

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1611 OF 2021**

Kuzakkum K. R. Malik

...Petitioner

Versus

The State of Maharashtra and anr.

...Respondents

WITH

INTERIM APPLICATION (ST) NO. 10851 OF 2022

WITH

INTERIM APPLICATION NO. 2100 OF 2021

WITH

INTERIM APPLICATION NO. 2105 OF 2021

WITH

INTERIM APPLICATION NO. 2103 OF 2021

WITH

INTERIM APPLICATION NO. 2099 OF 2021

WITH

INTERIM APPLICATION NO. 2101 OF 2021

WITH

INTERIM APPLICATION NO. 2098 OF 2021

WITH

INTERIM APPLICATION NO. 2077 OF 2021

WITH

INTERIM APPLICATION NO. 2102 OF 2021

AND

CRIMINAL WRIT PETITION NO. 1612 OF 2021

Mohamed Bin Sharukh and ors. ...Petitioners

Versus

The State of Maharashtra and anr. ...Respondents

WITH

INTERIM APPLICATION (ST) NO. 10838 OF 2022

WITH

INTERIM APPLICATION NO. 2095 OF 2021

WITH

INTERIM APPLICATION NO. 2096 OF 2021

WITH

INTERIM APPLICATION NO. 2094 OF 2021

WITH

INTERIM APPLICATION NO. 2090 OF 2021

WITH

INTERIM APPLICATION NO. 2086 OF 2021

WITH

INTERIM APPLICATION NO. 2081 OF 2021

WITH

INTERIM APPLICATION NO. 2078 OF 2021

WITH

INTERIM APPLICATION NO. 2079 OF 2021

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Mr. Zaid Qureshi for the Petitioner in both the Writ Petitions.

Mr. K.V. Saste, APP for the State.

Mr. Ankur Pahade a/w Anshuman R. Asare for Respondent No.2 and Intervenor in IA/2100/2021, IA/2105/21, IA/2103/21, IA/2099/21, IA/2101/21, IA/2098/21, IA/2077/21, IA/2102/21, IA/2095/21, IA/2096/21, IA/2094/21, IA/2090/21, IA/2086/21, IA/2081/21, IA/2078/21, IA/2079/21.

Mr. Amit Gajanan Kasbe for Intervenor in IA(st)/10851/22 and IA(st)/10838/22.

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**CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATED : 18 JULY 2022

P.C. :-

Heard the learned Counsel for the parties.

2. By these petitions, the Petitioners are seeking to quash the FIR No. 145 of 2021 registered with the Hinjewadi Police Station, Pune against the Petitioners for the offences punishable under Sections 406, 409, 420, 120-B read with 34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. The FIR was lodged by the Respondent-Complainant stating that in the year 2012, the Petitioners published an advertisement that

their Company would be developing and selling plots for farm house. The Complainant visited the office of the Company where it was represented that the Petitioners are in the business of development for thrity three years and also have businesses abroad. On 10 February 2012, the Complainant and Petitioners entered into an agreement sale of a plot and Complainant gave Rs.1305000/- to the Company. Complainant noticed that no steps were being taken by the Petitioner's Company. On a site visit the Complainant found that the Company had done no work. No land was acquired. When the Complainant and others tried to enter the site, they were insulted and chased by the Petitioners' employees. Later, the Petitioners promised that a plot will be given, which was not given. Then the Petitioner represented that instead of giving the plot, the consideration will be treated as a earning deposit 18% interest. Later an agreement was executed on 21 July 2015 and cheques were issued by the Petitioners stated that if they are not realized at the rate of 18% interest would be given. The cheques were dishonoured. In the case filed against the Petitioners at Shivaji Nagar Court, Pune, on 29 January 2019 settlement took place and it was agreed by the Petitioners an amount of Rs.2000797/- would be returned and a schedule of payment was given. But only amounts of Rs.255500/- and Rs.121987/- were given and thereafter nothing was paid. Time and again the Petitioners gave assurances which were not honoured. It

was stated by the Complainant that not only the Complainant but various other persons were duped in similar manner. On these all allegations FIR was lodged.

4. Various Intervention Applications have been filed. The intervenors contend that they are also similarly situated victims as the Complainant.

5. These Petitions came up on board on 31 March 2021, where on a statement that a sum of Rs.1700000/- would be deposited and on the assurance that the matter will be settled, notice was issued on 31 March 2021 in both the Petitions. On 28 June 2022, the following order came to be passed:

“ Heard learned Counsel for the parties.

2. A request is made on the ground that the Advocate on record who comes from Pune is not available.

3. On the last occasion, it was not the Advocate on record, but another Counsel had argued the matter and he made the same request, which we had declined in view of serious opposition of the Respondents. The Petitions are kept today for ‘For Directions’. We had passed a specific order in that regard on 20 June 2022 as follows :

Heard the learned Counsel for the parties.

2. The learned Counsel for the Petitioner seeks time till 4 July 2022.

3. The learned Counsel for the Respondents-Complainants and the learned APP make a

grievance that the Petitioner is not cooperating with the authorities, though there is an interim order in favour of the Petitioner. We are inclined to fix the matter on 4 July 2022 for disposal. However, so as to ensure that the Petitioner attends the Police Station as called for by the investigation authorities, we make it clear that if the Petitioner does not cooperate by attending the concerned Police Station, the Court may consider vacating the interim order.

4. Stand over to 28 June 2022 under the caption “For Directions”, to report compliance.”

4. A report is submitted by the learned APP stating that from 21 June 2022 to 27 June 2022, the Petitioners have not remained present. Such conduct cannot be entertained. In light of this statement, which is accepted and in the light of the law laid down by the Supreme Court in the case of Niharika Infrastructure, we vacate the ad-interim order.

5. It is open to the Petitioners if so advised to avail of the remedy of applying for anticipatory bail Application etc. which remedy will be considered on its own merits.

6. The Petitions will be considered in respect of the prayers made for quashing of FIR.

7. Stand over to 4 July 2022 as scheduled.”

6. Thereafter, on 4 July 2022, the following order came to be passed:

The learned Counsel for the Petitioners seeks time to examine the intervention Applications. There are two Writ Petitions and nine intervention Applications.

2. *The learned APP states apart from the intervention Applications, there are around 582 depositors.*

3. *The learned Counsel for the Petitioners states that instructions as regard the dues of the depositors and stand of the Petitioners would be examined and informed to the Court on the next date. For that purpose, stand over to 18 July 2022.*

4. *If the Petitioners are ready to resolve the dispute with the depositors, we expect that the Petitioner will come with a concrete proposal on the next date alongwith the Affidavit of the Petitioners, otherwise Court will have to proceed to examine the matter on merits.*

7. Today, in the morning session when the matter is called out the Petitioners were not ready with any proposal much-less concrete proposal. Therefore, time was given till the afternoon. In the afternoon, the chart is given to us in respect of nine depositors where certain figures have been given and rate of interest is stated. As regards an amount of Rs.4701487.5/- is stated that it would be paid in October 2022 and remaining would be thereafter in January 2023. The learned Counsel for the Complainants and the intervenors rightly state that looking at the history of the Petitioners' default they had no faith unless amounts are handed over today. According to them, the amounts mentioned as a principal amount is even less than what they had deposited. Be that as it may merely handing over chart

with future promise is not a concrete proposal, in light of the facts and circumstances. It is clear that the Petitioner are only delaying the matter by putting forth frivolous proposals.

8. The learned APP submits that the investigation has revealed that apart from the parties before us there are 582 of such depositors. The names and sums advanced by them which has been shown to us from the investigation papers. Statement of 58 such victims have been recorded and the total amount so far revealed is around Rs. 611029776/-. The learned APP submits that investigation is going on but taking advantage of the ad-interim order, the Petitioners did not cooperate with the investigation, so far till the order was vacated on the last date.

9. The learned Counsel for the Petitioners sought to contend that the Petitioners have intention to repay and some further time be granted to demonstrate *bona fides*. The learned Counsel submits that the Petitioner in Writ Petition No. 1612 of 2021 is a minor. As regards the request for further time to grant the proposal, we refuse the same. The FIR and the statements of other witnesses show that the Petitioners have demonstrated that their promises do not mean anything as they are going back on their promises at will.

10. As on merits of the matter is concerned, the investigation has revealed the execution of agreements and deposits. The magnitude of the fraud, as per the Investigation Agency travels much beyond the Complainants the intervenors before us, with 582 victims. Detailed investigation is necessary and no case is made out whatsoever at this stage to quash the FIR at the inception. Powers to quash the FIR in exercise of inherent and extraordinary powers of this Court is to be exercised in exceptional circumstances. No such exceptional circumstance is made out.

11. Both the Writ Petitions are rejected.

12. Intervention Applications do not survive and are accordingly disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)