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

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\# **CNR No. DLHC010311422026**

\+ **BAIL APPLN. 2759/2026 and CRL.M.A. 20966/2026**

POOJA SHARMA .....Petitioner

Through: Mr. Atul Verma, Advocate.

versus

STATE OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Naresh Kumar Chahar, APP for State with SI Rohit Kumar.
Ms.Bahuli Sharma, Mr. Suryansh Kishan and Ms. Susan, Advocates for R-2.

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\# **CNR No. DLHC010346432026**

\+ **BAIL APPLN. 3055/2026, CRL.M.A. 23078/2026 and CRL.M.A. 23080/2026**

ASHOK KUMAR SHARMA .....Petitioner

Through: Mr. Atul Verma, Advocate.

versus

STATE OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Naresh Kumar Chahar, APP for State with SI Rohit Kumar.
Ms.Bahuli Sharma, Mr. Suryansh Kishan and Ms. Susan, Advocates for R-2.

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CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **01.09.2026**

1. By way of these two connected applications, filed under Section 482 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), the applicants, who are husband and wife, seek the grant of anticipatory bail in connection with FIR No. 111/2026, registered at Police Station New Friends Colony, Delhi, for offences punishable under Sections 318(4)/351(2)/324(2)/126(2)/61(2) of the Bharatiya Nyaya Sanhita, 2023 ("BNS").

2. Pursuant to the directions passed by this Court, the applicants have appeared before the concerned Investigating Officer and have cooperated with the investigation.

3. The case, in brief, is that the applicants are alleged to have wrongfully claimed exclusive rights over the common vacant terrace of Tower-A of the property bearing No. 144 E/1, Hari Nagar Ashram, New Delhi. The said property was purchased by the applicants by way of a registered Sale Deed dated 30.06.2025, on the representation of the builder that it carried exclusive terrace rights, for which the applicants are stated to have paid a separate sum of Rs. 10,00,000/-. It is alleged that the applicants, in collusion with the builder, cheated the complainant by asserting exclusive rights over a terrace that was, in truth, common to all the occupants of Tower-A.

4. Counsel for the applicants submits that the applicants are innocent and have been falsely implicated, and that they are themselves victims of the builder, Geeta Bansal, and one Sunil Singhal, who had earlier sold the very

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same terrace as common to other flat owners. It is submitted that the applicants had bona fide purchased the property with terrace rights and that, upon discovering the true position in February 2026, the builder demanded and obtained a refund and executed a rectification deed dated 14.05.2026 acknowledging the terrace to be common to all the occupants of Tower-A.

5. It is further submitted that, insofar as one of the applicants was shown as a witness to a document in the year 2019, the same was a mere attestation made without a careful reading of its contents, and cannot, by itself, fasten criminal liability upon him. It is lastly submitted that the applicants have cooperated with the investigation and undertake to render full cooperation, and to furnish all documents in their possession, as and when required.

6. The applications are vehemently opposed by the APP for the State as well as by counsel for the complainant. It is submitted that the applicants are not innocent and have cheated the complainant by purchasing the property with terrace rights despite being aware that the terrace was common to all the occupants; that the applicants have colluded with the builder in the commission of the offence; and that there is another criminal case pending against the applicant, Ashok Kumar Sharma.

7. I have considered the submissions advanced by counsel for the parties and have perused the record.

8. The principles governing the grant of anticipatory bail have been authoritatively settled by the Constitution Bench of the Supreme Court in ***Gurbaksh Singh Sibbia v. State of Punjab***,[1] wherein it was held that the power under Section 438 of the Code of Criminal Procedure, 1973 is an extraordinary discretionary remedy intended to protect personal liberty, to

[1] (1980) 2 SCC 565.

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be exercised on the facts and circumstances of each case, and that, in exercising such discretion, the Court must strike a balance between the individual's right to personal liberty and the investigational powers of the police; such power cannot be invoked on the basis of vague or general apprehensions.

9. These principles were further elucidated in ***SiddharamSatlingappaMhetre v. State of Maharashtra***,[2] wherein the Supreme Court, emphasising the intrinsic connection between the power under Section 438 and the guarantee of personal liberty under Article 21 of the Constitution, as also the presumption of innocence, observed that bail is the rule and jail the exception, and held that the denial of anticipatory bail would be justified only where the facts disclose a genuine necessity for such a course, such as the requirement of custodial interrogation, or the likelihood of the applicant absconding, tampering with the evidence or influencing witnesses.

10. In ***Siddharth v. State of Uttar Pradesh***,[3] the Supreme Court drew a distinction between the existence of the power to arrest and the justification for its exercise, holding that an accused who has cooperated with the investigation need not be arrested merely because an arrest is lawful. It was observed:

> *The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. ... If the investigating officer has no reason to believe that the accused will*

[2](2011) 1 SCC 694.
[3](2022) 1 SCC 676.

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> *abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.*

11. To like effect, in ***Arnesh Kumar v. State of Bihar***,[4] the Supreme Court cautioned against the mechanical exercise of the power of arrest, particularly in respect of offences punishable with imprisonment of up to seven years, holding that an arrest ought not to be effected in a routine manner and must be justified with reference to the necessity therefor.

12. Applying the aforesaid principles to the facts of the present case, the allegations against the applicants rest, in substance, upon documentary material, namely, the registered Sale Deed dated 30.06.2025 and the subsequent rectification deed dated 14.05.2026. The rival submissions of the parties will, in due course, have to be examined by the Investigating Officer during the course of the investigation, the chargesheet not having yet been filed.

13. The investigation being one that relates principally to documentary evidence, it can be completed without the custodial interrogation of the applicants; and the question of the applicants' alleged conspiracy and connivance with the builder can equally be examined by the Investigating Officer. The applicants have, moreover, appeared before the Investigating Officer as and when called upon and have cooperated with the investigation, and there is nothing on record to suggest that they are likely to abscond or to tamper with the evidence. In these circumstances, no case for the custodial interrogation of the applicants is made out.

14. Bearing in mind the overall facts and circumstances of the case, the

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[4](2014) 8 SCC 273.

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Court deems it appropriate to allow the present applications. Accordingly, it is directed that, in the event of arrest, the applicants shall be released on anticipatory bail subject to such terms and conditions as may be imposed by the concerned trial Court.

15. With the aforesaid, the present applications stand disposed of. The pending applications also stand disposed of.

PURUSHAINDRA KUMAR KAURAV, J

SEPTEMBER 1, 2026
Nc/ab

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