

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2265 OF 2022

Mohammed Bin Sharukh Mallik	...Applicant
Versus	
The State of Maharashtra	... Respondent

**WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2266 OF 2022**

Kuzakkum K.R.Malik	...Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. Aashutosh Srivastava, Advocate for the Applicant.

Mr. N.B. Patil, APP for the Respondent – State in Anticipatory Bail Application No.2265 of 2022.

Mr. M. G. Patil, APP for the Respondent – State in Anticipatory Bail Application No.2265 of 2022.

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CORAM	:	PRAKASH D. NAIK, J.
DATE	:	3rd OCTOBER, 2022.

PER COURT:

1. The applicants are apprehending arrest in Crime No.145 of 2021 registered with Hinjewadi Police Station, Dist. Pune for offences punishable under Sections 406, 409, 420 & 120 r/w Section 34 of of Indian Penal Code (for short “IPC”) and Sections 3 & 4 of Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, (for short ‘MPID Act’).

2. The case of the prosecution is that the complainant's son is in America for employment. The Chairman and Director of M/s. Sairang Developer and Promoter Pvt. Ltd published advertisement that the company is selling and developing plots in Pune City and Rural area. It was also represented that the plots are available for farm house. The complainant visited the office of Company. Mr. K.R. Malik was available in the office. He introduced himself as Chairman and Director of Company. Thereafter, he provided information about his company and stated that the company has under construction and development since last 33 years. It is ISO Certified Company having business activity at New Zealand and Australia having their approval. It was also represented that, if the complainant invested an amount in the company, it would be a sound of safe investment. He also informed that the company is having project as Village Rihe, Taluka Mulshi and that plots are available in the said village. He also stated that the plots are occupied and developed with all the amenities and available for sale. The Chairman and Managing Director Mr. K.R.Malik and other directors and staff were also stated that the lands are purchased by the Company in Village Rihe and the process of occupying other property is going on. The entire land would be purchased within one and half year and the lay out would be

prepared. Believing his words, it was decided to execute agreement with the Company having plot at Foliage Park. The agreement was signed by K.R. Malik on behalf of the company. It was decided to provide plot of 5,000 Sq. Ft. As per the agreement, Rs.13,05,000/- were deposited with the Company. Mr. K.R. Malik promised that plot would be provided to the complainant. The amount of Rs.13,05,000/- was accepted from the complainant. The plot was purchased in the name of complainant's son. After execution of agreement, inquiry was made about plot. However, it was informed that process of occupying the plot is going on. The company was issuing E-mail to the complainant. In – 2013, the accused K.R. Malik informed through E-mail that the process of occupying plot is in progress and shortly the plot would be provided to the complainant. The accused kept on giving evasive answers. The complainant went to the place of property, no work of development was in progress. The complainant was shocked. The persons deployed by the accused prevented the complainant from visiting the property. They were abused and assaulted. The complainant and others contacted the staff of the accused K.R. Malik. They were informed that the plot would be provided in March – 2014. The complainant waited till – 2014. No work was in progress. The staff of the accused kept on misleading the

complainant. The complainant approached the accused. Mr. K.R. Malik represented that the agreement of 2012 can be terminated by executing new agreement in respect to the property at Village Rihe. It was also promised that, in the event the amount is not returned, 18% interest would be provided. Agreement was executed on 21st July, 2015. The accused K.R. Malik had promised that the returns would be given to the complainant immediately and in the event the amount is not received as per the agreement, the cheque can be deposited. The cheques were dishonoured. The investors were cheated by representing that the property owned by the accused. The settlement could not be arrived at. The complainant tried to contact K.R.Malik and others for executing settlement, no steps were taken by the accused for fulfilling the settlement. Ultimately it was stated that the accused do not have money.

3. Learned Advocate for the applicant submitted that, no offences are made out against the applicants. Custodial interrogation of the applicants is not necessary. The applicant in Anticipatory Bail Application No.2265 of 2022 has been falsely implicated in this case. When the Memorandum of Understanding was signed, the said applicant was aged around 17 years and 11 months. The applicant Mohammed Bin Sharukh Malik was not the

director in 2012. The MOU is dated 10th December, 2012. The said applicant resigned from the post of Director on 05.03.2020. Custodial interrogation is not necessary. The matter relates to the documents. Multiple FIR were registered. The applicants have settled with several investors. Details of payments are mentioned in these applications. There was no intention to cheat. No offence of cheating or breach of trust is made out. The offence under Section 3 of MPID Act is not attracted. The applicant in Anticipatory Bail Application No. 2265 of 2022 is young boy. He is the son of Managing Director of M/s. Sairang Developer and Promoter Pvt. Ltd. He was appointed as Director of M/s. Sairang Developer and Promoter Pvt. Ltd on 14.09.2012. He was minor at that point of time. He had not played any role in the transaction. He has resigned from the post of Director from 05.03.2020. The FIR was registered after his resignation. M/s. Sairang Developer and purchasers entered into the MOU on 10.02.2012. He cannot be held liable for financial transaction. There is no specific allegations against him in the FIR. M/s. Sairang Developer and Promoter Pvt. Ltd has filed suit against Suyog Natekar and Snehal Natekar. Both the applicants need not be subjected to custodial interrogation. FIR is after thought. The transaction is purely of purchase and sale of land. The applicant K.R.Malik had preferred

Writ Petition No.1611 of 2011 before this Court challenging the FIR. The accused had shown willingness to repay the amount. The matter relates to the documents and custodial interrogation of the applicant is not necessary.

4. Learned APP submitted that, both the applicants are involved in the transaction. The complainant was deceived by the applicant in Anticipatory Bail Application No.2265 of 2022 is the director of Company. Both the applicants were not available. Proclamation was issued. Warrant is issued. Red corner notice is also issued against them. They have sold the property worth Rs.6 Crores.

5. Perused the documents on record. Apparently, false representatives were made to the complainant. Writ Petition preferred before the Division Bench of this Court was rejected. While rejecting the said petition, it was observed that the investigation has revealed the execution of agreement and deposits. The magnitude of fraud, as per the Investigation Agency travels much beyond the complainants and there are 582 victims. Detailed investigation is necessary and no case is made out to quash the FIR. Thus, there is complicity of both the applicants, Several investors were promised of good returns and deceived. Involvement of both the applicants is apparent from record.

6. Considering the aforesaid circumstances, no case for grant of anticipatory bail is made out.

ORDER

Anticipatory Bail Application Nos. 2265 of 2022 and 2266 of 2022 are rejected and disposed off.

(PRAKASH D. NAIK, J.)