new purchaser acted surreptitiously by circumventing the attachment order of the Court and the communications of the Tahasildar and Talathi are *prima facie* unfounded because it is an admitted position that on 18.04.2023 the Circle Officer, Bandra addressed a communication to the new purchaser in response to the letters addressed by his client to the Tahasildar, Andheri and Talathi, Vile Parle in respect of the subject flat. He would submit that the Circle Officer informed the Applicant that he had not produced any document showing his right, title and interest in the subject flat and therefore he desired to implement the order of the attachment passed by the learned Magistrate and Applicant was called upon to vacate the subject flat within two days. He would submit that a similar communication was addressed by the Tahasildar.

16. He would submit that the new purchaser already had a pre-existing agreement and right in the said flat from the year 2017 when the said project commenced in view of the subsisting MOU between the Developer and new purchaser. He would submit that it has come on record in the charge-sheet that there are various agreements executed on 19.08.2019 wherein the Developer agreed to reimburse the First Informant through the new purchaser. He would submit that though the said MOU is not a registered document, still it would stand the test of contract as it is a binding agreement between the parties and intention of the parties to the said MOU has fructified and it required it will have to be tested at the time of trial. He would submit that allegation of First Informant that the new purchaser colluded with the Developer in surreptitiously getting transferred the said Flat No.404 is now the subject matter of trial wherein the registered documents alongwith the RERA certificate attached thereto has been seized by the Investigating Officer and is the subject matter of the charge-sheet. He would submit that nothing further is required to be recovered at the instance of the Applicant. He would submit that there is nothing incriminating placed on record to show role of Applicant in dishonestly inducing any person to deliver the property or valuable asset which is *prima facie* absent in the present case. Hence charge under Section 420 is not attracted. He would submit that in so far as the allegation regarding forgery and misappropriation of money is concerned, the present Applicant is completely unaware about the same and therefore there is no reason as to why the present Applicant has to be incarcerated in prison. He would submit that present Applicant is a Civil Contractor and he has no criminal antecedents whatsoever but because of the complex web of transactions hit by delay over a period of years in the present case, he has became a victim of circumstances and got entitled due to his proximity with the Developer having undertaken works in its various development projects. He would submit that Applicant has deep roots in the Society and assures all co-operation in the trial and his further incarceration in custody is unwarranted. Hence, he would pray for bail.

17. ***PER CONTRA***, both Applications for bail are vehemently opposed by the learned APP for the State and learned Advocate for the First Informant. Ms. Ganapathy, learned APP would submit that role of the Applicant in Bail Application No.5034 of 2024 cannot be viewed lightly in view of the fact that he is guilty of fabricating and forging a government document namely a statutory certificate issued by the

MAHA RERA Authority with respect to extension of the date of completion of project in order to gain an unfair advantage and enabling the Developer to transfer the said flat to the new purchaser represented by Mr. Bhuta to the exclusion of the first informant. She has placed before me a compilation of documents on record which are the part of the charge-sheet. They pertain to warrant for recovery of fine against Applicant on behalf of the Developer and other relevant documents which form basis of prosecution case pertaining to forgery and fabrication of the document. She has particularly drawn my attention to two documents therein which are the certificate for extension of registration of project issued in Form 'F' in Rule 7(2) of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents Rates of Interest and Disclosures on Website) Rules, 2017. The first certificate to which my attention is drawn states that registration shall be valid up to 30.04.2020 unless renewed by the Maharashtra Real Estate Regulatory Authority in accordance with Section 6 or 7 of the MAHA RERA Act read with Rule 7 of the Rules. The next document that she has drawn my attention to a similar certificate for extension of registration of the subject project called 'Gokul Mohan' wherein it is stated that registration shall be valid up to 31.12.2024. She would submit that this second certificate which is dated 27.10.2023 is a forged and fabricated document. She would submit that such forgery and fabrication of Government document is a serious crime as it undermines entire authority of the Government and results in fraud gaining an undue advantage to the Developer. She would submit that in the facts of the present case, the Developer has not only gained an undue advantage to himself by extending the project completion date pertaining to extension of registration of the project but he has used the same for executing and registering a sale deed dated 10.05.2023 with the new purchaser thereby committing a fraud.

18. She would fairly admit that though *prima facie* on the face of record it is seen that substantial amount out of amounts which are advanced by the First Informant and his family members have been returned back by the Developer to the First Informant and his family members, but the implication of such return, the fraudulent act of the Developer in committing forgery of a Government document needs to be considered *prima facie*. She would submit that the intent, motive and role of the Developer in the present case of committing forgery and fabrication of a statutory Government document *prima facie* shows his intent of falsehood, dishonesty and deceit in committing the crime and therefore this Court should not be lenient to the Developer. In the compilation of documents, she has taken me through the various certificates for extension of registration of project which are granted by the MAHA RERA Authority to the Developer with respect to the subject Gokul Mohan project and she would culminate her arguments by submitting that the final certificate which is dated 27.10.2023 which extended the registration up to 31.12.2024 is admittedly a fabricated document and therefore such an act is an act which the Applicant - Developer is likely to re-offend if he is released on bail and therefore this Court should reject both the Bail Applications.

19. Ms. Ganapathy has referred to and relied upon the decision of the Supreme Court in the case of *Naveen Singh Vs. The State of Uttar Pradesh and Anr.*[1] to contend that in that case the Applicant had forged a Government record and under that forgery he claimed to have paid GST to the Government which was not the case. She would submit that in that case, High Court had allowed his case for bail which the Supreme Court cancelled by observing that the High Court had observed that since the innocence and complicity of the accused can be decided only after taking in evidence, but the High Court had not commented with respect to anything on merit as to his complicity, involvement and severeness of the offence concerned and therefore having not considered the same the Supreme Court cancelled his bail. She would draw my attention to paragraph No.8.2 of the said decision and submit that forgery and manipulating government record and getting benefit of such forged and manipulated record is a very serious offence and should be viewed strictly.

1 Criminal Appeal No.320 of 2021 – decided on 15.03.2021

19.1. She would persuade the Court to be cautious and serious in granting bail to the Applicant who has been alleged to have forged / manipulated Government record and taken benefit of such manipulated and government record as he has been *prima facie* found of having committed the said offence.

20. Mr. Jha, learned Advocate for the First Informant in the crime would submit that forgery in the present case has been committed in the teeth of various orders passed by the Court. He would submit that the order passed by the Metropolitan Magistrate 63rd Court, *inter alia,* attaching the subject flat was an order which was known to the Applicant on behalf of the Developer as also the new purchaser and they both colluded with each other in ensuring that agreement dated 10.05.2023 was executed and registered to defeat the rights of the First Informant. He would submit that such a forgery cannot be equated to a normal case of cheating by a party because it is carried out by forging a Government statutory document to gain undue advantage.

20.1. He would vehemently submit that the order dated 08.02.2023 passed under Section 143-A of the NI Act was forwarded to the Collector on 08.02.2023 and thereafter the Collector forwarded the said order to the Tahasildar on 23.03.2023 which was further forwarded to the Talathi, Vile Parle for implementation of the attachment proceedings. He would submit that despite this the Agreement dated 10.05.2023 was executed and registered by the Applicants merely to defeat the said orders. He would submit that the new purchaser of the flat namely Accused No.3 was in complete knowledge of the aforesaid orders as also the entire communication and correspondence because at that time the new purchaser was also corresponding with the Tahasildar and Talathi. He would submit that there is one more dereliction on the part of the Applicant namely that on 22.11.2022 Applicant informed the learned Trial Court that the subject flat was already attached by the High Court which was a blatantly false statement on the face of record. He would place before me Roznama before the Trial Court dated 22.11.2022 which would show that the statement recorded by the learned Trial Court was an incorrect statement with respect to the subject Flat No.404. He would place reliance upon the High Court's order and Court Receiver's report regarding attachment of some of the flats in the said project Gokul Mohan which would show that the subject Flat No.404 was not part of the attached flats. Next he would submit that the blatant act of forgery committed by Applicant in getting a statutory certificate forged to show extension of registration of the project under MAHA RERA and using the same for executing and registering the Sale Agreement dated 10.05.2023 is nothing but a malafide act on the part of the Developer. Thereafter he has drawn my attention to the various agreements in respect of the subject flat as also other flats which were executed between the parties in the year 2019 and to that extent would submit that there has also been an element of forgery in changing the date from 2019 to 2023 when the subject flat was actually registered.

21. Mr. Jha would draw my attention to page No. 116 of the Bail Application No. 5473/2024 filed by new purchaser Mr. Gothi and while drawing my attention to the various invoices appended at page Nos. 116 to 135 would submit that though it has been stated by the new purchaser that he has paid CGST & SGST tax amount to the Government, however in reality the said invoices are fabricated and forged documents in as much as the new purchaser has not paid the said tax amount either to the Central Government or the State GST Authorities. He would submit that present Applicant as also the new purchaser who are incarcerated in prison have not approached the Court with clean hands as they have placed reliance on the invoices to show their bonafides which are *prima facie* fraudulent. He would submit that all actions of the present Applicant and the new purchaser are designed to deprive the First Informant and his family members of the subject Flat No.404. He would next draw my attention to the agreement for sale dated 09.11.2021 executed between the present Applicant and the First Informant to contend that after execution of the said agreement for sale, intent of the Applicant was not to comply with the same. He would submit that therefore Applicant did not execute the sale deed despite the fact that the subject flat was in a fully complete state. He would submit that if the said agreement is perused, the payment with respect to the subject flat in question is appearing in two tranches in the recitals of the agreement but insofar as the breakup of the payment is concerned, it is stated to be paid in several slabs as per the schedule of payment. He would submit that the sinister motive of the Applicant is evident because despite the subsistence of the agreement for sale with the First Informant, the Applicant entered into the registered sale deed dated 10.05.2023 with the new purchaser thereby depriving the legitimate right of the First Informant in the subject flat. Lastly he would draw my attention to the statement of account which was argued by the prosecution to contend that insofar as the substantial payment of Rs. 28.5 Lakhs and 14 Lakhs received by the First Informant's group members from Mr. Avinash Bhanji and Mr. Rahul Sapan are concerned, those payments should not be treated as part and parcel of the present transaction in view of the fact that there was arrangement between the parties whereby the said amount of Rs. 28.5 Lakhs was rerouted to the First Informant group through the said Mr. Avinash Bhanji who had also simultaneously purchased another flat No. 504 in the same development for which he was required to pay the said amount to the Developer Heena Lifestyles. He would submit that the said amount of Rs. 28.5 Lakhs received by the First Informant's group from Mr. Avinash Bhanji was a premium and is required to be excluded from the entire purchase value of the subject flat as there is *prima facie* variation with respect to the total amount which is received from the Applicant. In support of his submissions, Mr. Jha has referred to and relied upon the following decisions of the Supreme Court and this Court:-

(i) ***Mahesh Kumar Bhawsinghka v. State of Delhi;*** [2]
(ii) ***CBI v. V. Vijay Sai Reddy*** [3]***;***
(iii) ***Nimmagadda Prasad v. CBI*** [4]***;***
(iv) ***Naveen Singh v. State of U.P.*** [5]***;***
(v) ***Nirajkumar Ashok Kumar Singh v. The State of Maharashtra*** [6]***.***

22. In rejoinder to the submissions made by Mr. Jha, Mr. Ponda has persuaded me to consider the FIR which *prima facie* has been filed on the basis of seeking the entire money invested by the First Informant and his group members from the Deveeloper / Applicant. He would submit that separate FIR has also been registered independently by the prosecution with respect to the issue of forgery in respect of the alleged MOFA order extending the date of registration of the project in question, however in fairness he would submit that the said FIR is now been tried along with the present offence together. In support of his submissions, Mr. Ponda has referred to and relied upon the following decisions of the Supreme Court:-

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2 (2000) 9 SCC 383
3 (2013) 7 SCC 452
4 (2013) 7 SCC 466
5 (2021) 6 SCC 191
6 Order dated 17.03.2025 passed in BA 835/2024

(i) ***P. Chidambaram v. Directorate of Enforcement*[7]*;***

(ii) ***Sebil Elanjimpally v. State of Odisha*[8]*;***

23. Mr. Jha would also persuade me to take into account conduct of the Applicant in the present case. He would submit that conduct of the Applicant being repetitive in nature of attempting to repeat his fraudulent conduct should not be ignored by the Court. He would submit that even at the stage of anticipatory bail, the mother of the Applicant who is co-accused in the present crime has not complied with the order enlarging her on bail. He would submit that though she had promised to pay the amount of Rs. 60 Lakhs, she had only paid first installment of Rs. 10 Lakhs and thereafter has not paid the balance amount and has now gone absconding. To this Mr. Ponda would submit that the conduct of the co-accused should not be considered as the ground to refuse bail to the present Applicant as ruled by the Supreme Court in the case of ***Sebil Elanjimpally (supra).***

24. I have heard the submissions made by the learned Advocates and perused the record with their able assistance.

25. *Prima facie* it is seen and as delineated herein above, it is seen that the Developer has already paid a substantive amount of Rs.92,35,000/- to the First Informant and his family members and has deposited same amount in Court, thus totalling to Rs.1,08,64,200/-.

7 (2020) 13 SCC 791
8 2023 SCC OnLine SC 677

26. Further, it is seen that the First Informant and his family members have filed three Criminal Summary Cases against the Developer with respect to dishonor of cheques in which the subject order came to be passed for attachment of the subject flat due to non-deposit of the 20% amount. *Prima facie*, it is seen that Applicant before me though may have been a partner of the developer partnership firm, he was not primarily instrumental in initiating and engaging with the First Informant and his family members at the time when the development begun and until the demise of his father, the Managing Partner of the Developer firm during the Covid period. The development in the present case dates back to the 2015. Admittedly over a period of time there have been several agreements executed between the parties qua their mutual obligations and rights. I am informed across the bar that a Suit for specific performance has been filed by the new purchaser against the Developer for specific performance of his registered agreement. That apart, *prima facie* it is an admitted position borne out from the record that new purchaser is a civil contractor who has had a long-standing business relationship with the Developer right since inception as he was appointed as civil contactor to complete the finishing work of the project undertaken by the Developer. The MOU with the new purchaser is also placed on record which dates back to 2017.

27. Hence, from the aforesaid it is *prima facie* seen that there was no intention of cheating the Applicant right from the inception. In so far as the issue of forgery and fabrication is concerned, no doubt *prima facie* the prosecution case is that the Developer has forged the MAHA RERA certificate in order to gain an undue advantage so that he could sell the subject flat to the new purchaser by virtue of the extension.

28. From the charge-sheet and the rival submissions, it is *prima facie* borne out that the agreement which was executed between the Developer and the new purchaser was primarily executed with the knowledge of the First Informant – Complainant so that money that would be received from the new purchaser could be paid to the First Informant. From the chart of payment which has been placed before me, it is *prima facie* seen that between 2018 and 2021 a substantial amount of approximately Rs.92,35,000/- has already been paid by way of bank transfer to the First Informant and his family members and this cannot be ignored at the *prima facie* stage.

29. Support is drawn from the decision of the Supreme Court in the case of ***Sanjay Chandra Vs. Central Bureau of Investigation***[9] wherein the Supreme Court has held that in economic offences while considering an application for bail, the nature of charge may be relevant but at the same the punishment to which the party may be

9 (2012) 1 SCC 40

liable, if convicted is also a significant aspect and therefore both, the seriousness of the charge and the severity of the punishment should be taken into consideration for arriving at decision of grant of bail. It further observed that deprivation of liberty must be considered a punishment unless it is absolutely necessary in the interest of justice and that <u>object of bail is merely to secure appearance of accused at the trial</u> (*emphasis supplied*).

30. Next, the decision of the Supreme Court in the case of ***P. Chidambaram Vs. Directorate of Enforcement*** [10] is also relevant in the facts of the present case. The Supreme Court observed that economic offences would fall under the category of 'grave offences' and in such circumstances while considering application for bail, the Court will have to deal with the same being sensitive to the nature of allegations made against the accused, however the term of sentence that is prescribed for the offence is in addition to the triple test or the tripod test that would be normally applied. In that regard the Supreme Court has further held that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case and ultimately the consideration will have to be on case-to-case basis on the facts involved therein and for securing the presence of the accused to stand trial.

10 (2020) 13 SCC 791

31. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh (supra)*** has observed as under:-

> *"6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the **principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment.** In this perspective…" (emphasis supplied)*

32. In that view of the matter, considering the aforesaid *prima facie* observations, there can be no reason as to why custody of the Applicants is any further required. Their presence can be secured. The complicity of the Applicants in the alleged crime can undoubtedly be proved by the prosecution at the time of trial.

33. Considering the aforesaid *prima facie* observations, I am inclined to accept the submissions made by Mr. Ponda, learned Senior Advocate and Mr. Bhuta, learned Advocate and release the Applicants on bail.

34. In view of my above *prima facie* observations, Applicants before me have made out a case for grant of bail. Hence the following order:-

(i) Both Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.1,00,000/- each with one or two sureties in the like amount;

(ii) Before their actual release from jail, Applicants shall furnish their address where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;

(iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;

(iv) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, Applicants shall mark presence on the next working day;

(v) Applicants shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if they do so, it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court; Applicants shall deposit their passports with the Trial Court within a period of two weeks from the date of their release; Applicants shall not leave the State of Maharashtra and / or leave the country without the permission of the trial Court;

(vii) Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

35. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

36. Bail Application No.5034 of 2024 and Bail Application No.5473 of 2024 are allowed and disposed.

37. In view of disposal of Bail Applications, pending Interim Application No.258 of 2025 and Interim Application No.819 of 2025 are disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2025.03.26 18:26:49 +0530