IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1928 OF 2024

Imtiyaz Hasanali Maredia & Ors. … Applicants

V/s.

The State Of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.4109 OF 2025
IN
ANTICIPATORY BAIL APPLICATION NO.1928 OF 2024

Asif Aslam Athania & Ors. … Applicants

V/s.

State Of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.3400 OF 2025
IN
ANTICIPATORY BAIL APPLICATION NO.1928 OF 2024

Farhad Yunus Mehsania & Ors. … Applicants

V/s.

State Of Maharashtra & Ors. … Respondents

WITH
INTERIM APPLICATION NO.3698 OF 2025
IN
ANTICIPATORY BAIL APPLICATION NO.1928 OF 2024

Yunus Khaja Shaikh & Ors. … Applicants

V/s.

State Of Maharashtra & Ors. … Respondents

WITH
INTERIM APPLICATION NO.3864 OF 2025
IN
ANTICIPATORY BAIL APPLICATION NO.1928 OF 2024

Salik Khan … Applicant

V/s.

State Of Maharashtra & Ors. … Respondents

WITH
INTERIM APPLICATION NO.3832 OF 2025
IN
ANTICIPATORY BAIL APPLICATION NO.1928 OF 2024

Anis G R Mehsania & Ors. … Applicants

V/s.

The Of Maharashtra … Respondent

Dr. Shirish Gadge a/w Mr. Tanmay P. Bidkar, Mr. Tushar Wable, i/b S. K. Ranjnikar & Associates, Advocate for the Applicants.

Mr. Vivek B. Pandey a/w Mr. Utkarsh Pandey, Advocate for the Applicant in IA/3400/2025.

Mr. Karansingh B. Rajput a/w Fauzan Shaikh, Advocate for the Intervenors in IA/4109/2025, IA/3864/2025 & IA/3832/2025.

Mr. Kuldeep Patil a/w Mr. Sahil Jadhwani & Mr. Yogesh A. Sukale, Advocate for Respondent No.2-CBI.

Ms. G. P. Mulekar, APP, for the State.

CORAM : MADHAV J. JAMDAR, J.

DATED : 26th FEBRUARY 2026

P.C.:

1. Heard Mr. Gadge, learned Counsel appearing for the Applicants, Mr. Patil, learned Counsel appearing for Respondent No.2 and Ms. Mulekar, learned APP for the Respondent-State of Maharashtra.

2. By the present Application filed under Section 438 of the *Code of Criminal Procedure, 1973*, the Applicants are seeking pre-arrest bail in connection with CR No.48 of 2023 dated 7th September 2023 registered with EOW Mumbai, District-Mumbai (FIR No.679 of 2023 registered with Amboli Police Station, Mumbai) under sections 420, 409, 406, and 34 of the *Indian Penal Code, 1860* ("**IPC**")and Sections 3, 5, and 13 of the *Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963* ("**MOFA**") and subsequently Sections 3 and 4 of the provisions of the Maharashtra Protection of Depositors Act, 1999 ("**MPID**") have also been added.

3. The prosecution case is that the First Informant's father has paid total amount of Rs.45,00,000/- for purchase of flat in under construction building in or about 2008 and till date the possession of the Flat has not been handed over. In the FIR it is stated that there are about 138 flat purchasers who have paid about Rs.45 crores and the possession has not been given to them.

4. It is the submission of Mr. Gadge, learned Counsel appearing for the Applicants that the dispute is of Civil nature. He submits that the Flat purchaser will be entitled for compensation or interest as per the provisions of law, however, there is no criminal element involved in the alleged crime. To substantiate the said contention he has relied on the decision of the Supreme Court in the case of ***Thermax Ltd. v. K.M. Johny***[1] and also relies on the decision of the Supreme Court in the case of ***Sarabjit Kaur Vs. State of Punjab***[2]. He submits that there was no intention to commit the crime as envisaged under Sections 406 and 420 of the IPC. He submits that the FIR doesn't mention the dishonest intention to deceive person since beginning of the transaction. He therefore submits that the essential ingredients of Section 420 are missing in the FIR and therefore custodial interrogation is not necessary. He further submits that about 90% construction of the building is completed, which shows that there was no dishonest intention.

5. Mr. Gadge, learned Counsel, points out Agreement Dated 12th June, 2018 executed between the father of the First Informant and the Applicants and submitted that the transaction is of civil nature and in any case the Flat purchaser has agreed for extension of time for delivery of the possession till 31st March 2025.

6. On the other hand, Ms. Mulekar, learned APP submitted that total 200 Flats are sold out of the scheme of 252 Flats and total amount accepted by the Applicant is Rs. 102.45 Crores. She also submits huge amounts have been diverted to the personal accounts of the Applicants

1 (2011) 13 SCC 412
2 (2023) 5 SCC 360

and directors of Maredian Realtors Private Limited. She further submits that there is another company known as Hotel Maredian Private Limited and the Directors of both these companies i.e. M/s Maredian Realtors Private Limited and of M/s. Hotel Maredian Private Limited are the same and total amount of Rs.8,01,05,000/- has been transferred from M/s Maredian Realtors Private Limited to Hotel Maredian Private Limited. She submits that apart from this huge amount has been diverted to the personal accounts of the directors of said Maredian Realtors Private Limited. Ms. Mulekar, submitted that even after invocation of the provisions of the MPID, 5 Flats have been sold. She therefore submits that offences are very serious requiring custodial interrogation. She further submits that there are two antecedents of similar nature which have not been disclosed in the Anticipatory Bail Application.

7. Mr. Patil, learned Counsel appearing for the Respondent No.2 points out order dated 23rd July 2025 passed by a Division Bench of this Court in Criminal Writ Petition (STAMP) No.140 of 2024 and more particularly paragraph no.16 of the same. He submits that huge amounts have been transferred in the personal accounts of the directors.

8. It is admitted position that one of the director namely Barkat Ali Momein has permanently shifted to the USA.

9. Perusal of the record shows that huge amounts have been collected by the Applicants i.e. Directors of M/s. Maredian Realtors Private Limited from the Flat purchasers and the said amounts have then been diverted either to the personal account of sons of the director or near relatives of the directors. Accordingly, total amounts which have been diverted by the directors in their personal account or personal account of family members is Rs.5,95,28,794/-. Apart from the same, the directors of said M/s Maredian Realtors Private Limited who are also directors of Hotel Maredian Private Limited have transferred huge amount of Rs.8,01,05,000/- from the account of M/s Maredian Realtors Private Limited to the account of M/s. Hotel Maredian Private Limited. Said Hotel Maredian Private Limited has been subsequently sold and the Applicants have received total amount of Rs.78,00,00,000/- from the said transaction.

10. The Supreme Court in the decision in ***Newtech Promoters and Developers Private Limited v. State of Uttar Pradesh and Ors.***[3] which is concerning the constitutional validity of RERA has observed in paragraph no.12 as follows:-

3 (2021) 18 SCC 1

> "12. To examine the matter in this perspective, consider what a house means in India. **The data shows that about more than 77% of total assets of an average Indian household are held in real estate and it's the single largest investment of an individual in his lifetime. The real estate in Indian has a peculiar feature. The buyer borrows money to pay for a house and simultaneously plays the role of a financer as building projects collect money upfront and this puts the buyer in a very vulnerable position the weakest stakeholder with a high financial exposure.** The amendment to the Insolvency and Bankruptcy Code, 2018 recognised the homebuyers as financial creditors and the present enactment is the most important regulatory intervention in favour of the homebuyers and it had an impact and with passage of time, has become a yardstick of laying down minimum standards in the market. Earlier, the real estate sector was completely unregulated and there was no transparency in their business profile and after the present enactment, it is open for the potential homebuyers to check if a project is approved under the Act, 2016 that at least gives a satisfaction to a person who is coming forward in making a lifetime investment."
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> (Emphasis added)

11. The Supreme Court has observed that about more than 77% of total assets of an average Indian household are held in real estate and it's the single largest investment of an individual in his lifetime. The Real Estate in Indian ethos has a peculiar importance. The buyer borrows money to pay for the house and simultaneously plays the role of a financier as construction projects collect money upfront and this puts the buyer in a very vulnerable position and the buyer is a weakest stakeholder with a high financial exposure.

12. The Flat purchasers who have purchased Flat from the Applicants are in a similar situation. This is a case where the Applicants accepted huge amounts even without entering into any agreement with the Flat purchaser.

13. It is admitted by the learned Counsel appearing for the Applicant, on instructions of the Applicants that 100% consideration has been accepted only from 35% of the flat purchasers whereas, the learned Counsel appearing for the Intervenor submits that 100% consideration has been accepted from atleast more than 100 Flat purchasers.

14. In view of the contentions raised by Mr. Gadge, learned Counsel appearing for the Applicants that for the offence under Section 420 what is important is that there should be dishonest intention to be shown right from the beginning of the transaction. In view of the said contention raised it is necessary to consider provisions of MOFA and more particularly Section 4 of said act. The relevant part of Section 4 is as under:-

> "4. **Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered**.— 3[(1)] Notwithstanding anything contained in any other law, **a promoter who intends to construct or constructs a block or building of flats**, all or some of which are to be taken or are taken on ownership basis, **shall, before, he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent. of the sale price enter into a written agreement forsale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under** [the Registration Act, 1908 (XVI of 1908) (hereinafter in this section referred to as "the Registration Act")] [and such agreement shall be in the prescribed form.]"
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> (Emphasis added)

15. Thus, what is contemplated under Section 4 of the MOFA is that a developer before accepting consideration of more than 20% of the sale price has to enter into written agreement for sale with such person. In fact what is provided is that, the developer shall accept the consideration as per the progress of the construction. This is a case where, 100% consideration has been accepted by the Applicants, even as per the contention raised by the Applicants from 35 Flats purchasers. In fact perusal of record shows that number of such flat purchasers are much more. It appears that at least more than 20% of the consideration has been accepted from all the flat purchasers without written agreement and registration of the same.

16. Ms. Mulekar, learned APP, on instructions, states that during investigation it has been found that the developers have entered into 172 agreements, however, she states that all the agreements were executed after RERA has been enacted and the consideration is accepted in or about the year 2008. Thus, it is clear that as per the prosecution case the developers have received almost entire consideration without executing agreement from atleast more than 100 Flats purchasers.

17. It is very significant to note that a huge amount of Rs.5,95,28,794/- has been diverted by the Applicants either in their personal account or in the personal account of their close relatives including son and brother of the accused, who has permanently shifted to USA. A huge amount of Rs.8,01,05,000/- has been transferred from said M/s Maredian Realtors Private Limited to the account of M/s. Hotel Maredian Private Limited and the said Hotel Business has been sold for Rs.78,00,00,000/-.

18. Although, it is the contention of Mr. Gadge, learned Counsel appearing for the Applicants that 90% of the construction is completed, during investigation it was found that the building M-1 which is to be of

22 floors only 18 floors slabs are constructed and as far as building no. M-2 is concerned only 15 slabs out of 22 floors has been constructed and as far as building no.M-3 is concerned out of 21 floors only 13 slabs have been constructed.

19. Ms. Mulekar, learned APP states that the construction has stopped in the year 2014 and thereafter there is no progress in the construction.

20. The Supreme Court in the decision in the case of ***Nikita Jagganath Shetty vs. State of Maharashtra*** [4], held that anticipatory bail is an exceptional remedy and ought not to be granted in a routine manner. There must exist strong reasons for extending indulgence of this extraordinary remedy to a person accused of grave offences. It has been further observed that the Court should be very cautious while dealing with the applications for anticipatory bail as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. The said observations of the Supreme Court are squarely applicable to the present case.

4 2025 SCC OnLine SC 1489

21. As noted herein above, the allegations are very serious and grave. It is well settled that among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger of justice being thwarted by grant of bail. On the touchstone of these parameters, no case is made out for grant of anticipatory bail.

22. This is a case where huge consideration has been accepted and in fact 100% consideration has been accepted from many Flat purchasers without entering into the registered agreement. Huge amounts are transferred to the personal account of the Applicant or of their near relatives. Huge amount of Rs.8,01,05,000/- has been transferred to the other company. The said Hotel Maredian Private Limited was sold on 25th April 2024 for huge consideration of Rs.78,00,00,000/- and in spite of receipt of huge amount of Rs.78,00,00,000/- also the Applicants have not taken any steps to complete construction of these building namely

M-1, M-2 and M-3. Ms. Mulekar, learned APP, states that in fact the Applicants have started construction of another building.

23. It is also required to be noted that Criminal Writ Petition (Stamp) No.140 of 2024 was filed by some of the Flat purchasers seeking of transfer of investigation as according to them the police were not property investigating the crime. The Division Bench of this Court in order dated 23rd July 2025 recorded finding that the Court is convinced that the Petitioners i.e. Flat purchasers are right in contending that they have lost confidence in the investigating team and accordingly the entire investigative team was changed and accordingly, final order was passed on 23rd July 2025 by which SIT has been formed. It is relevant to note observations made in paragraph nos.15 and 16 of order dated 23rd July 2025 passed by a Division Bench of this Court, which read as under:

> "*15.* ***We cannot ignore that on 11th June, 2025, a co-ordinate Bench of this Court, had directed the officials of the Home Department, who were present in the Court hall, to initiate steps for attaching the properties of the Accused and also transferring large sums of amounts from their bank accounts, so also the properties being sold by the Accused in the open market when the Petitioners/Purchasers were suffering since 2008. It was observed that criminal intention of the Accused is visible by the said actions.***
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> *16. We also find from paragraph 5 of the Affidavit that* ***a large sum of Rs.45,01,21,131/- was parked in the account which was supposed to be frozen much earlier. Thereafter, the***

> ***amount of Rs.45,00,74,009/- was taken out of the account and thereafter EOW succeeded in freezing the accounts****. This is with regard to Account number ending with .....128, with ICICI Bank.*"

24. The above position clearly shows that the Applicants are influential as they ensured that police will not investigate the crime properly and in fact the subject account was frozen only after huge amount of Rs.45,01,21,131/- was transferred from the said account. The Applicants are very influential. Therefore, ultimately some of the Flats purchasers filed Criminal Writ Petition (STAMP) No.140 of 2024 and Division Bench of this Court transferred the investigation.

25. As noted herein above the allegations are very serious and grave. Thus, in the facts and circumstances, no case is made out for grant of Anticipatory Bail. Accordingly, the Anticipatory Bail Application is dismissed.

26. At this stage, Mr. Gadge, learned Counsel appearing for the Applicants request continuation of ad-interim protection already granted. However, as set out herein above the Applicants are very influential persons and in fact they have seen that the investigation is not properly done. The account which was required to be frozen earlier was not frozen at appropriate time and the same was frozen only after amount of Rs.45,01,21,131/- was transferred from the subject account. Accordingly, said request is rejected.

27. As the Anticipatory Bail Application is disposed of, nothing survives in the Interim Application and the same is also disposed of.

(MADHAV J. JAMDAR, J.)