Shivgan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4060 OF 2025
WITH
CRIMINAL BAIL APPLICATION NO. 4061 OF 2025
WITH
CRIMINAL BAIL APPLICATION NO. 4063 OF 2025

Ateev Vrajlal Gala …Applicant
Versus
State Of Maharashtra …Respondent

WITH
INTERIM APPLICATION NO. 4805 OF 2025
IN
CRIMINAL BAIL APPLICATION NO. 4061 OF 2025

Ankur Kapoor and Anr. …Applicants
Versus
State Of Maharashtra …Respondent

WITH
INTERIM APPLICATION NO. 4383 OF 2025
IN
CRIMINAL BAIL APPLICATION NO. 4063 OF 2025

Kuwar Yadav …Applicant
Versus
The State of Maharashtra …Respondent

Mr. Girish Kulkarni, Senior Advocate, with Harshad Sathe and Saurabh Butala, Aishwarya Hinge for the Applicant in B.A. 4060 of 2025, 4061 of 2025 & 4063 of 2025.

Mr. H. J. Dedhia, APP for the Respondent-State in all Bail Applications.

Mr. Devakinandan R. Singh, for the Intervener in I.A. 4805 of 2025.

Ms. Sandhya A. Mailagir for Anil. D. Joshi for the Intervener in I.A.

4383 of 2025.

Mr. Vivek Patil, with Afsar Ansari, Apurva Renge, i/b Vivek Patil & Associates, for the Informant/Intervenor in B.A.4060/2025.

Mr. V. S. Shirsat, API attached to Kasarwdavali Police Station, present.

CORAM: R. M. JOSHI, J.
DATED: 18th APRIL, 2026.

PC:-

1. By these Applications, the Applicant seeks bail in connection with C.R. No. 261 of 2022 for the offences punishable under Sections 420, 406 read with 34 of Indian Penal Code, 1860 (for short "IPC"), C.R. No. 0318 of 2022 for the offences punishable under Sections 420, 465, 467 and 471 of the IPC and C.R. No. 0283 of 2022 for the offences punishable under Sections 420, 406 read with 34 of the IPC, all registered with the Kasarwdavali Police Station, Thane City.

2. Since all these Applications involve similar facts, by consent of both sides, they are heard and decided together.

3. In short, it is the case of the prosecution that in three different First Information Reports (FIRs) lodged by the Informants, there is an allegation against the present Applicant that though the Applicant and the Co-accused received amounts of consideration towards the sale of flats, the Applicant suppressed the fact that mortgage has been created in respect of said flats and sold them to the Informants. There is further allegation in one of the FIRs that the Applicant prepared a false 'no due' certificate issued by the J.M. Finance in order to dupe the Informant of the amount. The offence came to be registered as mortgages were created in respect of the same and the banks/financial institutes initiated the recovery proceedings against the said flats. In short, the details in respect of each of the FIR is recorded herein-below:-

4. The Applicant, Director/Chairman of M/s. Vijay Group Construction Pvt. Ltd., undertook the project "Vijay Enclave", Waghbil, Thane. The Informants/Original Complainants purchased the flats in the said "Vijay Enclave". The Applicant induced the Informant to make the investment of Rs.1,10,00,000/- in C.R.No. 261 of 2022; Rs.1,07,40,000/- in C.R.No. 318 of 2022 and Rs. 1,17,00,000/- in C.R.No. 0283 of 2022 respectively by making false representation that the property would be free from encumbrances. However, the said flats were mortgaged with Axis Bank and the "No Objection Certificate" of the "No Due Certificate" of the Axis Bank was forged by the Applicant. In this manner, the Applicant has cheated several flat purchasers. In pursuance of the FIR, investigation was carried out and the charge-sheet came to be filed. The Applicant was arrested on 16th April 2025. Notably, while the FIR originally implicated four other individuals, only the present Applicant was ultimately arqraigned in the final charge-sheet.

5. The learned Senior Counsel appearing on behalf of the Applicant, submits that though it is alleged that the Applicant had misrepresented with regard to the status of flats that it being not mortgaged, there is a categoric statement in the agreement to sale/sale deed indicating that such mortgage exists. It is his further submission that in any case, the present offence cannot be tried beyond Section 420 of the 'IPC', which is punishable with maximum 7 years imprisonment. It is his submission that in fact, no offence has been committed by the Applicant for the reason that the effect of non-payment of the money in respect of one of the projects, has resulted into creation of the situation in question. It is his further submission that once, there is evidence to indicate that flat purchasers were duly informed about the mortgage, question of any misrepresentation and cheating does not arise. He further argues that intention of cheating the Informants must exist from the inception of the transaction and the disclosure of mortgage clearly shows that no such intention was present at the time of entering into transactions in question. He also drew attention of the Court to various proceedings initiated by the flat purchasers against the Applicant as well as banks/financial institutions. It is his submission, on instructions, that the Applicant is ready to extend all co-operation to the Informants/Flat Purchasers in order to ensure that they get flats free from encumbrances or refund of the money as the case may be. In this regard, on instructions, he makes statement to have exchanged communication with one of the Flat Purchasers/Informants. A photo-copy of the said communication is on record. It is his submission that in any case, the Applicant cannot help investors unless he is released from jail. It is claimed that the Applicant is arrested on 16th April 2025 and for over period of one year, he is in jail. According to him, since the offence charged against him is punishable with maximum imprisonment of 7 years and, as there is no possibility of commencement and conclusion of trial in a reasonable period of time, the Applicant deserves bail.

6. Learned counsel for the Informant/Intervenor in Criminal Bail Application No. 4060 of 2025 contends that the Applicant has accepted entire amount of consideration and it was necessary for him to sell the flat free from encumbrances. It is his submission that the intention of the Applicant to cheat can be gathered since inception in view of the fact that he sold flat to the Informant, which was mortgaged to the bank/financial institution. It is sought to be argued that the Applicant has misrepresented about obtainment of 'No Objection Certificate' ('NOC') in respect of Flat No.11 from the Axis Bank. It is his submission that relying upon the said NOC and the representation made by the Applicant, the Informant believed that the flat sold to him would not have any mortgage or loan. In any case, it is his submission that the Applicant needs to be put to conditions in order to safeguard the interests of the Informant. He confirms the fact on behalf of the Applicant that communication is received as stated by the learned Senior Counsel appearing on behalf of the Applicant.

7. The counsel for the Intervenor in Criminal Bail Application No.4061 of 2025 submits that there is evidence on record to indicate that the offence of forgery of the certificate of 'No Objection' issued by the J. M. Finance is proved by way of evidence collected during the investigation. Thus, it is argued that since such serious offence is made by the Applicant, he is not entitled to bail. In this regard, statements of witnesses are also referred to by the counsel.

8. In Criminal Bail Application No.4063 of 2025, learned counsel for the Informant/Intervenor further submitted that the 'NOC' issued by the Axis Bank is doubtful. To support his submission, reference is made to the statements of witnesses and observations made by the Trial Court in it's order. It is argued that the date on which the NOC was issued by the Axis Bank, differs and, therefore, there is a case made out against the Applicant of fabrication of documents. It is submitted that since consideration has been received on misrepresentation, there is *prima-facie* evidence against the Applicant showing his involvement in the crime in question.

9. The learned APP opposes all the Bail Applications by contending that herein in this case, on account of misrepresentation made by the Applicant, Informants/Flat Purchasers were induced to make the payment of considerations. It is further pointed out that since the Applicant has sold flats, which were already mortgaged with the Banks/Financial Institutions, the offence of cheating is made out against him.

10. At the outset, this Court would like to deal with the contention of the learned counsel Informant in Criminal Bail Application No. 4063 of 2025 with regard to any case being made out against the Applicant of fabrication of documents. *Prima-facie*, perusal of the documents indicate that though, it is the case of the Informant that one 'NOC' purported to be issued by J.M. Finance was seen on the mobile phone of the Informant by the Applicant, there is absolutely no investigation carried out in this regard. In order to allege any fabrication of documents, there must be investigation indicating the existence of the document by itself. Herein in this case, except for the statement of the Informant, there is no material in order to show that any document was prepared by the Applicant and on the basis of which the Informant was induced to make payment. On the contrary, agreement to sale of the Informant indicates that there is no mention about any such 'NOC' being obtained from the financial institutions. The relevant clause in the said agreement is kept blank. Thus, there is nothing on record to show that there is fabrication of document of 'NOC' of the said financial institutions.

11. Insofar as the 'NOC' of Flat No.11 issued by the Axis Bank is concerned, there is a statement of witness from the Axis Bank confirming the fact that 'NOC' has been issued in respect of Flat No.11. Thus, it cannot be said that the Applicant fabricated 'NOC' of Flat No.11 in order to induce the investors to pay considerations towards the purchases of the flats.

12. Once, there is no *prima-facie* material on record to indicate involvement of the Applicant in fabrication of any record/document, the offence remains against him is the offence punishable under Section 420 of the IPC, which is punishable with maximum imprisonment of 7 years.

13. The Applicant is in jail for a period of above one year. During the course of hearing, the learned Senior Counsel appearing on behalf of the Applicant, on instructions, has given an assurance to the Informants about extending his co-operation for making the flats of the Informants free from encumbrances. Similarly, written communication is sent on behalf of the Applicant to one of the Informants.

14. Having regard to the aforesaid facts and also in view of the fact that the there is not even remote chance of commencement and conclusion of trial within a reasonable period of time, the Applicant is entitled to bail. Hence, following order:-

ORDER

(i) The Bail Applications stand allowed in connection with C.R. No. 261 of 2022, C.R. No. 0318 of 2022, C.R.No. 0283 of 2022 registered with the Kasarwdavali Police Station, Thane City;

(ii) The Applicant be released on bail on furnishing P .R. Bond of Rs.30,000/- with one or two sureties in the like amount to the satisfaction of the Trial Court;

(iii) The Applicant not to interfere into the evidence of the prosecution in any manner whatsoever;

(iv) The Applicant to attend all the dates of hearing before the Trial Court except exempted by a specific order by the Trial Court;

(v) The Applicant shall be bound by the assurances given to the Informants before this Court, by written communication as well as oral statements to co-operate to them.

15. The Bail Applications stand disposed of with Interim Applications therein.

16. The observations made herein-above are *prima-facie* in nature and won't bind parties or Trial Court during trial.

(R. M. JOSHI, J.)

SHAMBHAVI NILESH SHIVGAN

Digitally signed by SHAMBHAVI NILESH SHIVGAN
Date: 2026.04.20 20:01:36 +0530