



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

ANTICIPATORY BAIL APPLICATION NO. 1940/2024

RAMESH HARAKCHAND GADA & ANR. ..APPLICANTS
VS.
STATE OF MAHARASHTRA ..RESPONDENT

WITH

ANTICIPATORY BAIL APPLICATION NO.2073/2024

RAJENDRAKUMAR HASTIMAL SINGHAVI & ANR...APPLICANTS
VS.
STATE OF MAHARASHTRA ..RESPONDENT

WITH

ANTICIPATORY BAIL APPLICATION NO. 2189/2024

PANKAJ K KUBADIA ..APPLICANT
VS.
STATE OF MAHARASHTRA & ANR ..RESPONDENTS

WITH

ANTICIPATORY BAIL APPLICATION NO.2193/2024

KAMLESH PRABHULAL KHANDOR & ANR ..APPLICANTS
VS.
STATE OF MAHARASHTRA & ANR ..RESPONDENTS

Senior Advocate Aabad Ponda a/w. Adv. Jugal Kanani, Adv. Manisha Prajapati, Adv. Parth Parikh i/b. Vimla & Co. for applicants in ABA/1940/2024.

Adv. Vaibhav Bagade for applicants in ABA/2193/2024, ABA/2189/2024, ABA/2073/2024.

Mr. Avinash A. Naik, APP for State.

Adv. Sandeep Karnik for the intervenor in IA/3485/2024 in ABA/2073/2024, IA/3484/2024 in ABA/2189/2024, IA/3456/2024 in ABA/2193/2024, IA/3677/2024 in ABA/1940/2024.

Adv. Ashok Mishra a/w. Adv. Kinjal Mehta, Adv. Dhara Chauhan i/b. Solicis Lex, for the intervenor in IA/3132/2024 in ABA/2073/2024, IA/3088/2024 in ABA/2189/2024, IA/3090/2024 in ABA/1940/2024, IA/3089/2024 in ABA/2193/2024.

Adv. Amogh Singh a/w. Adv. Rahul Arora i/b. Adv. Jeet Gandhi for applicant in IA/3135/2024 in ABA/1940/2024 & IA/3134/2024 in ABA/2073/2024.

Mr. Karamveer Jain, Secretary on behalf of the society present.

CORAM : RAJESH S. PATIL, J.

DATE : APRIL 28, 2025.

P.C. :

1. These applications are filed under Section 438 of the Code of Criminal Procedure, 1973 for seeking pre-arrest bail in connection with the First Information Report (FIR) No.444/2024 registered with the Malad Police Station, for the offence punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code, 1860 as well as Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors Act, 1999.

2. These four pre-arrest bail applications are filed by the partners and ex-partners of the partnership firm who are the developers in the present proceedings. The informant is one Mr. Sanjay Mahendra Parmar has booked a flat in the project of the developers. Apart from

the informant Sanjay Parmar, there are other eight flat purchasers who have complained against the developers' firm as regards not receiving the possession of the flats, delaying construction of the building and non-payment of interest due to delay. There is no case of seeking refund of the amount paid to the developers and interest would be paid on the said amount.

3. The learned counsel Mr. Sandeep Karnik appeared for the intervener (society) supporting the developers. On instructions of the Secretary of the society who is present in the Court submits that the developers on 24/3/2025 has tendered an undertaking dated 24/3/2025. The said undertaking was filed by the current partners of the developers' firm thereby agreeing to complete the construction of the flats of the present nine victims in the subject building and granted occupation certificate by 31/12/2025. The learned counsel Mr. Karnik has agreed and has shown faith in the developers by accepting the undertaking given by the developers. The learned counsel Mr. Karnik has no objection if the present pre-arrest bail applications of the applicants – partners of the developers' firm are allowed, since according to Mr. Karnik, if the pre-arrest bail applications are opposed and are rejected, the developers will not be able to complete the construction as per undertaking given to this

Court.

4. The learned APP appearing for the State, as of today, on instructions, has submitted that the custody of the present applicants are not necessary as they have already filed undertaking to this Court.

5. The learned counsel Mr. Vaibhav Bagade appearing for the developers submits that all the current partners of the developers' firm on solemn undertaking has submitted to this Court that by 31/12/2025, the construction of the building would be completed at least till the floors in which the flats of the present complainant and the interveners who are before this Court and occupation certificate till that floor is granted. He submitted that in order to show their *bonafide* and without admitting the guilt, the applicants are ready to deposit a sum of Rs.8,30,00,000/- in this Court within a period of 60 days which would be the sum total of all the nine flats, with which the present victims are concerned, this will of course be in addition to the undertaking which is already given of completing the construction of the flats with which nine victims are concerned. He submits that as far as nine victims are concerned, one of the victim-complainant has already approached the RERA authorities. In the

said proceedings it will be decided about the possession date and also about the interest component if at all payable to one flat purchaser, on delayed possession. As far as the learned counsel Mr. Singh argument is concerned, apart from this one flat purchaser, the remaining eight flat purchasers can also now approach the RERA for delayed possession and for interest payable on the amount paid by them.

6. The ex-partners in Anticipatory Bail Application No.1940/2024 have not given undertaking as according to them they are not the partners of development firm any more.

7. I am of the view that at this stage where the developers have given solemn undertaking to this Court as regards the nine flat purchasers as far as the present applicants are concerned, which mentions about the flats being completed by 31/12/2025 and the occupation certificate of the said flats being granted by the Planning Authority. Therefore, as far as possession of the flats are concerned of the nine victims, the same is taken care of. As far as the interest component is concerned, about all nine victims, one victim i.e. the complainant herein has already approached the RERA authorities. Rest of the eight victims are still free to approach the RERA

authorities. This is not a forum where the issue regarding refund of flat purchasers is to be decided along with the interest to be payable if any on the said amount. Therefore, according to me, considering the facts that even the learned APP through IO has made a statement that the custody of the present applicants is not necessary. Therefore, according to me, a case is made out to grant the pre-arrest bail to the present applicants.

8. The issue seems to be more of benefits of extra F.S.I. which the developers have received in the year 2022, pursuant to the Development Control Regulations, whereby the saleable building which was to be of 18 floors can now be developed till 33 floors. As far as the slum re-development is concerned, the developers have already completed that building and the slum dwellers have already received their possession as per submission of applicants. The present applicants are persons who have purchased flats “sale component”.

9. The issues regarding relatives and friends of the developers shown as flat purchasers and society being formed based on these purchasers having majority, who according to the complainant have paid Rs.1 lakh each. In my opinion, these issues and other issues raised by the complainant of valuation as far as MOFA Act and RERA

Act are concerned, can be decided by the concerned authorities. In my view, all these issues can not be dealt in the pre-arrest bail applications where specifically an argument is made before me that the complainant and the eight other victims are not seeking refund of their monies along with interest. Their specific case is that all of them want possession of their flat and along with it for delayed period they want interest component. As far as possession is concerned, already an undertaking has been given to this Court which is part of the record. For interest component payable out of nine victims, the complainant has already been approached the RERA authorities seeking specific prayers as far as interest component is concerned along with other prayers. There is no bar to other eight victims from approaching the RERA or any other authorities for seeking interest component for the delayed possession. Hence, the following order.

ORDER

- (a) **The anticipatory bail applications are allowed.**
- (b) In the event of arrest in connection with FIR No. 444/2024 registered with the Malad Police Station, the applicants shall be released on bail, on furnishing P.R. bonds to the extent of Rs.30,000/- each with one or two sureties each of the like amount.

(c) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

(d) The applicants shall furnish details of their residential addresses, contact numbers and email addresses to the Investigating Officer.

(e) The applicants shall attend the concerned police station and meet the IO in every week on Monday's between 11.00 a.m. to 1.00 p.m. till filing of the charge-sheet.

10. Needless to say that violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicants in the present applications and that the trial Court shall proceed further, without being influenced by the observations made in this order.

11. Anticipatory Bail Application No.1940/2024, Anticipatory Bail Application No.2073/2024, Anticipatory Bail Application No.2189/2024 and Anticipatory Bail Application No.2193/2024 are

disposed of.

12. In sequel, the Interim Applications, if any, are also disposed of.

(RAJESH S. PATIL, J.)