

MHCC020173362022



BEFORE THE DESIGNATED COURT UNDER M.P.I.D. ACT  
CITY CIVIL & SESSIONS COURT, MUMBAI

ANTICIPATORY BAIL APPLICATION NO. 2840 OF 2022

**Mr. Mahesh Pandurang Naik** ]  
Age : 56 years, Occ : Business ]  
residing at B/306, Ram Mandir Road, ]  
Opp. Shankar Mandir, Bhayander (West), ]  
Thane – 401101. ]... *Applicant*

**Versus**

**The State of Maharashtra** ]  
(At the instance of Sr. Inspector of Police, Malad ]  
Police Station ]... *Respondent*

**Appearances:-**

Ld. Advocate Shirke for the Applicant.  
Ld. SPP Malankar for the State/ Respondent.  
Ld. Advocate Pranoti Pawar for Intervenor.

**CORAM : HIS HONOUR JUDGE  
SHRI S. M. TAPKIRE  
(Court Room no. 7)**

**DATED : 04<sup>th</sup> January, 2023.**

**ORAL ORDER**

1. This is a subsequent application preferred by the applicant under Section 438 of The Code of Criminal Procedure, 1973 to have the protection of pre-arrest bail in connection with crime vide C.R. No. 68 of 2020 dated 15.02.2020 registered with Malad Police Station for the offences punishable under Sections 406, 409, 420 r/w Section 34 of Indian Penal Code, 1860 (hereinafter referred "IPC") as well as Sections

3 with 4 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred "MPID Act").

2. The Respondent/ Investigating Officer, and Intervenor namely Kirit Himatlal Morwadiya have strongly opposed to the bail plea of applicant through their written submissions and objection below Exh.02 and Exh.06.

3. Perused the application, plea, grievance, submissions grounds raised therein coupled with documents placed reliance by the applicant along with the written say of respondent. Heard, Ld. Advocate Shirke for the Applicant, Ld. Advocate Pranoti Pawar for Intervenor and Ld. SPP V. C. Malankar for State/ Respondent.

4. Taking into consideration, rival submissions, contentions and availed record it inclined in impugned crime in all 6 accused are involved. The accused Deepak Shah is enlarged on bail as per order of Hon'ble High Court. The impugned crime initially raised against two accused Deepak Shah and Vishal Shah. Subsequently, the partners of said firm namely Parshwa Deepak Shah, Vijay Parekh, Anand Pradhan and applicant implicated in impugned crime. It is alleged by the informant / intervenor that the accused Deepak Shah was intended to develop the project of bungalow by name as Ashiana Green City in Village Tokare, Vaitarna Road, Taluka Vasai, Virar, District Thane. Wherein he has booked 2 bungalow premises. The said project proposely could be completed within 15 months duration. In that regard, they have shown certain relevant concern documents of said project. They also assured if the said project could not complete within period of 15 months. Thereafter, they will give the interest on accepted

earnest money @ 1.5% per month. The informant has in all paid the amount of Rs.38 Lakhs with the accused. There was due amount of Rs.30 Lakhs, he was ready to pay the remaining amount. However, the other accused and applicant have not completed the said project. Though, they have raised and completed the construction of 75 bungalows. However, the same are already alienated transferred to others. Upon raising the impugned crime while investigation and pending the legal proceedings the applicant had admitted and accepted the responsibility of the said projects of Naleshwar Deep Realtors (Ashiana Green City). Thereafter, also the applicant has also failed to provide bungalow premises to informant. Moreover, the applicant has not got approved any Building Plan availed Commencement Certificate or required documents for raising construction of bungalows. Further, alleged that the applicant is also one of the responsible person and being a partner of said firm for non-compliance of the alleged transaction. He was also actively involved participated in impugned crime. Thereby, implicated him in impugned crime.

5. After raising the impugned crime, the applicant has raised the pre-arrest bail plea by Anticipatory Bail Application No.1445 of 2021. The same is pleased to rejected on 29.10.2021 principally on the ground the entire amount is diverted by the partnership firm of applicant in their personal account without using the same for construction of bungalows. Threby, prima facie involvement of applicant is clarifying. In view of nature of allegations seriousness gravity of crime, custodial interrogation of applicant is necessary to incline every relevant material fact and circumstance of crime. However, thereupon the applicant has raised the pre-arrest bail plea before Hon'ble High Court by Anticipatory Bail Application No.2776 of

2021. The same is also pleased to rejected on 09.12.2021. Thereupon, the applicant has raised the Special Leave to Appeal (Cri.) No(s).1115 of 2022. Which is pleased to withdrawn unconditionally by the applicant. Thereby, the said proceeding is pleased to dismissed by the Hon'ble Apex Court. In the circumstances, the applicant has again preferred the present application for having protection of pre-arrest bail on relying the affidavit-cum-undertaking submitted by him below Exh.05. Whereby, shown readiness and willingness to deposit the amount of Rs.17,50,000/- out of the total alleged amount of Rs.38 Lakhs and also raised submission that the main accused i.e. Deepak Shah has already deposited Rs.20,50,000/- as per order of Hon'ble High Court in view of compliance of order passed in Anticipatory Bail Application No.255 of 2021 dated 09.12.2021. On relying it vehemently asked the relief of pre-arrest bail.

6. The Respondent / State and intervenor have strongly opposed to the pre-arrest bail plea of applicant principally on the grounds that the applicant is also one of the main culprit of impugned crime, he is a partner of partnership firm Naleshwar Deep Realtors. Moreover, during the pendency of investigation and before the Court, he has accepted the liability to complete the project and provide bungalow premises to the intervenor. However, he has failed to comply the same. Even he has not got approved any sanction, permission, building plan from the Competent Authority. His pre-arrest bail plea is already rejected by this Court as well as Hon'ble High Court Bombay and Hon'ble Apex Court. Therefore, merely relying on the affidavit-cum-undertaking, he does not deserves to ask any relief. Moreover, as per observation and findings of all the Court about his involvement,

thereby, custodial interrogation is necessary. Thereby, no any protection could be granted to him. They also raised the general objection.

7. In above such circumstances cautiously having into consideration, the rival submissions, contentions availed record the most material relevant considerable facts circumstances are required to be appreciate considered that the applicant has preferred Anticipatory Bail Application No.1445 of 2021 before this Court. The same is pleased to rejected on 29.10.2021 on the reason and ground his custodial interrogation is necessary. Thereafter, he has raised Anticipatory Bail Application No. 2776 of 2021 before Hon'ble High Court for the same relief. However, the same is also rejected on 09.12.2021 principally on the ground prima facie involvement of applicant in commission of serious economic offences inclined. Moreover, he has again raised the Petition for Special Leave to Appeal (Cri.) No(s). 1115 of 2022, which is withdrawn by the applicant. Thereby, it has been dismissed by the Hon'ble Apex Court. Considering all above such circumstances and eventualities now as the applicant come with the case that he is ready to deposit Rs.17,50,000/- and on relying it, seeking the relief of pre-arrest bail. Considering the same coupled with the entire record order of Hon'ble High Court and Hon'ble Apex Court coupled with reasons and findings asserted therein with conduct demeanor behave of applicant and especially when it has been held that the custodial interrogation of applicant is necessary and essential. Thereby, merely relying on his alleged plea to deposit the certain amount the said alone ground would not be a considerable appreciable ground for having relief sought by him. Thus, I am not inclined any justified substance force relevance to have any relief to applicant. Hence, the present

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application devoids on merits and liable to be declined. With this passed the following order :

**ORDER**

The present Anticipatory Bail Application No.2840 of 2022 is hereby rejected and stands disposed of accordingly.

**(Dictated and pronounced in the open Court)**

**Date : 04.01.2023.**

**( S. M. Tapkire)**

Addl. Sessions Judge,  
City Civil & Sessions Court, Mumbai.

Dictated on : 04.01.2023.

Transcribed on : 11.01.2023.

Signed on : 13.01.2023.

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Order in ABA 2840/22

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT /ORDER”

16.01.2023 at 11.00 a.m.  
UPLOADED DATE AND TIME

Mrs. G. P. Acharekar  
NAME OF STENOGRAPHER

Name of the Judge (with Court Room no.)	H.H.J. S. M. Tapkire C.R. No.07
Date of Pronouncement of Judgment/Order	04.01.2023
Judgment /Order signed by P.O. on	13.01.2023
Judgment/Order uploaded on	16.01.2023