

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

CRIMINAL WRIT PETITION NO.5362 OF 2025

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|-------------------|---|----------------|
| 1. Kumar G. Shah |] | |
| 2. Arvind Solanki |] | .. Petitioners |

Versus

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|---|---|----------------|
| 1. The State of Maharashtra, |] | |
| Through Economic Offences Wing, Unit-8 |] | |
| 2. The Competent Authority, |] | |
| Dy. Collector (ENC/Rem), Malad Division |] | |
| 3. Amit Prakash Masalia |] | |
| 4. Prakash Rasiklal Masalia |] | |
| 5. Deena Prakash Masalia |] | |
| 6. Payal Amit Masalia |] | |
| 7. Mayank H. Doshi |] | |
| 8. Cosmos Investments |] | |
| 9. Athena Investments |] | |
| 10. Pulin Kusumgar |] | |
| 11. Veena Developers Pvt. Ltd. |] | |
| 12. Kaushal Prakash Panchal |] | |
| 13. Prakash Uttamlal Panchal |] | .. Respondents |

Mr. Mutahhar Khan with Ms. Ishita Kamath, Mr. Sachin Mhatre and Ms. Rishika Mehra, Advocates, i/by Mhatre Law Associates, for the Petitioners.

Mr. K.V. Saste, Additional Public Prosecutor for Respondent Nos.1 and 2.

Mr. Piyush P. Hushing, Advocate for Respondent Nos.3 to 9.

**CORAM : SHREE CHANDRASHEKHAR, CJ. &
GAUTAM A. ANKHAD, J.**

DATE : 28TH JANUARY 2026.

P.C. :

Mr. Kumar G. Shah, petitioner no.1, aged about 75 years and engaged in business joins Mr. Arvind Solanki, petitioner no.2, who is aged about 67 years and discloses his occupation as former

C.A., I.C.W.A. and they have filed this writ petition seeking a direction for transfer of the investigation of C.R. No.92 of 2019 pertaining to F.I.R. No.164 of 2015 to Central Bureau of Investigation (CBI), Serious Fraud Investigation Office (SFIO) or Enforcement Directorate (ED). The petitioners are also seeking a direction to the designated Special MPID Court to decide various applications filed by them since 2024. There are unrelated prayers made by the petitioners for deposit of Rs.5,05,00,000/- in the designated Special MPID Court in compliance of the statement dated 14th May 2015, a direction to the respondent nos.3 to 9 and the respondent nos.11 to 13 to not to create third party rights in the construction and development project bearing MAHARERA No.P99000012256 and a direction to the competent authority to conduct the forensic audit through a Forensic Auditor appointed through empanelled Forensic Auditors with SEBI. The petitioners refer to the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 which makes provisions for provisional attachment and disbursement of the proceeds to the aggrieved investors. The grievance of the petitioners raised in this writ petition is that the respondent-authority has failed to attach sufficient properties equivalent to about Rs.17.35 crores. The learned counsel for the petitioners refers to the order dated 18th December 2024 passed by this Court in Criminal Writ Petition (Stamp) No.25821 of 2024 and submits that no action was taken by the Economic Offences Wing or the competent authority. In paragraph no.7 of the order dated 18th December 2024, this Court indicated that the Principal Secretary of the Home Department can issue certain directions keeping in mind the long pendency of the criminal cases and despite that properties were not attached.

2. Mr. Piyush P. Hushing, the learned counsel for the respondent nos.3 to 9 and Mr. K.V. Saste, the learned Additional Public Prosecutor submit that the petitioners have approached this Court with similar prayers which were made by them in Criminal Writ Petition (Stamp) No.25821 of 2024. The said writ petition was disposed of by observing that as sufficient properties have been attached and the Competent Authority will make an appropriate application for auctioning the properties before the MPID Court, nothing survives for further consideration in the petition and the proceedings were closed on 16th April 2025.

3. A crime has been registered and the investigation has been transferred to the Economic Offences Wing. There is no foundation laid in this writ petition for transfer of the investigation and that too after the criminal proceedings are pending before the designated MPID Court to CBI, SFIO or ED. Such a prayer has been made in a casual manner and results in wastage of Court's valuable time. As to the prayers made for a direction to the respondent no.10 to deposit a certain amount in compliance of some statement made on 14th May 2015 and a direction to certain respondents not to create third party rights, we are inclined to indicate that the writ Court cannot exercise the functions of the designated Court. Moreover, the writ Court cannot issue a direction to the designated Court to act in a certain manner or pass a certain order or direction. There is a statutory mechanism provided under the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 which protects the rights of the investors. At the same time, the Courts are required to keep in mind that an accused has also a right in law to defend himself. The accused has above all a natural right that any order passed shall not be passed contrary to the statutory

provisions and without hearing him. The provisions under sub-section (4) of section 7 on which Mr. Mutahhar Khan, the learned counsel for the petitioners has placed reliance shall come into operation only if no case is shown or no objection is raised by the accused on or before a specified date. Sub-section (4) vests powers in the designated Court to make an order of attachment absolute and issue such directions as may be necessary for realization of the assets attached. It is only after such proceedings are complete, the designated Court may pass an order for equitable distribution amongst the depositors of the money realised from out of the property attached. Sub-section (5) provides for a summary proceedings to be adopted where objections are made. Sub-section (6) indicates that the designated Courts shall have powers to make an order of attachment absolute or to vary the said order by releasing portion of the property from attachment. In view of such wide ranging procedure under section 7, no direction can be issued by the writ Court in the present matter for deposit of Rs.5,05,00,000/- or for not creating third party rights. As to disposal of the applications filed by the petitioners, there is no statement made by the petitioners in the writ petition as and when they pressed those applications before the designated Court.

4. In view of the above, Writ Petition No.5362 of 2025 is dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]