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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC010163362026**

\+ BAIL APPLN. 1522/2026

DEEPAK .....Petitioner

Through: Mr. Pramod Kumar, Mr. Ajay Kumar Yadav, Ms. Kanti Tiwari, Mr. Amit Kumar Sharma & Ms. Tanvi Sharma, Advs.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Shoaib Haider, APP.
SI Champat Singh PS Gazipur.

(102)

\# **CNR No. DLHC010369522026**

\+ BAIL APPLN. 3266/2026

DEEPAK .....Petitioner

Through: Mr. Pramod Kumar, Mr. Ajay Kumar Yadav, Ms. Kanti Tiwari, Mr. Amit Kumar Sharma & Ms. Tanvi Sharma, Advs.

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Shoaib Haider, APP.
SI Champat Singh PS Gazipur.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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O R D E R

% **12.08.2026**

CRL.M.A. 24450/2026 (exemption) in BAIL APPLN. 3266/2026

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

BAIL APPLN. 1522/2026

BAIL APPLN. 3266/2026

3. By this common order, the Court disposes of two connected applications for grant of anticipatory bail, being BAIL APPLN. 1522/2026 and BAIL APPLN. 3266/2026, both filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 438 of the Code of Criminal Procedure, 1973. The two applications, though arising out of two separate FIRs registered at different points in time, are being taken up and decided together for the reason that both FIRs arise out of the same transaction, namely, an organised and continuing scheme of theft of underground MTNL copper cable from the same locality, involve the same set of co-accused persons and investigating officials, and the implication of the present applicant in both matters is traceable to the very same chain of investigation.

4. BAIL APPLN. 1522/2026 has been preferred against the order dated 17.03.2026 passed by the ASJ (SC-RC)-01/East, Karkardooma Courts, Delhi in Bail Matter No. 246/2026, titled ***State v. Deepak***, whereby the applicant's prayer for anticipatory bail in FIR No. 48/2026, registered at P.S. Ghazipur under Sections 303(2)/62/3(5) BNS, was dismissed. BAIL APPLN. 3266/2026 has been preferred against the order dated 13.05.2026 passed by the same Court in Bail Matter No. 494/2026, titled ***State v.***

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Deepak, whereby the applicant's prayer for anticipatory bail in FIR No. 00032/2026, registered at the same police station under Sections 303(2)/3(5) BNS, was dismissed.

5. The first in point of time is FIR No. 00032/2026, registered on 19.01.2026 at P.S. Ghazipur, in respect of an incident of theft of underground MTNL cable during the intervening night of 18/19.01.2026 from Main Market, Mayur Vihar Phase-III, Delhi. The FIR was recorded against unknown persons. During investigation, one Vishwanath, the JCB driver, was apprehended and arrested; his disclosure statement led to the identification of one Tony Mathur, who was arrested on 07.02.2026. Upon interrogation, Tony Mathur is stated to have disclosed that he had come into contact with the applicant approximately eight months prior to the incident.

6. About a month before the occurrence, the applicant told him that he, along with his associates, used to steal buried MTNL cables and profited from the same; that the applicant asked Tony Mathur to arrange a JCB machine, pursuant to which Tony Mathur made contact with Vishwanath; and that on the night of 18/19.01.2026, the applicant was present at the spot along with three to four other persons when the excavation and removal of the cable took place. It is further alleged that the responsibility for disposal and sale of the stolen cable rested with the applicant, and that on a previous occasion he had sold stolen cable for approximately Rs. 5,00,000/-, out of which he retained a share.

7. The second, and subsequent, occurrence is the subject matter of FIR No. 48/2026, registered on 26.01.2026 at the same police station under Sections 303(2)/62/3(5) BNS, concerning an incident during the intervening night of 25/26.01.2026 at the very same locality, i.e., Main Market, Mayur

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Vihar Phase-III. On this occasion, a police patrol party intercepted a JCB, engaged in digging the road. Unlike the earlier occurrence, no cable appears to have actually been removed on this occasion, the patrolling having been intensified precisely on account of the earlier incident. During further investigation of this FIR, upon interrogation of Tony Mathur, it is recorded that he stated that he, along with the applicant, had earlier stolen MTNL cable on the night of 18/19.01.2026, and that the entire responsibility for disposal of the stolen cable was that of the applicant.

8. It is thus evident from the record of both FIRs that the two occurrences are closely interlinked. They concern the same stretch of underground MTNL cable network in the same locality and the same complainant establishment, overlapping investigating and patrolling staff, and, most significantly, the very same chain of disclosure, through which the applicant's name enters the investigation in both matters. Neither FIR names the applicant at the stage of registration; in both, his implication surfaces subsequently, during interrogation of a co-accused.

9. The applicant's first application for anticipatory bail in FIR No. 48/2026 was dismissed by the Sessions Court *vide* order dated 17.03.2026 (Bail Matter No. 246/2026). The Sessions Court, upon consideration of the case diary, recorded that the applicant was the main conspirator in the case, and, having regard to the nature, gravity, and manner of commission of the offence, no ground for grant of anticipatory bail was made out. It is necessary to record that this order was not, as sought to be suggested in the present application, confined to the stage of investigation being at an initial stage; the dismissal proceeded on a specific finding as to the applicant's alleged role.

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10. Aggrieved thereby, the applicant approached this Court in BAIL APPLN. 1522/2026. It is stated, and recorded by the applicant, that this Court, *vide* order dated 20.04.2026, noticed that the applicant's name did not appear in FIR No. 48/2026 and that his implication was sought to be founded upon the disclosure statement of a co-accused; notice was issued, and it was directed that, subject to the applicant joining investigation as and when required by written notice, no coercive steps be taken against him in the interregnum.

11. In the meanwhile, the applicant's application for anticipatory bail in the connected FIR No. 32/2026 was dismissed by the Sessions Court *vide* order dated 13.05.2026 (Bail Matter No. 494/2026). The Sessions Court noted that Non-Bailable Warrants had already been issued against the applicant, that the case property remained to be recovered, and that his location, as reflected through Call Detail Records, placed him at the spot of occurrence at the relevant time; having regard to the nature, gravity, and manner of commission of the offence, the application was dismissed.

12. The status reports filed by the State in both matters record a consistent narrative regarding the applicant's conduct during this period. Notices under Section 35(3) BNSS were sought to be served at the applicant's rented premises at Bhajanpura, Delhi, as also at his native address in village Raja Purva, District Kannauj, Uttar Pradesh, upon his father. It is the case of the prosecution that despite service of three such notices, the applicant did not join investigation; that Non-Bailable Warrants were issued against him on 12.03.2026, returnable on 10.04.2026; and that, significantly, even after this Court's order dated 20.04.2026 directing him to join investigation upon written notice, the applicant vacated his rented accommodation and has,

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since then, remained untraceable.

13. The applicant, for his part, seeks to explain his non-appearance after 20.04.2026 on the ground that he was apprehensive of arrest on account of the Non-Bailable Warrants already outstanding against him in the connected FIR, and now furnishes an unconditional undertaking to join investigation forthwith.

14. Learned counsel for the applicant has taken this Court through the record of both FIRs to submit that in neither case has the applicant been named at the stage of registration, and that his implication in both matters rests solely upon the disclosure statement of the co-accused Tony Mathur, which, in the absence of independent corroboration, cannot found the basis for arrest or for denial of anticipatory bail. It has been submitted that no recovery of any stolen cable, tool, vehicle, or sale proceeds has been effected from the applicant or at his instance in either case, and that there exists no CCTV footage, independent eyewitness, or forensic material connecting him with either occurrence.

15. A particular emphasis has been laid on what learned counsel describes as the circularity in the prosecution's case. It is submitted that the same disclosure of Tony Mathur, itself generated in the course of investigation of one FIR, is sought to be treated as an independent corroborative circumstance in the other FIR, when in truth both implications spring from a single, undifferentiated source. It has further been submitted that the applicant is a permanent resident of Delhi with a settled family, is the sole earning member responsible for his wife and a minor son, that he has no previous criminal antecedents, and that custodial interrogation is not warranted since the case, as it stands, rests entirely on documentary and

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circumstantial material already within the possession of the Investigating Officer.

16. Learned APP for the State, *per contra,* has opposed both applications. It has been submitted that the two FIRs, far from being independent and unconnected occurrences whose evidentiary value must be assessed in isolation, disclose a single continuing enterprise of theft of public telecommunication infrastructure, in which the applicant is alleged to be the originator of the modus operandi and the person responsible for disposal of the stolen property. It has been pointed out that the disclosure of the co-accused Tony Mathur is not a bare, generic implication but sets out specific particulars and that this account stands corroborated, at the present stage, by Call Detail Record analysis placing the applicant's location at the spot of occurrence.

17. It has been further submitted that the applicant's conduct subsequent to registration of both demonstrates a deliberate design to evade the process of law rather than a *bona fide* apprehension of arrest. It has been submitted that custodial interrogation is necessary in both matters to effect recovery of the stolen cable and sale proceeds, to trace the remaining associates of the racket, and to verify the CDR-based location material against the applicant's own account; and that the gravity of an organised, repeated theft of public infrastructure, executed within a span of one week at the same location, warrants a stringent approach. The argument of circularity has been described as misconceived, it being submitted that the disclosure in each FIR independently sets out a distinct and specific role attributable to the applicant in that occurrence, and that connected offences committed pursuant to a continuing scheme cannot be artificially compartmentalised so

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as to deny the prosecution the benefit of the totality of the material collected across the connected investigations.

18. The principles governing the grant of anticipatory bail have been succinctly and authoritatively settled by the Constitution Bench of the Supreme Court in ***Gurbaksh Singh & Ors. v. State of Punjab***[1]. It was held that the power under Section 438 CrPC is an extraordinary discretionary remedy intended to protect personal liberty and is to be exercised on the facts and circumstances of each case. The Constitution Bench further held that while exercising such discretion, the Court must strike a balance between the individual's right to personal liberty and the investigational powers of the police. It was also observed that anticipatory bail cannot be granted on vague or general apprehensions and that no inflexible restrictions or conditions, not envisaged by the statute, can be imposed while considering an application under Section 438 CrPC. Paragraph 111 of the said decision, as extracted and relied upon in subsequent authorities, reads as under:-

> *"111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case."*

19. The Supreme Court in ***P. Chidambaram v. Directorate of Enforcement***[2], held that the power under Section 438 CrPC has to be exercised sparingly, and that the privilege of pre-arrest bail should be

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[1] (1980) 2 SCC 565.
[2] Crl. Appeal No. 1340/2019, decided on 05.09.2019.

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granted only in exceptional cases. Paragraph 67 of the said decision is reproduced as under:-

> *"67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."*

20. The Supreme Court in ***State of Maharashtra & Ors. v. Mohd. Sajid Hussain Mohd. S. Husain***[3], provided the relevant factors for considering an application for grant of anticipatory bail. Paragraph 20 of the said decision is reproduced as under:-

> *"20. The four factors, which are relevant for considering the application for grant of anticipatory bail, are: "(i) the nature and gravity or seriousness of the accusation as apprehended by the applicant; (ii) the antecedents of the applicant including the fact as to whether he has, on conviction by a court, previously undergone imprisonment for a term in respect of any cognizable offence; (iii) the likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and (iv) the possibility of the applicant, if granted anticipatory bail, fleeing from justice."*

21. On the specific question of the necessity of custodial interrogation, which has been pressed by the State in both matters for the purpose of effecting recovery and unearthing the remaining links of the alleged racket,

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[3] (2008) 1 SCC 213.

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the Supreme Court in ***State (rep. by CBI) v. Anil Sharma***[4], held 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."*

22. Equally relevant, having regard to the conduct attributed to the applicant of not joining investigation despite service of notices and the issuance of unexecuted Non-Bailable Warrants, is the observation of the Supreme Court in ***Lavesh v. State (NCT of Delhi)***[5], wherein it was held as under:-

> *"12. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory bail."*

23. It is, however, necessary to record that the proceedings in the present case does not disclose that proceedings under Section 82 BNSS/CrPC have culminated in a formal declaration of the applicant as a proclaimed offender; what is borne out is the issuance of unexecuted Non-Bailable Warrants and a pattern of evasive conduct, including the vacating of rented premises after this Court's own protective order. The ratio of ***Lavesh*** (supra) is, therefore, invoked not as an absolute bar, but as a directly relevant circumstance bearing upon the applicant's conduct and the *bona fides* of his stated apprehension, to be weighed along with the other factors enumerated in

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[4] (1997) 7 SCC 187.
[5] (2012) 8 SCC 730.

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Mohd. Sajid Hussain (supra).

24. The principal thrust of the applicant's case is the argument of circularity, that the disclosure of the co-accused Tony Mathur, being the common thread through which the applicant is implicated in both FIRs, cannot be treated as independent corroboration of one FIR by reference to the investigation of the other. There is force in the submission to the limited extent that a bare recycling of the same unverified statement, without more, would not ordinarily suffice to sustain twin custodial claims. However, on a closer examination of the record, the disclosure of Tony Mathur is not a single undifferentiated assertion mechanically repeated across the two case files; it sets out, in relation to each occurrence, a distinct and specific particular, the applicant's role as the originator of the scheme and his presence at the spot in relation to the earlier occurrence dated 18/19.01.2026, and his continuing responsibility for disposal of the stolen property spanning both occurrences.

25. Where connected offences are alleged to arise out of a single continuing enterprise, the Court cannot adopt a compartmentalised approach to the evidence as would require each occurrence to be assessed in a hermetically sealed silo, oblivious of the totality of the material gathered across the connected investigations. At the same time, the Court is not oblivious to the fact that the applicant has not been named in either FIR at the threshold, that no recovery has been effected from him, and that his implication rests, at this stage, principally upon the statement of a co-accused, coupled with CDR-based location material. These are factors that will fall for consideration on their own merits before the trial court in due course.

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26. Despite service of notice under Section 35(3) BNSS at applicant's rented premises and, additionally, at his native address upon his father, the applicant did not join investigation, resulting in the issuance of Non-Bailable Warrants on 12.03.2026. What weighs most heavily against the applicant is that even after this Court, *vide* order dated 20.04.2026 in BAIL APPLN. 1522/2026, extended interim protection expressly conditioned upon his joining the investigation as and when called by written notice, the applicant chose to vacate his rented accommodation and has, on the record before this Court, remained untraceable since. This conduct falls squarely within the mischief cautioned against by the Supreme Court in ***Lavesh*** (supra).

27. An applicant cannot be permitted to treat the protective umbrella of an interim order of this Court as a licence to disengage altogether from the investigative process. The explanation now offered, that the applicant's apprehension stemmed from the Non-Bailable Warrants outstanding in the connected FIR, does not, on a fair reading of the timeline, account for his continued unavailability over several months, nor for the vacation of settled residence.

28. The State has also pressed the necessity of custodial interrogation for the purpose of effecting recovery of the stolen cable and its sale proceeds, said to be in the region of Rs. 5,00,000/-, and for identifying the remaining associates of the alleged racket who are stated to have fled from the spot on both occasions and remain unidentified. Applying the test laid down in ***Anil Sharma*** (supra), custodial interrogation in the facts of the present case is qualitatively more likely to be effective in eliciting this information than an interrogation conducted with the applicant insulated by a pre-arrest bail order, particularly where, the applicant is alleged to be centrally placed in

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the disposal chain of the stolen property and is stated to have evaded investigation for a considerable period.

29. Tested against the standard enunciated in ***Gurbaksh Singh Sibbia*** (supra) and reiterated with emphasis in ***P. Chidambaram*** (supra), namely that the extraordinary power under Section 438 CrPC is to be exercised sparingly and only where exceptional circumstances are made out, this Court is unable to hold that the applicant has discharged that burden in either matter. The gravity and organised character of the alleged offence, the specific and consistent nature of the disclosure implicating the applicant across both connected occurrences, the applicant's own conduct in evading service and vacating his residence notwithstanding a protective order of this Court, and the genuine investigative requirement of custodial interrogation for recovery and identification of the remaining associates, cumulatively outweigh the considerations urged on the applicant's behalf, including his clean antecedents and family circumstances.

30. Bearing in mind the repeated involvement of the applicant and his non-cooperation during ad-interim anticipatory bail, the Court is not inclined to grant anticipatory bail in these applications; however, liberty is granted to the applicant to surrender and to apply for regular bail.

31. The application stands dismissed.

32. All the rights and contentions of the parties are left open.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 12, 2026
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