IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 5994 OF 2025

1. Jigar Parmar
An Adult Indian Inhabitant, Age 47 years, Occu: Business, residing at Apartment 4A & B Aravali Co-operative Housing Society, 29, B.G. Kher Marg, Malbar Hill, Mumbai – 400 006.

2. Jayantilal Parmar
An Adult Indian Inhabitant, Age 75 years, Occu: Business, residing at Apartment 4A & B Aravali Co-operative Housing Society, 29, B.G. Kher Marg, Malbar Hill, Mumbai – 400 006. ...Petitioners

Versus

1. State of Maharashtra
through the Senior Inspector of Police N.M. Joshi Marg Police Station, Mumbai.

2. Norris Crasto
Age 35 years, Occ : employed, Residing at Zone – 40, Street – 804, Building – 9, Villa – 5, Doha, Qatar, also having address at Pithrody post, Udyavara, Udupi, Karnataka – 574 118.

...Respondents

WITH
WRIT PETITION NO. 6668 OF 2025

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An Adult Indian Inhabitant, Age 47 years, Occu: Business, residing at Apartment 4A & B Aravali Co-operative Housing Society, 29, B.G. Kher Marg, Malbar Hill, Mumbai – 400 006.

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Occu: Business, residing at Apartment
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also having address at Pithrody post,
Udyavara, Udupi, Karnataka – 574 118.
...Respondents

Mr. Girish Kulkarni, Sr. Advocate, a/w Mr. Aditya Mithe,
Mr. Sachin Agawane, Ms. Esha Joshi, for the Petitioners.

Ms. Neeta Karnik, Sr. Advocate, i/b Sangharsh V Waghmare,
for Respondent No. 2.

Mr. D J Haldankar, APP for Respondent – State.

PSI Anit Sul – N.M. Joshi Marg P.S.

CORAM	:	N. J. JAMADAR, J.
RESERVED ON	:	25th MARCH 2026
PRONOUNCED ON	:	08th JUNE 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of learned Counsel for the parties, heard finally.

2. As both the Writ Petitions arise out of the same set of facts leading to registration of CR No. 0213/2025 with N. M. Joshi Marg Police Station for the offences punishable under Sections 318(4) and 61 of the Bhartiya Nyaya Sanhita, 2023 ("the BNS, 2023") and Sections 3, 4 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("the MOFA, 1963"). Both the petitions were heard together and are being decided by this common judgment.

3. The background facts can be summarized as under :-

3.1 The Respondent No. 2/first informant was a non-resident Indian. The first informant alleged that, the Petitioner No.1 – Jeegar Parmar (Accused No.1) made a representation to the first informant at Kuwait that Accused No. 1 was engaged in the business of Real Estate development. The Petitioners were the partners of JITEJ Life Spaces. The Accused No. 1 induced the first informant to part with a huge amount by making a false representation that, the Accused No. 1 would sale 13 shops

and 13 car parking spaces in the redevelopment project of Patel building.

3.2 Eventually, the first informant was induced to part with an amount equivalent to Rs.1,30,00,000/- (Rupees One Crore Thirty Lakhs), in Kuwaiti Dinar, during the period 03rd October, 2019 to 18th February, 2020. The first informant was also induced to pay a sum of Rs.19.474 Lakhs to the Accused No. 1 on 18th February, 2020, and various amounts to Raju Zaveri, Jitendra Prakash Gupta and Charu Sharma towards stamp duty and registration charges, etc.

3.3 Agreements to sale were executed by the Accused No. 1 in the capacity of the partner of JITEJ Life Spaces in favour of the first informant. The receipt of the amounts were duly acknowledged by executing the agreements and receipts as well as in the telephonic conversation.

3.4 The Accused No. 1 avoided to execute the registered instrument to convey those shops and the parking spaces. Later on the first informant realized that, the properties which the Accused No. 1 professed to sell, did not stand in the name of the accused.

3.5 When the fraud was unearthed, the Accused No. 1 and his father (Accused No. 2) again made false representations to the first informant that, there was a buyer for the properties which were agreed to be sold to the first informant and assured to refund the amount parted with by the first informant by 30th January, 2024.

3.6 The Accused No. 1, however, continued to buy time on one or other pretext. Further inquiries revealed that, the Society of which the property was to be redeveloped had terminated the development agreement executed with JITEJ Life Spaces.

3.7 The first informant thus initially filed a private complaint and pursuant to the directions issued by the Magistrate for registration of F.I.R. and investigation, crime came to be registered at N. M. Joshi Marg Police Station, for the offences punishable under Sections 318(4) and 61 of BNS, 2023 vide CR No. 0213/2025.

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3.8 The learned Magistrate initially granted interim bail. By a further order dated 01st December, 2025, the learned

Magistrate was persuaded to make the order of interim bail absolute and release the accused on bail till the final disposal of the case. However, in addition to the conditions imposed by the order releasing the accused on interim bail, the learned Magistrate directed the Accused Nos. 1 and 2 to furnish a bank guarantee in the sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs), each and Accused Nos. 3 and 4 to furnish the bank guarantee of Rs.5,00,000/- (Rupees Five Lakhs) and Rs.9,52,600/- (Rupees Nine Lakhs Fifty Two Thousand), respectively, within a month from the date of the said order.

3.9 The learned Magistrate was of the view that, in order to prevent commission of identical offences in future, it was appropriate to impose stringent conditions for enlarging the accused on bail.

3.10 Being aggrieved, the Accused Nos. 1 and 2 have preferred Writ Petition No. 6668/2025 assailing the legality and validity of the condition to furnish the bank guarantee of Rs. 75,00,000/-, each, for release on bail.

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3.11 During the pendency of the investigation, the Investigating Officer, professed to debit freeze the bank accounts of the Accused No. 1. On 24th May, 2025, the Accused No. 1 informed the Senior Inspector of Police, N. M. Joshi Marg Police Station that, there was a balance of about Rs.1,89,48,000.00/- (Rupees One Crore Eighty Nine Lakhs Forty Eight Thousand) in Account No. 0748104000030825 maintained by the Accused No. 1 with IBDI Bank, JVPD Scheme. The Police Inspector was requested to create a lean in respect of the amount of Rs.1,89,48,000/- which was allegedly defruaded, and permit the accused to operate the said account as that was the main business account.

3.12 The Investigating Officer, in turn, informed the first informant that, on 23rd May, 2025, the Accused No. 1 had deposited the amount in the said bank account maintained with IDBI Bank, so as to have an aggregate balance to the tune of Rs. 1,89,48,000/-. The said account was debit freezed. The Respondent No. 2/first informant was thus advised to file an application before the learned Magistrate for release of the said amount.

3.13 Pursuant thereto, the Respondent No. 2/first informant filed a Criminal Application No.1514/2025 seeking release of the amount of Rs. 1,89,48,000/-. That application was resisted by the accused.

3.14 After appraisal of the material on record, the learned Magistrate was persuaded to allow the application and to direct the release of the said amount of Rs.1,89,48,000/- in favour of the Respondent No. 2/first informant upon furnishing an indemnity bond in the sum of Rs.1,89,48,000/-. The first informant was also put to the terms that while investing the said amount, the first informant shall ensure that, the amount would become available within a period of one month of the requisition.

3.15 Being aggrieved, the petitioners preferred a revision application before the Court of Session for Greater Mumbai. The learned Additional Sessions Judge was persuaded to dismiss the revision application opining *inter alia* that, the order of release of the seized amount was an interlocutory order and, thus, not amenable to revisional jurisdiction.

3.18 Being further aggrieved, the Petitioners have preferred Writ Petition No. 5994/2025, to quash and set aside the order passed by the learned Magistrate on 03rd October, 2025 and the impugned order passed by the learned Additional Sessions Judge.

4. I have heard Mr. Girish Kulkarni, the learned Senior Advocate for the petitioners, Ms. Neeta Karnik, the learned Senior Advocate for Respondent No. 2/first informant in both the Writ Petitions and Mr. D J Haldankar, the learned APP for the Respondent - State. With the assistance of the learned Counsel for the parties, I have perused the material on record and the impugned orders.

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5. Mr. Kulkarni, the learned Senior Advocate for the petitioners would submit that, a direction for furnishing a bank guarantee of Rs. 75,00,000/-, to avail the bail granted by the learned Magistrate, is too onerous. The learned Magistrate has completely ignored the settled position in law that a bail order cannot be made conditional on the payment or deposit of the amount of which the alleged victim is defrauded. A direction for

furnishing bank guarantee of Rs. 75,00,000/- virtually amounts to directing the accused to satisfy the claim of the alleged victim at a pre-trial stage. Such an order of bail is wholly unsustainable.

6. Ms. Karnik, the learned Senior Advocate for Respondent No. 2/first informant, made an attempt to sustain the directions in the impugned order. It was submitted that, the facts of the case at hand are so gross and the material on record so clear that an inference that the petitioner/Accused No. 1 had defrauded the first informant becomes explicitly evident.

7. Ms. Karnik made an endeavor to take the Court through the documents which, according to her, clearly establish that, the Accused had induced the first informant to part with huge amount by making a false and fraudulent representation. In such circumstances, the learned Magistrate was justified in directing the accused to furnish the bank guarantee so as to secure the interest of the first informant and also prevent the accused from deceiving innocent and unsuspecting persons. Thus, the directions to furnish the bank guarantee of the amount

which has already been received by the accused cannot be interfered with, in exercise of the writ jurisdiction, submitted Ms. Karnik.

8. I am afraid to accede to the submissions of Ms. Karnik. By a line of judicial precedents, the legal position is firmly crystallized to the effect that, an order of bail cannot be made conditional upon the payment of any amount to the victim or the deposit of the amount in Court. While exercising the power to impose conditions for enlarging an accused on bail; either regular or a pre-arrest, the Court cannot impose unreasonable and onerous conditions. A condition that, the accused shall furnish a bank guarantee of Rs. 75,00,000/- is *ex facie* onerous and unreasonable. The Court cannot be oblivious to the principle of presumption of innocence. A direction for deposit of the amount, therefore, cannot be issued. Nor can the Criminal Court act as a recovery agent for the victim. The aforesaid position in law is settled by a catena of decisions.

9. It would suffice to make a reference to two decisions of the Supreme Court. In the case of ***Ramesh Kumar Vs.***

State of NCT of Delhi[1], after a survey of authorities, the Supreme Court enunciated that, the conditions to be imposed while enlarging the accused on bail, must not be onerous or unreasonable or excessive. In the context of grant of bail, all such conditions that would facilitate the appearance of the accused before the Investigating Officer/court, unhindered completion of investigation/trial and safety of the community assume relevance. However, inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for grant of bail.

10. In the case of ***Gajanan Dattatray Gore Vs. State of Maharashtra & anr.***[2], the Supreme Court cautioned the courts against imposing the condition of deposit of the amount while enlarging the accused on bail. The observations in Paragraph Nos. 19 to 22 read as under :-

> "**19**. By this order, we make it clear and that too in the form of directions that henceforth no Trial Court or any of the High Courts shall pass any order of

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1 (2023) 7 SCC 461

2 2025 SCC OnLine SC 1571

grant of regular bail or anticipatory bail on any undertaking that the accused might be ready to furnish for the purpose of obtaining appropriate reliefs.

20. The High Courts as well as the Trial Courts shall decide the plea for regular bail or anticipatory bail strictly on the merits of the case. The High Courts and the Trial Courts shall not exercise their discretion in this regard on any undertaking or any statement that the accused may be ready and willing to make.

21. This practice has to be stopped. Litigants are taking the courts for a ride and thereby undermining the dignity and honor of the court.

22. We hope and trust that the High Courts as well as the Trial Courts across the country do not commit the same mistake again."

(emphasis supplied)

11. In view of the aforesaid enunciation of law, the learned Magistrate clearly erred in directing the accused to furnish bank guarantee in the sum of Rs. 75,00,000/-, each, as a condition for grant of bail. The said condition is thus liable to be quashed and set aside. The Writ Petition No. 6668/2025 therefore deserves to be allowed.

12. The thrust of the submission of Mr. Girish Kulkarni, the learned Senior Advocate for the petitioners, was that, the amount which was lying in the account of the Accused No. 1 with IDBI Bank, which was debit freezed, had no nexus with the commission of alleged offences. The money so standing on the credit of the said account was generated out of the legitimate business activities of the Accused No. 1. In the absence of the direct connection between the commission of the alleged offences and the said amount, which was lying in the account of the Accused No. 1, the learned Magistrate could not have directed the release of the said amount in favour of the Respondent No. 2 – first informant. Such a course is legally impermissible. The criminal proceedings, Mr. Kulkarni would urge, cannot be permitted to be converted into proceedings for recovery of debatable claims. The Respondent No. 2 – first informant was free to initiate the appropriate proceedings before the Competent Court to recover the amount which he was induced to allegedly part with and/or damages. However, before the conclusion of the trial and without pronouncing upon the complicity of

the accused, the first informant cannot be permitted to utilize the said amount.

13. Per contra, Ms. Karnik, the learned Senior Advocate for Respondent No. 2 – first informant, would urge that, there is overwhelming evidence to show that the accused especially the Accused No. 1 had deceived the first informant and induced him to part with the huge amount of Rs.1,89,48,000/-. There are statements of witnesses including the co-accused which show that, the co-accused had paid the amount, which were credited to their account, to Accused No. 1. The receipt of the amount has also been acknowledged by the Accused No. 1 by passing receipts. The opinion of the handwriting and fingerprint expert reveals that, the said receipts have been executed by the Accused No. 1.

14. In the aforesaid backdrop, in the face of overwhelming material in support of the prosecution version, the first informant who has been defrauded of an amount to the tune of Rs. 1,89,48,000/-, cannot be made to wait till the final disposal of the criminal proceedings. To ask the first informant to indefinitely wait for the release of

the amount, would be a travesty of justice. Therefore, the learned Magistrate was fully justified in directing the release of the amount in favour of the first informant upon furnishing an indemnity bond. The said condition, according to Ms. Karnik, adequately protects the interest of the petitioners. Thus, in exercise of supervisory jurisdiction, no interference is warranted with the impugned order and the order passed by the learned Magistrate directing the release of the amount of Rs. 1,89,48,000/- upon furnishing an undertaking.

15. The gravamen of indictment against the petitioners especially Accused No. 1, narrated above is that, the Accused No. 1 had induced the first informant to part with the amount by making a false representation that the Accused No. 1 would sale 13 shops along with 13 parking spaces, in a building which was to be re-developed. The Accused No. 1 resiled from the promise and sought time on one or the other pretext. Eventually, it transpired that, the Society had terminated the re-development agreement executed in favour of the JITEJ Life Spaces of which the Accused No. 1 was a partner. The petitioners had not taken steps to register the project and execute a registered

instrument in favour of the first informant, despite having obtained money under the pretext of payment of stamp duty, registration charges and other expenses. Thus, the petitioner committed the offence of cheating in pursuance of the criminal conspiracy punishable under Sections 318(4) and 61 of BNS, 2023.

16. It is trite, there is clear distinction between a civil wrong in the form of breach of contract, non-payment of money, failure to perform the contract and the criminal offence of cheating. To constitute an offence of cheating, it has to be shown that there was dishonest intention since the inception of the transaction. There ought to be deceit coupled with injury. In a prosecution for the offence of cheating, the questions as to whether the prosecution has succeeded in establishing that, the intention of the accused was dishonest since the inception of the transaction and injury was caused to the victim by practicing deception are the matters for adjudication at the trial.

17. In the facts of the case at hand, in the backdrop of the nature of indictment narrated above, the controversy

revolves around the question as to whether, the learned Magistrate was justified at this stage to direct the release of the amount of which the first informant was allegedly defrauded, in favour of the first informant ?

18. To begin with, it is necessary to appreciate the manner in which the amount standing to the credit of the subject account of the Accused No.1, came to be freezed. From the narration of facts and indictment in the charge-sheet, it becomes evident that, the Investigating Officer had debit freezed as many as 12 bank accounts of the Accused vide communication dated 19th May, 2025, purportedly under Section 106 of the Bhartiya Nagarik Suraksha Sanhita, 2023 ("the BNSS, 2023") which corresponds to Section 102 of the Code of Criminal Procedure, 1973 ("the Code, 1973"). The freezing of the accounts was informed to the jurisdictional Magistrate on 20th May, 2025. It is pertinent to note that, on 24th May, 2025, Jeegar Parmar (Accused No.1) addressed a communication to Investigating Officer apprising him that, he had deposited a sum of Rs. 1,89,48,000/- in the subject IDBI Bank account which was also defreezed. Thereupon, apart from the subject account maintained with IDBI Bank, wherein the said amount of

Rs. 1,89,48,000/- was credited and debit freezed, the Investigating Officer moved to de-freeze the rest of the bank accounts.

19. Resultantly, the situation which thus obtains is that, the amount which stands to the credit of the subject IDBI account of Accused No. 1, was not seized by the Police in the strict sense of the term. On the contrary, it represents the amount which was deposited by the Accused No.1, so as to facilitate the defreezing of other 11 accounts which were also freezed by the Investigating Officer. That brings to the fore the nature of the power of the Police to seize the property under Section 102 of the Code, 1973.

20. Section 102 of the Code, 1973 which is subsumed in Part D of Chapter VII of the Code, 1973, deals with the power of Police Officer to seize certain property. The phraseology of sub-Section (1) of Section 102 makes it abundantly clear that, the Police officer is empowered to seize the property if it meets the specified character. First, such property is either alleged or suspected to have been stolen. Second, such property is found under circumstances which creates suspicion of the commission

of any offence. It implies that, the legislature has not conferred the general power to seize the property of whatever description and found under whichever circumstances in relation to the persons who are privy to the crime. Nor, the Investigating Officer is empowered to seize any property of the person who is alleged to be involved or suspected to have committed any offence. Emphasis is, thus, on the character of the property rather than its association with the Accused or for that matter the first informant/victim.

21. In the case of ***State of Maharashtra V/s. Tapas D. Neogy***[3], the Supreme Court considered the question whether the police officer investigating an offence can issue prohibitory order in respect of the bank account of the accused in exercise of the power u/s 102 of the Code ?

22. While answering the question in the affirmative to the effect that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Code and a police officer in the course of investigation can seize or prohibit the operation of the said

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3 (1999) 7 SCC 685

account if such assets have direct links with the commission of the offence for which the police officer is investigating into, the Supreme Court expounded the nature of the power under Section 102. It was in terms observed that, two pre-conditions for applicability of Section 102(1) are that, firstly, it must be 'property' and secondly, in respect of the said property, there must be suspicion or commission of any offence. The Supreme Court emphasized that the police officer can seize or prohibit operation of the bank account if such assets have direct link with the commission of the offence.

23. In the case of ***M. T. Enrica Lexie & Anr. Vs. Doramma & ors.***[4], the Supreme Court enunciated in clear and explicit terms that the property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the Code, the police officer can seize such property which is covered by Section 102(1) and no other.

24. In the case of ***Nevada Properties Pvt. Ltd. Vs. State of Maharashtra & anr.***[5], a three-judge Bench of the Supreme

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4 (2012) 6 SCC 760

5 (2019) 20 SCC 119

Court considered the question whether the expression "any property" used in sub-section (1) of section 102, includes an immovable property. The Supreme Court after an elaborate analysis of the provisions and the previous judicial precedents, answered the reference by holding that, the power of a police officer under Section 102 of the Code, to seize any property which may be found under circumstances that create suspicion of the commission of any offence, would not include the power to attach, seize and seal an immovable property. In the process, the Supreme Court expounded the scope and object of Section 102.

25. The observations in paras 30 and 31 are instructive, and, hence, extracted below :-

> "30. Equally important, for the purpose of interpretation is the scope and object of Section 102 of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge sheet. The Section is a part of the provisions concerning investigation undertaken by the police officer. After the charge sheet is filed, the prosecution leads and produces evidence to secure conviction. Section 102 is not, per se, an

enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the police officer feels is the rightful and true owner. This is clear from the objective behind Section 102, use of the words in the Section and the scope and ambit of the power conferred on the Criminal Court vide Sections 451 to 459 of the Code.

31. The expression 'circumstances which create suspicion of the commission of any offence' in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not 'any property' is required to be seized. The word 'suspicion' is a weaker and a broader expression than 'reasonable belief' or 'satisfaction'. The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences."

(emphasis supplied)

26. In the case of ***Shento Varghese Vs. Julfikar Husen & ors.***[6], the Supreme Court again reiterated that, the pre-requisite for exercising power under Section 102(1) of the Code, 1973 is the existence of a direct link between the tainted property and the alleged offence. It is essential that, the property sought to be seized under Section 102(1)

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6 (2024) 7 SCC 23

of the Code, 1973 must have a direct or close link with the commission of offence in question.

27. The legal position which thus emerges is that, though the text of Section 102(1) uses the expression "any property" which the Police Officer may seize, yet, the power to seize the property stems from the expressions which follow, namely, "the allegation or suspicion that such property is stolen" or "it is found in a circumstances which creates suspicion of commission of any offence". There ought to be a direct link between the property which is seized and the offence which is alleged to have been committed. In other words, the nexus between the seized property and the commission of the alleged offence ought to be objectively evident during the course of investigation and the investigating officer ought to have grounds to entertain a suspicion that an offence is committed in relation to such property.

28. Keeping in view the aforesaid principles, re-adverting to the facts of the case at hand, as noted above, when the 12 accounts of the Accused were initially debit freezed, the amount of Rs. 1,89,48,000/- was not standing to the credit

of the account of Accused No. 1. Instead, to seek the defreezing of the rest of the 11 accounts, the Accused No. 1 purportedly deposited the amount in the subject account maintained with IDBI Bank, to make up the total amount of Rs.1,89,48,000/-.

29. If viewed through this prism, the assertion of the Investigating Officer that, the said amount represented the recovery of the proceeds of the crime for which the investigation was underway, appears to be rather debatable. Even otherwise, as noted above, Section 102 of the Code, 1973, is neither intended to confer, nor a repository of, the power to seize the property for the purpose of its delivery to the person/victim whom the Investigating Officer considers to be the rightful owner.

30. Such being the nature of the order of freezing of the account and the nature of the property which came to be seized in the instant case, could the learned Magistrate have directed the release of the amount of Rs. 1,89,48,000/- in favour of the first informant, during the pendency of the trial ?

31. Ms. Karnik, the learned Senior Advocate for the Respondent No. 2 – first informant, would urge that, the first informant had succeeded in demonstrating a very strong *prima facie* case and substantiated the same by placing on record the documents. Therefore, though the trial is yet not concluded the release of the amount in favour of the first informant on the condition of furnishing an indemnity to bring back the said amount, was wholly in order.

32. The aforesaid submissions are required to be appreciated in the light of the well recognized principles that, the criminal proceedings are not for realization of the disputed dues and the Criminal Court is not expected to act as a recovery agent to release the dues of the complainant, particularly without trial. A direction for release of the freezed amount in favour of the first informant, partakes the character of compensatory justice at a pre-trial stage. The Court cannot lose sight of the fact that, *prima facie* there is no element of a public offence in the sense that, a large body of purchasers has been deceived in an identical fashion. Nor, any public money appears to be involved. The transaction was essentially

that of sale of the commercial units in the building proposed to be redeveloped by the accused. The genesis of the offences therefore appears to be in a private dispute between the parties. This distinction assumes significance.

33. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of ***Ramesh Kumar (supra)***, wherein the Supreme Court underscored the distinction in the approach to be adopted by the Court where the allegations were of mis-appropriation of public money. The observations in Paragraph Nos. 25 and 26 are material and hence extracted below :-

> "**25**. Law regarding exercise of discretion while granting a prayer for bail under section 438 of the Cr. PC having been authoritatively laid down by this Court, we cannot but disapprove the imposition of a condition of the nature under challenge. Assuming that there is substance in the allegation of the complainants that the appellant (either in connivance with the builder or even in the absence of any such connivance) has cheated the complainants, the investigation is yet to result in a charge-sheet being filed under Section 173(2) of the Cr.PC, not to speak of the alleged offence being proved before the competent trial court in accordance with the settled procedures and the applicable laws. Sub-section (2) of Section 438 of the Cr. PC does empower the high

court or the court of sessions to impose such conditions while making a direction under sub-section (1) as it may think fit in the light of the facts of the particular case and such direction may include the conditions as in clauses (i) to (iv) thereof. However, a reading of the precedents laid down by this Court referred to above makes the position of law clear that the conditions to be imposed must not be onerous or unreasonable or excessive. In the context of grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating officer/court, unhindered completion of investigation/trial and safety of the community assume relevance. However, inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for grant of bail.

26. We may, however, not be understood to have laid down the law that in no case should willingness to make payment/deposit by the accused be considered before grant of an order for bail. In exceptional cases such as where an allegation of misappropriation of public money by the accused is levelled and the accused while seeking indulgence of the court to have his liberty secured/restored volunteers to account for the whole or any part of the public money allegedly misappropriated by him, it would be open to the concerned court to consider whether in the larger public interest the money

misappropriated should be allowed to be deposited before the application for anticipatory bail/bail is taken up for final consideration. After all, no court should be averse to putting public money back in the system if the situation is conducive therefor. We are minded to think that this approach would be in the larger interest of the community. However, such an approach would not be warranted in cases of private disputes where private parties complain of their money being involved in the offence of cheating."

(emphasis supplied)

34. At a pre-trial stage, the release of the aforesaid amount in favour of the first informant is fraught with the risk of pre-judging the guilt of the Accused. It is true, in such a situation of the present nature and especially when the Accused No. 1 had volunteered to credit the amount into the subject IDBI account which has been debit freezed, with a view to get the rest of the 11 accounts defreezed, the interest of the first informant/victim, cannot be completely ignored. However, releasing the amount in favour of the first informant would be taking a view which is at the other end of the spectrum. A balance would thus be required to be struck.

35. In the considered view of this Court that balance can be struck by directing that the amount of Rs.1,89,48,000/-

be invested in an interest bearing account so that at the conclusion of the trial, the Court is equipped to pass an appropriate order in relation to the said amount, as well.

36. For the foregoing reasons, I am inclined to hold that, the learned Magistrate was not justified in directing the release of amount of Rs.1,89,48,000/- in favour of the first informant/victim. Thus, the order passed by the learned Magistrate deserves to be interfered with, on that score and suitably modified. The petition thus deserves to be partly allowed.

37. Hence, the following order.

: : O R D E R : :

i] The Writ Petition No. 6668/2025 stands allowed.

ii]The condition to furnish bank guarantee in the sum of Rs. 75,00,000/- each stands quashed and set aside.

iii] The Writ Petition No. 5994/2025 stands partly allowed.

iv] The impugned order passed by the learned Additional Sessions Judge stands quashed and set aside.

v] The order dated 03rd October, 2025, passed by the learned Magistrate stands modified as under:-

a) The order of releasing the amount of Rs. 1,89,48,000/- (One Crore Eighty Nine Lakhs Forty Eight Thousand) stands quashed and set aside.

b) The said amount of Rs.1,89,48,000/- (One Crore Eighty Nine Lakhs Forty Eight Thousand) be invested in an interest bearing fix deposit account.

c) The said amount alongwith accumulated interest shall abide the final order that may be passed by the learned Magistrate at the conclusion of the trial.

vi] Rule made absolute to the aforesaid extent in the respective petitions.

vii] No costs.

[N. J. JAMADAR, J.]