MHTH010037902026

BAIL APPLICATION NO. 1149/2026

Shankar Kumar Jha … Applicant

V/s.

State of Maharashtra
(Through Mira Road P.S. in
C.R. No. 324/2026) … Respondent

ORDER BELOW EXH.1

Structured framework as per Order of the Hon'ble Supreme Court of India in Cr. Appeal No.825 of 2026 Arising out of SLP (Cri.) No.12669 of 2025) in Zeba Khan Vs. State of U.P.

- **[A] CASE DETAILS**

•FIR No.	:	324/2026
•Police Station, District and State	:	Mira Road P. S., District-Thane, Maharashtra
•Section invoked	:	318(3), 318(4) of BNS
•Maximum prescribed punishment	:	10 years

- **[B] CUSTODY & PROCEDURAL COMPLIANCE**

•Date of arrest	:	N.A.
•Total period of custody undergone	:	N.A.

• [C] STATUS OF TRIAL

• Stage of proceedings (Investigation/Charge-sheet/Cognizance/Framing of charges/Trial)	: :	Investigation.
• Total number of witnesses cited in the charge-sheet	:	N.A.
• Number of prosecution witnesses examined	:	N.A.

• [D] CRIMINAL ANTECEDENTS

• FIR No. & Police Station	:	42/2022, Kharghar police station Navi Mumbai
• Sections	:	406, 420, 120-B, 506(2) IPC
• Status (Pending/Acquitted/Convicted)	:	Pending

• [E] PREVIOUS BAIL APPLICATIONS

• Court	:	1. Sessions Court, Thane
• Case No.	:	Bail Application No.437/2025
• Outcome of Case	:	Bail rejected
		2. Hon'ble Bombay High Court, Case No.1192/2025 Pending

• [F] COERCIVE PROCESSES

• Whether any Non-Bailable Warrant was issued	:	N.A.
• Whether declared a proclaimed offender	:	N.A.

ORDER BELOW EXH.1

The applicant/accused Shankar Kumar Jha has filed this application under Section 482 of the Bharatiya Nagarik Suraksha Sahnita (in short BNSS) for pre-arrest bail apprehending his arrest in Cr.No.324/2026 registered with Mira Road police station for the offences punishable under Sections 318(3), 318(4) of the Bharatiya Nyaya Sanhita, 2023.

2] It is contended that the applicant/accused and one Santosh Samal and Brijesh Singh are the partner in the firm M/s. Aristone Builders with share as 36%, 40% and 24% respectively. On the basis of report lodged by the partner namely Santoh Chaturbhuj Samal i.e. defacto informant with allegations that, there are irregularities in the account of M/s. Aristone Builders firm. Some of the flat purchasers in the said firm have made complaints that, they have paid amounts either in cash or transferred in the bank account of the applicant/accused, however, the receipts of the same were not issued. The applicant/ accused didn't inform about receipt of amounts from the flat purchasers to the defacto informant and also didn't inform about it to the firm account. Upon inquiry, the defacto informant came to know that, the applicant/accused has sold 37 flat in the project The Hyde Park of the informant firm, however, he has deposited nominal amount in the account of the firm and the remaining amounts have been accepted by him either in his personal account or in cash. In this way, the applicant/accused misappropriated amount of Rs.7,24,08,500/- and converted that amount for his own use by cheating other partners so also flat purchasers.

It is further contended that, the applicant/accused has lodged report against the remaining two partners (including defacto informant) on 20.02.2026 by alleging misappropriation of amount of Rs.55 to 60 crores. However, concerned police authority didn’t take any cognizance of the said report. The defacto informant has already approached to the competent Court under the provisions of Arbitration Act and the Arbitrator has been appointed as per the order passed by the Hon’ble High Court and all issues relating to the accounts of the firm have been subjudice before the Arbitrator. The sole Arbitrator has passed interim order in the said proceeding on 02.07.2026. Thereafter on the same day this FIR came to be registered. It is further contended that, the defacto informant has already invoked the civil remedy. In such circumstances, criminal law cannot be set in motion for the same allegations. The applicant/accused is a businessman and he is ready to co-operate for investigation.

3] The prosecution field reply vide Exh.14 and resisted this application by contending that, the applicant/accused is partner of M/s. Aristone Builders, so also the defacto informant is partner in the said partnership firm. M/s. Aristone Builders is developing site by name The Hyde Park. The applicant/accused has received booking amount of Rs.7,24,08,500/- from 37 purchasers. The said amount was not deposited in the account of the firm. However, said amount was siphoned by the applicant/ accused to his other accounts with dishonest intention. It is further contended that, magnitude of misappropriation of amount is large. The applicant/accused has diverted the amounts received from the flat purchasers to his own account and has not issued the receipts of the amount accepted from the flat purchasers. It is further contended that, the detail investigation is required about the booking amount accepted from the flat purchasers, to recover documents prepared for allotment of flats, bank details, etc., the custodial interrogation is necessary. The applicant/accused is directly and indirectly threatening to the investors and trying to keep them away by giving threat, inducement and promise and it is adversely affecting upon the investigation. The applicant/ accused has criminal antecedents. He was accused in Cr.No.110/2025 registered with Kashimira police station for the offence of cheating. So urged to reject the application.

4] The defacto informant/intervenor appeared and filed reply and taken strong objection to this application. The crux of the objection taken by the intervenor is that, the applicant/ accused has received amount from 37 flat purchasers. He didn't deposit the said amount in the RERA account of the firm's project 'The Hyde Park'. He has not provided the receipts after receiving payments to the said flat purchasers. It is further submitted that, the applicant/accused has construction firm by the name 'Jha Realities'. The applicant/accused has given address of 'The Hyde Park' as address of his 'Jha Realities' and he also using the RERA account of ‘The Hyde Park’ for booking of the flats in his own construction site 'Jha Realities’. These acts of the applicant/acused clearly made out the ingredients of cheating.

5] The intervenor has produced on record the copies of 37 flat purchasers with the detail description of the amount paid by said flat purchasers in the account of The Hyde Park, so also the amounts received by the applicant/accused either in his bank account or in cash. It is submitted that, the investigating officer has recorded statements of some of the flat purchasers and the thorough investigation is required about the allegations made in the FIR. So urged to reject the application.

6] Heard learned advocate appearing for applicant/accused, learned APP appearing for the prosecution and learned advocate appearing for the intervenor, at length.

7] The learned advocate appearing for applicant/accused drew attention of this Court on the documents produced with the application from page No.1 to 193 and submitted that, already the defacto informant has invoked the civil remedy and the matter is subjudice before the sole Arbitrator. In the proceeding initiated before the Arbitrator the defacto informant has made allegations of withdrawing of amount of Rs,7,24,08,500/- from the funds of partnership firm and said statement of defacto informant clearly establishes that, the dispute between defacto informant and applicant/accused is of civil nature. In the proceeding initiated before the Arbitrator there are no allegations of the defacto informant about either cheating or fraud on the part of applicant/ accused. It is further submitted that, by order dated 02.07.2026, the sole Arbitrator has made some temporary arrangements with intention to secure the interest of the partnership firm and to protect the rights of the partners. The learned advocate further vehemently submitted that, the applicant/accused is the Architect of the project The Hyde Park. He has obtained the necessary permission from the competent authorities, obtained NA permission, etc., he was only allowed to make dialogues with the land owners, etc. and he has paid amount of more than Rs.20 crores for the same. It is submitted that, in such circumstances, though assumed that the applicant/ accused has taken the amount of Rs.7 crores from the firm, he has not committed any criminal offence. The civil litigation is pending between the parties. There is no necessity of the custodial interrogation. It is further vehemently submitted that, the applicant/accused had filed complaint application with Kashimira police station on 20.02.2026 against the defacto informant and another partners for taking serious action about misappropriation and siphoning funds around 180 crores. However, the police authority didn't take any action against the defacto informant and another partners. After passing an order by the Arbitrator on 02.07.2026, this crime has been registered on the basis of false and frivolous complaint lodged by the informant. So, urged for protection of pre-arrest bail.

8] The learned advocate appearing for the applicant/ accused submitted that, when there is dispute of civil nature and arbitration proceeding is pending, FIR can't be registered and there is no need of custodial interrogation. Further, the averments in the FIR didn't make out the ingredients of offence so as to set in motion the criminal law. To support his submissions, the learned advocate placed reliance upon following authorities

i] Escorts Yamaha Motors Ltd. Vs. State –
1999 (48) DRJ (DB)

ii] Mitesh Kumar J. Sha Vs. State of Karnataka –
(2022) 14 SCC 572

iii] Velji Raghavji Patel Vs. State of Maharashtra -
1964 SCC OnLine SC 185

iv] Joginder Kumar Vs. State of U.P. -
(1994)4 SCC 260

v] Siddharam Satlingappa Mehtre Vs. State of Maharashtra -
(2011) 1 SCC 694

9] Per contra, the learned APP appearing for prosecution and the learned advocate appearing for the intervenor submitted that, the defacto informant, applicant/accused and one Brijesh Singh are the partners in M/s. Aristone Builders. These three partners have started the project by the name 'The Hyde Park'. It is submitted that the said project is registered under the Real Estate (Regulation and Development) Act (in short RERA) with independent RERA account. Applicant/accused running his own real estate business by name "Jha Realities'. The applicant/accused has received payment from 37 flat purchasers in The Hyde Park project, however, the amount received from the said flat purchasers was credited by him in his own account and not in the account of the ‘Hyde Park’. The 37 flat purchasers approached to the defacto informant and inquired about the payment made by them. That time, it is revealed that, the applicant/accused has received payment from them, the nominal amount has been deposited in the account of the firm and the remaining amount is transferred in his own account and some amount was received in cash. It is further submitted that, the applicant/accused has not issued receipt or any other document in acknowledgment of a payment from the flat purchasers and this shows about dishonest intention of the applicant/accused since inception

10] It is submitted that, the existence of arbitration clause in the partnership deed does not create any bar to initiate criminal proceeding where the allegations disclosing the commission of cognizable offence is made out. The arbitration is merely a contractual mechanism for dissolving civil dispute. The arbitration proceeding does not bar or affect on the maintainability of the criminal proceeding. The economic offence involving deep rooted conspiracy and corruption and siphoning of the hard earned money of the investors. So merely invoking the arbitration clause in the partnership agreement does not bar for initiating criminal action. To support this statement, the learned advocate appearing for the intervenor placed reliance upon the following rulings ;

i] Punit Beriwala Vs. State (NCT of Delhi) - 2025 INSC 582

ii] Trisuns Chemical Industry Vs. Rajesh Agarwal - (1999) 8 SCC 686

iii] Sri Krishna Agencies Vs. State of A.P. and another - (2009) 1 SCC 69

iv] N. Manoharan s/o. Natesan Naicker Vs. G. Sivakumar s/o. Gangadharan – in Criminal OP No. 24774/2022 decided on 26.09.2024

v] Indian Oil Corporation Vs. NEPC India Ltd in Criminal Appeal No.834/2002

vi] State of Bihar Vs. Ait Kumar @ Bachcha Rai – (2017)13 SCC 751

11] The learned APP vehemently submitted that, for the purpose of considering the scope of pre-arrest bail of the applicant/ accused, it is necessary to see whether there is need of custodial interrogation of the applicant/accused and that can be decided on the basis of averments made in the FIR and the facts disclosed before the investigating officer at the preliminary stage. It is submitted that, the allegations in the FIR clearly shows about misappropriating funds by the applicant/accused. The applicant/ accused received payment from 37 flat purchasers. The investigating officer has inquired with the said flat purchasers. In the statements of some of the flat purchasers they have specifically stated that, they paid amount to the applicant/ accused, but they were not received any receipt or no any document about acceptance of amount. It is further submitted that if the applicant/accused is granted protection of pre-arrest bail , then it will adversely affect on investigation. The detail investigation is required about the accounts in which the amount was diverted so also detail investigation is necessary about the amount received in cash and for the said purpose custodial interrogation is necessary.

It is submitted that, it is not the case of mere brach of contract. So invoking arbitration clause in the partnership deed, doesn't create bar for initiating criminal action, particularly when there is deception of the flat purchasers since inception by the applicant/accused and it shows about the mens rea. It is submitted that, in such facts and circumstances availability of civil remedy to the defacto informant, by itself cannot be the ground for not setting in motion the criminal law. It is further submitted that, the custodial interrogation is required. The prima facie case against the applicant/accused is made out. So urged to reject the application.

12] To support the submissions, the learned APP relied upon the Judgment of the Hon'ble Apex Court in the case of **Medchl Chemicals and Pharma Private Limited Vs. Biological E. Limited** dated 25.02.2000, Case No.233/2000 (it is collected from the software licensed to advocate Vivek Kadu, APP, citation - 2000 DGLS (SC) 409) wherein it is observed in para 14 that, "*in many anticipatory bail matters we have noticed on common argument being canvased that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that, if no case for custodial interrogation is made out by the prosecution, then that alone* *would be a ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspect to be considered alongwith other grounds while deciding application seeking anticipatory bail. There may be many cases in which custodial interrogation of the accused may not be required, but that does not mean that, the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail".*

The learned APP also relied upon the following authorities to support his submissions.

i] Lakkhman (Dr.) Vs. State of Karnataka – 2019 DGLS (SC) 1367

ii] Suresh Puri Vs. State of Maharashtra - 2016 DGLS (SC) 380

iii] Sumitha Pradeep Vs. C.K. Arun Kumar - 2022 DGLS (SC) 1415

iv] Shivnarayan Laxminarayan Joshi and others Vs. State of Maharashtra – (1980)2 Supreme Court Cases 465

13] This Court carefully gone through the submissions across the bar, the documents produced by the applicant/accused with list Exh.3, the documents produced by the prosecution with reply Exh.14 and the documents produced by the intervenor with list Exh.6, 10 and 11.

14] There is no dispute between the parties that, the applicant/accused, the defacto informant and one Brijesh Singh are the partners of M/s. Aristone Builder with share 40% (defacto informant), 36% (applicant/accused) and 24% (Brijesh Singh).

On perusal of the documents produced by both the parties it appears that, the defacto informant approached to the competent court under the provisions of Arbitration and Conciliation Act. The sole Arbitrator Shri.Rajesh Datar, advocate has been appointed by the Hon'ble High Court. Though the parties have made allegations and counter allegations before the Arbitrator about siphoning of the funds in the partnership firm account, the Arbitrator has passed order on 02.07.2026 and made temporary arrangements to secure the interest of the partnership firm and also to protect the rights of the partners. The Clause-E of the said operative order is about directions to the partners not to accept bookings for any flats or commercial premises in the project under any name other than the name of the respondent No.1 partnership firm. This shows about invoking the clause of arbitration for settling the dispute between the partners.

15] Now the question is whether invoking said clause and approaching the arbitrator is disentitle for setting the criminal law in motion and keeping the investigating officer away from the investigation ? and for the said purpose the averments in the FIR are material.

16] The copy of FIR is produced by defacto informant at page 185. Santosh Samal a partner who has 40% share in the partnership firm has lodged this FIR. The FIR shows that on 23.09.2022 he has started the business in the partnership with Ashirwad Nandivkar and Kundan Patil by the name as M/s.

Aristone Builders with his 50% share and 50% share of remaining two partners. On 10.02.2023 the two partners namely Ashirwad Nandivkar and Kundan Patil retired from the said firm and the applicant/accused with 36% share and Brijesh Singh with 24% share entered in the partnership with the defacto informant. They have opened the account in ICICI Bank, Srushti Branch, Mira Road vide account No. 777705216129. The said firm has entered into development agreement to develop the land old survey Nos. 422, 424, 425 new survey Nos.103, 104, 100 respectively, containing Hissa Nos.2, 3, 4, 6, 9, 10 and 11 situated at Navghar. They have decided to develop said land by constructing residential flats and commercial units by the name 'The Hyde Park'. They obtained commencement certificate on 13.03.2024 from Mira-Bhayander Municipal Corporation. The said project is registered under RERA vide registration No. P-51700077328. As per the provisions under RERA Act, they have opened the account in ICICI Bank. They were accepting the amount by way of sale, advance booking in the account No. 777705216129 and RERA collection account No.172805004914. It was their arrangement that, there should be signatures of at least two partners out of three for any money transaction. It is further alleged that, in the month of March 2025 they came to know about irregularities in the account of M/s. Aristone Builders. Some of the consumers who had booked flats in the said project approached and told that, they have deposited more amounts than shown as actual deposits and that amount was deposited with partner Shri. Shankar Jha by way of transfer in his bank account or by way of cash. But said Shankar Jha has not issued any receipt. Said Shankar Jha a partner had not informed anything about acceptance of amounts from such purchasers to the firm or to the account department of the firm. On inquiry it is transpired that, said Shankar Jha has sold 37 flats in The Hyde Park, however, deposited only nominal amount in the account of M/s. Aristone Builders and diverted the substantial amount in his own account.

17] The investigating officer has recorded statements of some of the flat purchasers out of the said 37 flat purchasers and in the statements, the said flat purchasers have stated that, they have paid money to Mr. Shankar Jha, he didn't give any receipt or acknowledgment in acceptance of such payment. The defacto informant has given the list of said 37 flat purchasers with his reply with detail table about the flat, size of flat, cost, name of the flat purchaser, the amount paid by the flat purchaser, the amount given by transfer in account of Mr.Shankar Jha and the amount given in cash to Mr. Shankar Jha. The sum total of said money by way of transfer in his bank account is Rs.81 lakhs and amount in cash is Rs.6,43,08,500/-.

18] The learned advocate appearing for the defacto informant also drew attention on the broacher of The Hyde Park particularly the last page of it and submitted that, the applicant/accused running his own construction firm by name Jha Realities and for running said firm he had given the address of

The Hyde Part, so also he is using the RERA account of the firm as his own RERA account. Prima facie there appears substance in the submissions because the RERA account of M/s. Aristone Builders is for the real estate project by name The Hyde Part is No. P51700077328. The broacher shows that the Jha Realities has mentioned the said RERA registration number for its Jha Realities and it shows prima facie substance in the submissions of the learned APP so also submissions of advocate for intervenor that there was intention of deception since inception.

19] The documents placed on record by the defacto informant with Exh.10 also shows about the criminal antecedents of the applicant accused by Cr. No.110/2025 for the offence punishable under section 316(2), 318(4), 351, 352 r.w. 3(5) of Bharatiya Nyaya Sanhita, 2023. From the above material on record it appears that, the victims of the alleged act of applicant/ accused are not only the defacto informant, but the flat purchasers and the other persons who have booked flats and commercial premises in the said project. There appears transaction of crores of rupees in cash. It also shows about cheating of the Government by evading stamp duty and taxes. The allegations in the FIR prima facie made out the ingredients of offence of cheating. In such circumstances, merely invoking or approaching to the Arbitrator by invoking the arbitration clause, it cannot be said that the criminal law cannot be set in motion. Considering the facts and circumstances, nature of the offence, seriousness of the white collar crime, the grounds of custodial interrogation, the applicant/accused does not deserve for the protection of the pre-arrest bail. From the facts and circumstances of this matter, the scope of investigation, grounds for custodial interrogation, the case laws cited supra on which the learned advocate for applicant/accused placed reliance are not helpful to applicant/accused.

20] The learned advocate appearing for the applicant/accused vehemently submitted that, the applicant/ accused has lodged report with the police on 20.02.2026 against the informant, however, the police didn't take cognizance.

So far as this submission is concerned, if really any cognizable offence is made out an the police have not taken the cognizance, then the remedy is provided in Cr.P.C. (BNSS) for approaching the Magistrate with appropriate relief. Nothing has been produced on record on behalf of applicant/accused about invoking remedy available under BNSS. So there is no merits in the submission.

Hence this Court pass following order.

ORDER

1. Application is hereby rejected.

Dictated and pronounced in open Court.

DHANAJI BALKRISHNA MANE

Digitally signed by DHANAJI BALKRISHNA MANE
Date: 2026.07.10 18:02:06 +0530

Thane. (D. B. Mane)
Date : 09.07.2026. Additional Sessions Judge, Thane