

FIR NO. 761/2007 registered under Sections 409/420/120B/506 IPC at P.S. Uttam Nagar which later on were investigated by the EOW, Cell, Qutub Enclave Mehrauli, New Delhi

2. According to the petitioners, they are law abiding and peace loving citizens. One of them, namely, husband was also elected as MLA from Najafgarh as an independent candidate. It has been submitted that the aforesaid FIR has been registered against the petitioners only at the behest of losing candidates. It is submitted that the complainant in the FIRs are one Praveen Dahiya who is real nephew of the petitioner being son of his brother-in-law, basically to force the petitioners to repay the loan which was allegedly obtained by petitioner, Anita from her brother in the year 1999. In fact, after election of Ranbir Singh for Legislative Assembly, the complainant and his father misused the trust and confidence reposed in the petitioner for their monetary gain and this is the reason that these FIRs were registered. It is submitted that prosecution was also sought to be made of the petitioners on the basis of dishonor of cheques for which notice were issued to him in the year 2004. The proceedings were contested by the petitioners and it is thereafter the complainant approached the MM by filing the complaint and obtained directions under Section 156(3) Cr.P.C. Since the police refused to comply with those directions, a contempt notice was issued and then the present FIRs were registered by the police without proper appreciation of the true facts. The petitioners then applied for grant of anticipatory bail before the Additional District and Sessions Judge which was granted only to the extent that the petitioners were protected from arrest for a period of three months and if the I.O. wanted to arrest them, he was

directed to give them seven day's notice. This was subject to the petitioners joining the investigation. However, it appears that according to the prosecution the petitioners did not join the investigation and as such prosecution decided to arrest them and gave a notice dated 01.02.2008 and it is thereafter the petitioners filed the present application.

3. It is submitted that the FIR does not make out a case of cheating as the allegations do not make out ingredients of Section 415 Cr.P.C. It is also submitted that the incident alleged against the petitioners had taken place in 1999 whereas the FIR has been registered on 25.04.2006 which is politically motivated.

4. The petitioners have also filed written synopsis and have also relied upon the following judgments:-

- (i) *T.T.Antony Vs. State of Kerala & Ors., 2001(6) SCC 181;*
- (ii) *Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor High Court of AP, 1978 (1) SCC 240;*
- (iii) *Babu Singh & Ors. Vs. State of U.P., 1978(1) SCC 579;*
- (iv) *Gurbaksh Singh Vs. State of Punjab, AIR 1980 SC 1632;*
- (v) *Parvinderjit Singh & Anr. Vs. State (U.T. Chandigarh), JT 2008 (11) SC 560;*
- (vi) *B.Suresh Yadav Vs. Sharifa Bee & Anr., 2007(9) SLT 94.*

5. It has been contended that in the facts of the case two FIRs have been registered which could not have been done in view of the judgment in *T.T.Antony's case (supra)*. It is also submitted the petitioner who is a public personality has been implicated falsely and therefore, is entitled to protection in view of judgment delivered in the case of *Gurbaksh Singh's case (supra)*. It is also submitted that even otherwise they are entitled to anticipatory bail in the light of the principles laid down in other judgments. They have joined the

investigation and no fruitful purpose will be served if they are sent to judicial custody.

6. While opposing the bail applications, the respondents submitted that:

“the accused petitioner Ranbir Singh Kharab and his wife Anita Kharab were running a finance company in the name of Jyoti Fair Financt Ltd. at G-1/589, Daal Mill Road, Uttam Nagar, New Delhi. Accused Ranbir Singh Kharab and his wife Smt. Anita induced the complainants to invest money in their above-mentioned finance company on the assurance that good interest will be paid regularly/on daily basis etc. or the amount will be double in three years and money will be returned as and when required. They also instigated the complainant to convince their friends and relatives to invest their money in above said finance company. Believing the words of Ranbir Singh and his wife the complainant along with their friends/relatives invested their money with the above-mentioned finance company. In this way the accused petitioner collected Rs.1.83 crore (approx.) from the 13 complainants of FIR No.329/2006 and Rs. 1.25 crores (approx) from the 4 complainants of FIR No.761/07 both P.S. Uttam Nagar as mentioned below.

Sl.No.	NAME OF COMPLAINANT/VICTIMS	TOTAL AMOUNT GIVEN TO ALLEGED	MODE OF PAYMENT/PROOF	REMARKS
1.	Sh.Praveen Dahiya	Rs.23 lacs	Handwritten receipt signed by Anita Kharab.	Proved by GEQD result.
2.	Sh.Ranbir Singh Dahiya	Rs.22 lacs + Rs. 1.78 crores	A receipt cum declaration executed by the petitioners has been given for Rs.1.78 crores. They also mortgaged property no. G-1/112, Uttam Nagar, ND with the victim R.S. Dahiya against the above mentioned amount of Rs.1.78 crores but sold the property without repaying the amount.	The petitioner gave cheques of Rs.1.34 crores from his personal account to the victim against the amount of Rs. 1.78 crores. The cheques got bounced and cases u/s 138 N.I. Act has been filed by the victim. In such case the petitioner has been convicted by the court at Rohtak.
3.	Sh.Girdhari Lal	Rs. 15lacs	Having receipt cum declaration executed by the petitioner RS Kharab on two stamp papers. As	--

			per the record of Treasurer, Delhi those stamp papers have been issued in the name of R.S. Kharab.	
4.	Sh. Jaipal Malik	Rs. 25 lacs	Cash	--
5.	Sh. Kuldeep Singh	Rs.20.20 lacs	Cash	Land of worth Rs. 2.41 lacs had been given to him by the petitioner Anita Kharab. Amount remained Rs.17.79 lacs
6.	Sh. Vinod	Rs.16.50 lacs	Cash	
7.	Sh. Akshay	Rs.21.10 lacs	Cash	
8.	Rajvati w/o Sh. Sajjan Singh	Rs.6 lacs	Cash	
9.	Beena w/o Sh. Dharamvir	Rs.4.20 lacs	Cash	
10.	Sh. Attar Singh	Rs.19 lacs	Cash	
11.	Omvati W/o Sh. Ram Chander	Rs.5.50 lacs	Cash	
12.	Mrs. Rajesh W/o Randhir Singh	Rs.2.50 lacs	Cash	
13.	Bijender Singh	Rs.3.15 lacs	Cash	The petitioner RS Kaharab Offered to sell his Ambassador Car as repayment of the amount and executed from 29 & 30 in this regard. The GEQD result has proved the signatures of the petitioner on the above said documents.
<u>FIR NO.761/2007, P.S. Uttam Nagar</u>				
1.	Sh. A.S. Hooda	Rs.95 lacs	Passboks of Jyoti Fair Finance Ltd. showing the transactions of amount invested in the alleged company and the amount received by the complainant as interest on daily/monthly basis (Balance amount shown in receipts is 29.84 lacs.)	

			Receipt on the letterhead of Jyoti Fair Finance Ltd. given by the petitioner Anita Kharab	
2.	Sh. Nishant	Rs.3 Lacs	The amount has been paid by cheque by the victim from his personal account and the same has been credited in the personal account of the petitioner R.S. Kharab with Corporation Bank. Reply from both the banks have corroborated the transaction	
3.	Sh. Gazey Singh	Rs.20 Lacs	The bank transactions of both the banks, i.e., of the complainant and of the alleged company have established that the amount of Rs.6 lacs was paid by the complainant from his account and the same was credited in the account of accused company, i.e., Jyoti Fair Finance and the same was withdrawn by petitioner Anita Kharab	The petitioner RS Kharab gave a cheque of Rs.20 lacs from his personal account to Sh. Gaxey Singh as repayment of the cheated amount but the same got bounced and a case u/s 138 NI Act has been filed accordingly.
4.	Sh. Ajmer Singh	Rs.3.5 lacs	One receipt on the letterhead of Jyoti Fair Finance signed by Anit Devi and Another receipt on a stamp paper executed by R.S. Kharab	Prove by GEQD result.

7. It is also submitted on behalf of the respondents that there are different victims/complainants in both the FIRs. In the statement made by the victims under Section 161 Cr.P.C., it has been specifically stated that no receipts were given to the investors by the petitioners to all of them and were given only to some on the pretext of claiming close relationship. The cheques issued by Sh. Ranbir Singh Kharab for repayment of the amount to victims namely Ranbir Dahiya and Gaje

Singh, bounced on presentation. In fact, in one of such cases the petitioner, Ranbir Singh has even been convicted by Rohtak Court despite his plea that his cheque book was stolen. *(Later on his appeal has been allowed after the case was compromised on payment of money)*. During the course of investigation the petitioner has not co-operated with the prosecution and had given vague information about his bank accounts and cheque books. His version about the loss of cheque book is factually wrong, the petitioner has misappropriated the amount taken from the victims on false assurances such as giving them daily interest and monthly interest which runs in crores of rupees. It has been clearly stated by the victims that both the petitioners are responsible for cheating and fraud played upon the investors inasmuch as one claims to be a Director of the Company whereas Ranbir Singh Kharab is the husband had been actively indulging in procuring advances from various investors most of whom were his near relations and probably invested the money on trust but at the time when the money was taken, the petitioners had no intention to repay the same. In fact, the conduct of the petitioner, Ranbir Singh who even mentioned his Pan Account No.AMRPS1095G with the election officer was found to be false as the same belongs to one Baldhari Saini which shows that the petitioner is not coming with clean hands and wants to hide his whereabouts and particulars relating to the properties and bank accounts which must be having the amount taken from the investors on false assurances. It is submitted that the allegations make out cases against the petitioners under Section 409/420/120B IPC in view of the conduct of the petitioners who are not even co-operating with investigation, they are not entitled to

anticipatory bail as prayed for. It is also submitted that it is a fit case where the custodial interrogation of the petitioners is necessary for elucidating the facts and disclosure of bank accounts and other properties which would have been purchased by them by misappropriating the money of the investors.

8. Reference has been made to a judgment delivered by the Supreme Court in the case of State Rep. by CBI Vs. Anil Sharma (1997) 7 SCC 187. The relevant observations made in the aforesaid case are as under:

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

7. The High Court has approached the issue as though it was considering a prayer for granting regular bail after arrest. The learned Single Judge of the High Court reminded himself of the principle that "it is well settled that bail and not jail is a normal rule" and then observed thus:

"Unless exceptional circumstances are brought to the notice of the Court which may defeat the proper investigation and fair trial, the Court will not decline bail to a person who is not accused of an offence punishable with death or imprisonment for life. In the present case, no such exceptional circumstances have been brought to the notice of this Court which may defeat proper investigation to decline bail to the applicant."

9. Reference has been made to number of judgments on behalf of the respondents delivered in the case of Adri Dharan Das Vs. State of West Bengal (2005) 2 SCC 303, Narinderjit Singh & Anr. Vs. Union of India & Ors. 2001 VIII AD (SC) 499, Enforcement Officer, Ted, Bombay Vs. Bher Chand Tikaji Bora & Anr. 2000 (1) Crimes 33 (SC).

10. In the case of Adri Dharan Das (Supra) which is the judgment delivered by the Apex Court, following observations have been made which may be taken into account for consideration of granting anticipatory bail in given facts:

16. Section 438 is a procedural provision, which is concerned with the personal liberty of an individual who is entitled to plead, innocence, since he is not on the date of application for exercise of power under Section 438 of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has 'reason to believe' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' shows that the applicant may be arrested must be founded on reasonable grounds. Mere "fear" is not 'belief' for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that some one is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief on the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the Court concerned to decide whether a case has been made out of for granting the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". Such 'blanket order' should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's

liberty' it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of legal position set out above, this does not prima facie appear to be a case where any order in terms of Section [438](#) of the Code can be passed.

11. In the case of Enforcement Officer, Ted, Bombay (supra) while interpreting the scope of granting relief under Section 438 Cr.P.C. in respect of white collar crimes, it was observed:

“The criteria and questions to be considered for exercising power under Section 438 of Cr.P.C. has been recently dealt with in *Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) Vs. Arun Kumar Bajoria*. The white-collar criminal like the respondent against whom the allegation is that he has violated the provisions of the Foreign Exchange Regulation Act is a menace to the society and therefore unless he alleges and establishes in the materials that he is being unnecessarily harassed by the investigating agency, the Court would not be justified in invoking jurisdiction under Section 438 Cr.P.C. and granting anticipatory bail. In the facts and circumstances of the present case, in our considered opinion, the High Court was wholly unjustified in invoking jurisdiction under Section 438 and granting anticipatory bail to the respondent. We, therefore, set aside the impugned order of the High Court. The appeal is accordingly allowed.”

12. I have analysed the written synopsis furnished on behalf of the petitioner as well as the ratio of judgments relied by them. In the present case, the fact brought on record during the course of investigation points out that the petitioners have cheated the innocent people and particularly those who were their close relations by giving false assurances for amounts, which run in crores of rupees. They have repaid the loan amount only to those who approached the Criminal Courts in prosecution under Section 138 of the N.I. Act that also on the basis of bounced cheques issued by Ranbir Singh Kharab in discharge of his liability. Thus, they are not entitled to any

discretionary relief from this Court. In fact, in such a case custodial interrogation is necessary because this may disclose the factual position of the financial affairs of the petitioners which may entitle the prosecution to seize the properties and also to take appropriate action with respect to the bank accounts of the petitioners and/or their relations which accounts might have been used for siphoning away the money of the complainants.

13. The present case is not a case of counter FIRs but it is a case of two FIRs having been registered alleging cheating to different individuals. In fact, every offence of cheating constitutes an independent offence and therefore, the arguments on behalf of the petitioners that in this case because two FIRs have been registered that vitiates the interrogation is not sustainable. The principles of other judgments regarding grant of bail does not protect the petitioners for the reasons stated above. The facts of this case very glaringly show as to how influence by a public personality has been misused in persuading innocent relations to shell out their hard earned money with false promises like interest on daily basis and on monthly basis which is without the petitioners knowing well will not be possible. Moreover, the money has been swindled away and misappropriated by purchasing various properties, which has been procured from the complainants.

14. In *Narinderjit Singh Sahni's case (supra)*, the Apex Court took note of the judgment delivered in the case of *Gurbaksh Singh (supra)* also but taking into consideration that a number of persons have been cheated made the following observations:-

7. The relief spoken of however pertains to Section 438 of Criminal Procedure Code. It is noteworthy that the 41st report of the Law Commission recommended for the first time inclusion of a provision for what is called anticipatory bail (vide Section 438 Cr.P.C.). Section 438 contemplates an application by a person on an apprehension of arrest in regard to the commission of a non-bailable offence; the object being to relieve a person from unnecessary harassment or disgrace and it is granted when the Court is otherwise convinced that there is no likelihood of misuser of the liberty granted since he would neither abscond nor take such step as to avoid due process of law.

25. The instant petition under Article [32](#) has been at the instance of Shri B.B. Sharma who happened to be the Chairman and Managing Director of Hoffland group of Companies. The latter has been engaged in accepting deposits and giving loans to public. The petitioner as appears has promoted 40 firms companies having 50 branches all over the country. Till 1997 the petitioner company said to have made payment with interest on maturity but thereafter the company suffered huge losses because of downturn in the business of financial-service companies and added together is the termination of registration as financial managers by SEBI-the problem according to the petitioner has been reason of subsequent closure of company's A/cs by main banker viz., Oriental Bank of Commerce and post dated cheques of the Company were returned unpaid and resultantly several FIRs were lodged. In January, 1998 on the factual score, it appears that petitioner was arrested but subsequently released on bail in the month of February itself. Diverse criminal proceedings have started against the petitioner was granted bail in some FIRs in Delhi and also at Mumbai, Pune, Chandigarh, Udaipur, Gurgaon, Ghaziabad, Ludhiana, Dehradun and Ambala but could not avail such privilege to be released on bail as he was in judicial custody in similar FIRs by other depositors. The principal grievance of the petitioner being that though in judicial custody for the last 21 months but the petitioner can never be released as the situation presently stands by reason of several production warrants pending in different States like Uttar Pradesh, Rajasthan, Kerala, Punjab and Karnataka. It is petitioners definite case that imperative is the question of release as then only he can look after the interest of investor by evolving a scheme of revival. The petitioner as a matter of fact, it has been contended, has to be shuttled from one place to another all over the country as presence of the petitioner suddenly becomes mandatory at every other place and on every date of hearing. It is this state of affairs which Mr. Shanti bhushan appearing in support of the petitioner highlighted and contended that the same is unjust and violative of the fundamental rights under Article [21](#) of the Constitution.

58. We are, therefore, unable to agree with the method adopted by this Court in Writ Petition (Crl.) No. 256 of 1999 and Writ Petitions (Crl.) Nos. 72-75 of 2000 since in our opinion to adopt the method would be giving a premium to the accused persons. Right of an accused to have speedy trial is now recognised as a right under Article 21. Even it has been extended to investigation of offences against child offenders in the case of *Sheela Barse (I) v. Union of India*¹⁰. The procedural fairness required by Article 21, including the right to a speedy trial, has, therefore to be observed throughout and to be borne

in mind. In course of hearing, we had requested the learned Additional Solicitor-General to evolve a scheme for expeditious disposal of criminal cases of the nature with which we are concerned in the present batch of cases. But no concrete proposal came till the conclusion of the hearing of these matters. **While, therefore, we are not granting any relief to the accused persons on the reasons already indicated, we would commend upon the Central Government to evolve certain formula or procedure, so that the accused will not complain of undue harassment on account of protraction of their cases and the persons deceived who have filed complaints, will be satisfied with the early conclusions of the trial.**

59. True, there are certain orders passed by this Court wherein special directions have been given but this Court while passing the orders has not only been extremely careful but was cautious enough to record therein that the order was passed on the special facts and the circumstances in the issue and the same ought not to be treated as a precedent — in the wake of recording of such a caution and the order being in the specific facts of the matter in issue, question of the same being treated as a judicial precedent would not arise, in any event in the view as noticed hereinabove, the said orders as a matter of fact have lost their significance.

60. **As regards the issue of a single offence, we are afraid that the fact situation of the matters under consideration would not permit to lend any credence to such a submission. Each individual deposit agreement shall have to be treated as a separate and individual transaction brought about by the allurements of the financial companies, since the parties are different, the amount of deposit is different as also the period for which the deposit was effected. It has all the characteristics of independent transactions and we do not see any compelling reason to hold it otherwise. The plea as raised also cannot have our concurrence.**

15. Moreover, it is also well settled that there is a difference between regular bail and anticipatory bail. Anticipatory bail is to be granted only to those persons who are able to show that they are not involved in the case, subject matter of the enquiry or that they have been falsely implicated and there is likelihood of harassment by police officials, which is not the case in hand. The whole purpose of filing of these bail applications by the petitioners is thus to keep themselves away from the police and to avoid interrogation so that their misdeeds

may not be revealed and the misappropriated property may not be unearthed. Thus, the case of *Babu Singh (supra)* also has no application to the facts of this case. Thus, the petitioners are not entitled to be released on anticipatory bail, as prayed for by them. The bail applications filed by them are accordingly dismissed.

MOOL CHAND GARG, J.

MAY 27, 2009
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