**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.2410 OF 2021**

**AHMAD S/O. ABDULLABHAI JIWANI )...APPLICANT**

**V/s.**

**THE STATE OF MAHARASHTRA )...RESPONDENT**

Mr.Ashraf Patel, Advocate for the Applicant.
Ms.P.P.Shinde, APP for the Respondent – State.
Mr.Shrikant Nimbalkar, Police Inspector, Ambad Police Station, present in Court.

**CORAM : V. G. BISHT, J.**

**RESERVED ON : 25th NOVEMBER 2021**
**PRONOUNCED ON : 9th DECEMBER 2021**

**P.C. :**

1 The present application has been moved by the applicant under Section 438 of the Code of Criminal Procedure (Cr.P.C.) apprehending arrest under Section 420, 406, 120b read with 34 of the Indian Penal Code (IPC) and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in

Financial Institutions) Act (MPID Act) registered vide Crime No.324 of 2015 with Police Station Ambad, District Nashik, later on numbered as Special Case No.3 of 2018.

2 Pursuant to the order passed under Section 156(3) of the Cr.P.C. by the learned Judicial Magistrate First Class, Nashik, on a complaint moved by one Amit Yashwant Sawargaonkar, the First Information Report (FIR) in question came to be registered. According to the informant, the applicant was one of the Directors of M/s.Phoenix Infra Estate International Ltd. engaged in the business of real estate. The applicant approached the informant and gave information about the company's business and further informed that the company was having project by name Archid Park on the plots bearing Survey No.1170/2, 1170/3 and 1226 situated at Village Devpur Shivar, Taluka Sinnar, District Nashik and that the company wants to sell the said plots. According to prosecution it was further represented to the informant that even if transaction could not be completed, the informant would get 100% growth in the amount. This being

so, the informant showed interest in the scheme and agreed to purchase the plot for Rs.2,56,721/- and Agreement for Sale was executed. However, Sale Deed could not be executed and the accused company and its agents and Directors avoided to take further steps. Although the informant was assured that he would get double the amount which he had deposited, but nothing was paid to him. Even a cheque issued in his name was dishonoured for which prosecution under Section 138 of the Negotiable Instruments Act is being pursued by the informant. According to prosecution, the informant later on came to know that there were others like him who had invested in the company but were not paid the promised return. On this basis, he filed a private complaint and as noted earlier, the learned Judicial Magistrate First Class was pleased to direct investigation under Section 156(3) of the Cr.P.C.

3 It further appears from the record that during the course of investigation, it was revealed that total number of investors of the said company were quite high and the amount

misappropriated was to the tune of Rs.3,58,80,469/-. Accordingly, provisions of MPID Act were also applied.

4 Mr.Ashraf Patel, learned counsel for the applicant, submits that the applicant was Director of the concerned Company till the date of his resignation i.e. 31st May 2014 and the same has been duly accepted by the Board vide its Resolution dated 2nd June 2014. According to the learned counsel although the agreement was executed but it was never implemented. It is also not the case that the applicant, in any manner, had given allurement to the investors including the informant herein. The case is purely of civil nature. All the necessary documents related to the company and the customers have been duly seized by the Investigating Officer leading to the filing of charge-sheet, and therefore, there is nothing to recover and discover from the applicant-accused.

5 The learned counsel then next submits that other Directors of Company, namely, Vijay Manikram Gautam and

Chandrashekhar Motiramji Deshbhratra have been released on bail having similar allegations, and therefore, the principle of parity is also applicable to the applicant.

6 Smt.P.P.Shinde, learned APP, on the other hand, vehemently opposed the submissions by contending that there are more than 100 investors whose huge amount has been misappropriated by the applicant and other Directors on pretext of giving them plots which were never given. In all, the amount of misappropriated is more than Rs.3.5 crores. Having regard to the seriousness of offence and the fact that the applicant was absconding since 2015, his custody is necessary for further investigation.

7 Perused the investigation papers.

8 As far as the submission of learned counsel for the applicant that the other Directors have been released on bail is concerned, I find from the record that one of the Directors,

namely, Vijay Manikram Gautam has been enlarged on regular bail by this Court (Coram : Sarang V. Kotwal, J.) on 23rd September 2019. It may not be out of place to mention here that the role of accused Vijay Manikram Gautam qua the applicant is similar, in as much as it is alleged by the informant that the applicant was also one of the Directors of the said company. It is also not disputed that the applicant herein resigned from the company on 31st May 2014 and the same has been duly accepted by Board members vide its resolution dated 2nd June 2014. The documents to that effect are on record and it is very clear from those documents that the applicant indeed resigned from partnership of the concerned company with effect from 31st May 2014.

9 I have also gone through Agreement to sell dated 13th October 2010 between the said company and informant herein. Clause (5) of the Agreement to Sell reads that “that the Said Plot is free from encumbrances of all kinds what so ever and also free from Gram Panchayat Taxes etc. defect if any shall be satisfied by

the vendor to the satisfaction of the Purchaser." From this clause it is prima facie clear that the company in question sincerely believed that they had proper title. It is only after cancellation of mutation entry, the title became defective. Even if it is so, the said clause takes care of the vendee.

10 As far as the question of dishonest intention since inception is concerned, the same will have to be ascertained at the time of trial after the parties had led their evidence. I am also aware that huge monies of the investors are involved but then there is always a civil remedy. Their interest can also be taken care of by virtue of provision, viz., Section 4 of the MPID Act.

11 Now the only question of importance is that since one of the Directors is admitted on regular bail and the fact that the present applicant is also similarly placed, whether, the apprehension of applicant of his being arrested is justified or not. I am also aware that the offence under Section 420 of the IPC is

triable by Magistrate having punishment upto 7 years. Investigation is over and charge-sheet has already been filed. As far as the concern of the learned APP that custody of applicant is necessary for the purpose of investigation is concerned, suitable directions can be given, so that the applicant can render assistance and co-operation, if at all required.

12 In view of above, I am inclined to allow the application. Hence, I pass the following order :

**ORDER**

1 The application is allowed.

2 In the event of his arrest in Crime No.324 of 2015 with Police Station Ambad, District Nashik, later on numbered as Special Case No.3 of 2018 for the offences under Section 420, 406, 120b read with 34 of the IPC and under Sections 3 and 4 of the MPID Act, the applicant be released on bail on

his executing P.R.Bond in sum of Rs.1,00,000/- with 1/2 surety in like amount.

3 The applicant shall attend the concerned twice in a week on Monday and Wednesday, in between 11.00 a.m. to 2.00 p.m. for a period of six months.

4 The applicant shall not tamper the prosecution evidence.

5 The applicant shall attend the Court proceedings regularly.

6 The application stands disposed off accordingly.

**(V. G. BISHT, J.)**