

Ajay

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

ANTICIPATORY BAIL APPLICATION NO. 2974 OF 2024

Navin Ramji Kothari .. Applicant
Versus
State of Maharashtra and Anr. .. Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 3141 OF 2024**

Irene Edwyn D'Mello and Anr. .. Applicants
Versus
State of Maharashtra and Anr. .. Respondents

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- Mr. Sunny Waskar a/w. Monel Thakkar and Ms. Harshada Morey, Advocates for Applicants in both Anticipatory Bail Applications.
 - Ms. Mahalaxmi Ganpathy, APP for Respondent No.1 – State of Maharashtra.
 - Mr. Irfan Ansari a/w. Amreen Shariff and Mr. Abdul Karam Ansari, Advocates for Respondent No.2 in both Anticipatory Bail Applications.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 02, 2025

P.C.:

- 1.** Mentioned out of turn at the rising of the Court.
- 2.** Heard Mr. Waskar, learned Advocate for Applicants in both Anticipatory Bail Applications; Ms. Ganpathy, APP for Respondent No.1 – State of Maharashtra and Mr. Ansari, learned Advocate for Respondent No.2 in both Anticipatory Bail Applications.

3. This is a group of two Anticipatory Bail Applications. In Anticipatory Bail Application No.2974 of 2024, Applicant is Navin Ramji Kothari whereas in Anticipatory Bail Application No.3141 of 2024, Applicants are Mrs. Irene Edwyn D'mello and Mr. Edwyn Jerry D'mello.

4. Learned Advocates for Applicant/s and original Complainant who is arraigned as Respondent No.2 in both the Applications have placed before me Consent Terms entered between them which are dated 26.12.2024. They are tendered before me today. They are signed by the Applicant/s and Respondent No.2 in both Applications. Both the learned Advocates persuade me to peruse the Consent Terms and pass appropriate orders in the interest of justice. It is seen that Consent Terms are conditional Consent Terms. Parties have agreed that subject to the conditions stated in the Consent Terms to be complied with by the Applicants in both the Applications. Present Applications be appropriately disposed of.

5. Mr. Waskar, learned Advocate appearing for the Applicants in both Applications would draw my attention to clause Nos.6 and 7 of the Consent Terms. In clause No.6, it is stated that all 3 Applicants agree and undertake to complete the construction of the project "MIDASBHAKTI MEADOWS" and hand over vacant, peaceful possession of the flats alongwith Occupation Certificate (OC) to all flat

allottee's / purchaser's / aggrieved party's within a period of 12 months from 18.12.2024 i.e. on or before 18.12.2025 and shall not ask any further extension period.

6. In clause No.7, it is stated that original Complainant i.e. Respondent No.2 before me and all other flat allottee's / purchaser's / aggrieved party's of the association as stated therein agree to provide their consent for extension of the project registration under MahaRERA for a period of 12 months from 18.12.2024 as stated therein to enable the Applicants to complete the project within a period of 12 months from 18.12.2024 as agreed.

7. Above two undertakings given by the Applicants and Respondent No.2 and all flat allottee's / purchaser's are taken as undertaking given to this Court.

8. In view of the Consent Terms, the following order is passed:-

- (i) Consent Terms are taken on record and marked "X" for identification. They are running into 5 pages. For ease of reference and convenience, Consent Terms are scanned and reproduced below:-

"X" *Topical Court 2/11/2024*

IN THE HONOURABLE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2974 OF 2024
C. R. NO. 478 OF 2024 (TILAK NAGAR P. S.)
C. R. NO.60 OF 2024 (E.O.W. UNIT 2)
DIST.: MUMBAI

NAVIN RAMJI KOTHARI] ... Applicant

VERSUS

1) THE STATE OF MAHARASHTRA]
2) GUL TOTLANI] ... Respondents

ALONG WITH

IN THE HONOURABLE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3141 OF 2024
C. R. NO. 478 OF 2024 (TILAK NAGAR P. S.)
C. R. NO.60 OF 2024 (E.O.W. UNIT 2)
DIST.: MUMBAI

1) MRS. IRENE EDWYN D'MELLO &]
2) MR. EDWYN JERRY D'MELLO] ... Applicants

VERSUS

1) THE STATE OF MAHARASHTRA]
2) GUL TOTLANI] ... Respondents

CONSENT TERMS

1. Mr. Navin Ramji Kothari (Applicant in ABA No: 2974 of 2024), Mrs. Irene D'Mello, and Mr. Edwyn Jerry D'Mello (Applicants in ABA No: 3141 of 2024), have filed applications for Anticipatory Bail before the Hon'ble High Court in relation to FIR No. 478 of 2024 (Tilak Nagar P.S.) and FIR No. 60 of 2024 (E.O.W. Unit 2)

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2. Mr. Gul Totlani (Respondent No. 2) has filed his Intervention Applications (IA No. 4704 of 2024 in ABA 2974 of 2024 and IA No. 4889 of 2024 in ABA No: 3141 of 2024) which was allowed by the Hon'ble Court and directed Applicants to be made/add a party in both the Anticipatory Bail Applications.
3. Mr. Navin Ramji Kothari, Mrs. Irene D'Mello, and Mr. Edwyn Jerry D'Mello had earlier filed a conditional affidavit-cum-undertaking to hand over possession of the new flat within 15 months.
4. On 18.12.2024, the Applicants represented, through their advocate, that they are willing to submit an unconditional affidavit-cum-undertaking to hand over possession of the new flat, along with the Occupation Certificate (OC), to all Flat allottee's / purchaser's/ aggrieved party's within 15 months.
5. The parties, through mutual understanding and amicable discussions held on 22.12.2024 in the presence of Applicants, Informant/Respondent No.2 and other Flat allottee's/ purchaser's/ aggrieved party's have agreed to the following terms in relation to the subject matter of the proceedings and complaints lodged before the concerned authorities:
6. Mr. Navin Ramji Kothari, Mrs. Irene D'Mello, and Mr. Edwyn Jerry D'Mello agree and undertake to complete the construction of the project "MIDASBHAKTI MEADOWS" and to hand over vacant, peaceful possession of the flats, along with the Occupation Certificate (OC), to all Flat allottee's/ purchaser's/ aggrieved



party's within a period of 12 months from 18.12.2024, i.e., on or before 18.12.2025 and will not ask any further extension period.

7. The original complainant, Mr. Gul Totlani, and all other flat allottee's/ purchaser's/ aggrieved party's of the association, agree to provide their consent for the extension of the project registration under MahaRERA for a period of 12 months from 18.12.2024, i.e., on or before 18.12.2025 to enable Mr. Navin Ramji Kothari (Applicant in ABA No: 2974 of 2024), Mrs. Irene D'Mello, and Mr. Edwyn Jerry D'Mello (Applicants in ABA No: 3141 of 2024) to complete the project within a period of 12 months from 18.12.2024, i.e., on or before 18.12.2025 and as per the terms herein.
8. Mr. Gul Totlani and all other Flat allottee's/ purchaser's/ aggrieved party's further agree to:
 - a) Not initiate any civil or criminal proceedings against the Applicants within a period of 12 months from 18.12.2024, i.e., on or before 18.12.2025 in respect of the delayed possession of flats.
 - b) Conditional Consent to the grant above mentioned Anticipatory Bail's subject to the present Consent term/ undertaking given by the Applicants in connection with FIR No. 478 of 2024, registered at Tilak Nagar Police Station under Sections 420, 409, 120-B of IPC and Sections 3 and 13 of MOFA.
9. Mr. Navin Ramji Kothari, Mrs. Irene D'Mello, and Mr. Edwyn Jerry D'Mello, in view of the above settlement, agree to file simultaneously a fresh affidavit-cum-undertaking confirming



unconditional commitment to hand over possession of the flats with the OC within a period of 12 months from 18.12.2024, i.e., on or before 18.12.2025 and will not ask any further extension period, in replacement of the previous affidavit which referred to a 15-month period as represented and assured before the Court on 18.12.2024.

10. It is further agreed that, in the event the Applicants fails to comply with the terms herein or complete the project within the stipulated period of 12 months from 18.12.2024, i.e., on or before 18.12.2025, the Anticipatory Bail's of Applicants Automatically Stand Cancel and all Flat allottee's /purchaser's/ aggrieved party's shall be entitled to resume/ initiates legal proceedings and pursue all remedies available under the law, without prejudice to any rights and entitlements.
11. These consent terms shall be binding on all the parties hereto and shall form part of the record of the Hon'ble Court.
12. The parties confirm that these consent terms have been executed voluntarily, without any coercion, undue influence, or misrepresentation, and with a full understanding of their respective rights and obligations.

Place: Mumbai

Date: 26.12.2024 -

N. R. Kothari

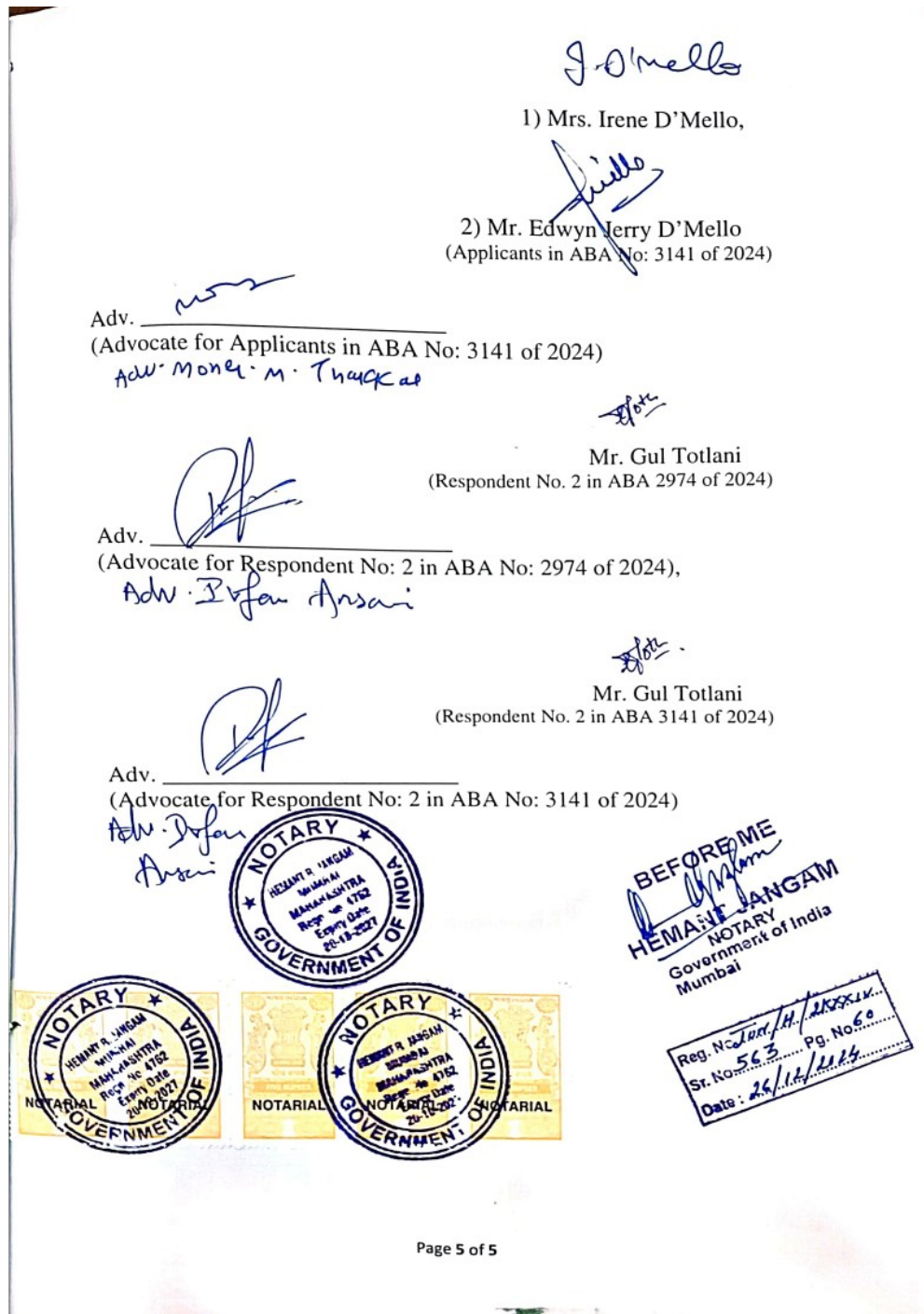
Mr. Navin Ramji Kothari
(Applicant in ABA No: 2974 of 2024)

Adv. *[Signature]*
(Advocate for Applicant in ABA No: 2974 of 2024)

Adv. Morel. M. Thakkar

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- (ii) Though in clause No.7, it is stated that Respondent No.2 i.e. original Complainant and all other flat allottee's / purchaser's / aggrieved party's of the association, agree to provide their consent, except original Complainant, rest of the flat allottee's /

purchaser's / aggrieved party's are not before me. Hence it shall be the responsibility of original Complainant to ensure that the consent of the other flat allottee's / purchaser's / aggrieved party's of the association shall be provided as stated in clause No.7 in order to make the Consent Terms effective;

- (iii) Order is passed in terms of Consent Terms to enable the parties to comply with the undertakings stated therein;
- (iv) In view of the Consent Terms, both Anticipatory Bail Applications stand allowed in terms of prayer clause (a);
- (v) In the event of the arrest, 3 Applicant/s in both Applications be enlarged on bail on executing P.R. Bond in the sum of Rs.50,000/- each with one or two sureties in the like amount;
- (vi) Applicants shall report to the Investigating Officer of the concerned Police Station as and when called for by the Investigating Officer;
- (vii) Applicants shall furnish their particulars of their address and mobile number to the Investigating Officer within one week from today;

(viii) Applicants shall not misuse their liberty in any manner or influence any of the witnesses and tamper with evidence; and

(ix) It is directed that Applicants shall extend complete cooperation in the investigation of the instant case.

9. All parties to act on a server copy of this order.

10. Both Anticipatory Bail Applications are allowed and disposed in the above terms.

Ajay

[MILIND N. JADHAV, J.]