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

% *Order delivered on: 5th March, 2015*

\+ **BAIL APPLN. No.2674/2014 & Crl. M. (Bail) No.11174/2014**

TARA CHAND ..... Petitioner
Through Mr.Suhail Dutt, Sr. Adv. with Mr.Ankit Khurana, Ms.Karishma & Mr.Alam, Advs.

versus

STATE OF NCT OF DELHI ..... Respondent
Through Mr.M.N.Dudeja, APP for the State. Mr.Anurag Jain, Adv. for the complainant.

\+ **BAIL APPLN. No.2680/2014 & Crl. M. (Bail) No.11176/2014**

ANUJ KUMAR JAIN ..... Petitioner
Through Mr.Suhail Dutt, Sr. Adv. with Mr.Ankit Khurana, Ms.Karishma & Mr.Alam, Advs.

versus

STATE OF NCT OF DELHI ..... Respondent
Through Mr.M.N.Dudeja, APP for the State. Mr.Anurag Jain, Adv. for the complainant.

\+ **BAIL APPLN. No.38/2015 & Crl. M.A. No.250/2015**

RAMESH KR. CHOUHAN ..... Petitioner
Through Mr.Sudhir Naagar, Adv. with Mr.Mukesh Saroja & Ms.Alka, Advs.

versus

STATE OF NCT OF DELHI ..... Respondent

Through Mr.M.N.Dudeja, APP for the State.
Mr.Anurag Jain, Adv. for the complainant.

+ **BAIL APPLN. No.119/2015 & Crl. M. (Bail) No.126/2015**

CHAMPATLAL JAIN ..... Petitioner

Through Mr.Siddharth Luthra, Sr. Adv. with Ms.Shyel Trehan, Ms.Tejaswi Shetty & Mr.Faraz Maqbool, Advs.

versus

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

Through Mr.M.N.Dudeja, APP for the State.
Mr.Anurag Jain, Adv. for the complainant.

+ **BAIL APPLN. No.123/2015, Crl. M. (Bail) No.127/2015 & Crl. M.A. No.911/2015**

MADANLAL BABULAL CHOWATIA & ORS. ..... Petitioners

Through Mr.Siddharth Luthra, Sr. Adv. with Ms.Shyel Trehan, Ms.Tejaswi Shetty & Mr.Faraz Maqbool, Advs.

versus

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

Through Mr.M.N.Dudeja, APP for the State.
Mr.Anurag Jain, Adv. for the complainant.

\+ **CRL.M.C. No.231/2015 & Crl. M.A. Nos.912-13/2015**

CHAMPATLAL JAIN & ORS ..... Petitioners

Through Mr.Siddharth Luthra, Sr. Adv. with Ms.Shyel Trehan, Ms.Tejaswi Shetty & Mr.Faraz Maqbool, Advs.

versus

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

Through Mr.M.N.Dudeja, APP for the State. Mr.Anurag Jain, Adv. for the complainant.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By this order, I propose to decide five anticipatory bail applications, filed by Tara Chand Lumbchand Jain, Ramesh Kumar Hazarimal Chouhan, Champatlal Jain, Madanlal Babulal Chowatia, Sharad Babulal Jain, Ashok Babulal Jain, Naina Ashok Jain and Anujkumar Tarachand Jain, under Sections 438 & 482 Cr.P.C. seeking pre-arrest/anticipatory bail with directions to the Investigating Officer/Arresting Officer in case FIR No.313/2014, under Sections 420/406 IPC, P.S. Kirti Nagar, Delhi to release the petitioners in the event of their arrest in the said case.

2. With regard to sixth petition, i.e. Crl. M.C. No.231/2015 filed by 8 petitioners under Sections 482 Cr.P.C., the prayer is made for quashing of the order dated 28th May, 2014 as well as for quashing of non-bailable warrants issued against them by order dated 11th

September, 2014 and also the orders dated 27th October, 2014 and 3rd December, 2014 issuing process against the petitioners under Section 82 Cr.P.C. and all the proceedings emanating therefrom, passed in the above said FIR No.313/2014 and CC No.72/3 by the Metropolitan Magistrate, Tis Hazari Courts, Delhi.

3. All the parties have made their submissions. Since the facts are common, all the petitions are being decided by this single order.

4. The complaint was filed by respondent No.2 Hitesh Kothari under Section 156(3) Cr.P.C. on 18th December, 2013 seeking registration of FIR at PS Kirti Nagar, New Delhi. The main contents of the complaint read as under:

> "I, Hitesh Kothari S/o Sh. Jayantilal Kothari R/o E-88, Kirti Nagar, Delhi-110015 submits as under:
>
> 1. I live at the aforesaid address with my family and Sh. Champatlal Babula Jain R/ o .4Q-20-52, Nirmal Pragi Nagar, Tikkal Road Vijayawada-520 008 who is doing the business of real estate is my relative and is also a partner in M/s. Suraj Constructions, 27-37-IA, Second Floor, Gopal Reddy Road, Governorpet, Vijayawada-520 001 also having his office at Ripple Mall, Mahatma Gandhi Road, Labbipeta, Vijayawada-520 002.
>
> 2. Sh. Champatlal Babulal Jain was insisting upon me to invest in his projects and on 20.04.2007 he came to my house and represented that he is constructing a mall cum multiplex "Ripple Mall" at M.G. Road Vijayawada and the price of same is going very high in property market and I can earn very good profit if I purchase some area in his mall. I was not interested in purchasing the property but he assured & represented me that he is my close relative and I must purchase space in his mall. He further represented me that the entire deal is transparent and the

property/space shall be allotted to me as soon as the construction is completed lie further offered me to allot 5000 sq. ft. (Supper built up) @ Rs.9500/- per sq. ft. amounting to Rs.4,75,000/- (Rs.Four crores and seventy Five lacs only) on the ground floor of the mall. He further offered me to allot 3000 sq. ft. (Super Built up) @ Rs.8,000/- per sq. ft. amounting to Rs.2,40,00,000/- (Rs.two crores and Forty lacs only) on the first floor of the mall. In other words, he represented me to allot total area of 8000 sq. ft. for a total consideration of Rs.7,15,00,000/- (Its seven crores and Fifteen lacs). I further stated to him that I am living at Delhi and it is not possible for me to monitor the project at Vijayavada but on that he again assured me that he is already there and I need not to come to Vijayvada personally and payments can be mace from Delhi from banking channels from time to time. He further assured me that he will keep me informed about the project.

4. Allured by his presentations and keeping in view the fact that he is my close relative and there was no reason to disbelieve him. I agreed to purchase the space in the mall and entered into an agreement dated 20.04.07 with Sh. Champatlal Babulal Jain at my house at Delhi. As per the agreement I also paid him Rs.21,50,000/- (Rs.Twenty One lacs and Fifty Thousands only) vide cheque No.655142 for Rs.11,00,000/- and cheque No.655143 for Rs.10,00,000/- both dated 20.07.2007 and cheque No.655143 for Rs.10,00,000/- both dated 20.07.2007 and drawn on state Bank of Bikaner & Jaipur, Kirti Nagar Branch in favour of Suraj Constructions. As per the demands of Sh. Champatlal Babulal Jain, I kept paying the money to him from my bank State bank of Bikaner & Jaipur, Kini Nagar Branch Delhi via RIGS. As and when I asked him about the development of the construction and possession of the property, he kept me telling that the construction is going on, and the completion of the Mall would take some time. As per his demands I paid the entire agreement amount of

Rs.7,15,00,000/ (Rs.Seven Crore and fifteen lacs) from 20.04.2007 to 03.03.2010 from my bank at Delhi. I further paid him Rs.3,75,000/- on account of transfer fee for the aforesaid area in my favour. 6. Even after the receipt of entire sale consideration and transfer fee. Sh. Champatlal did not transfer the property in my name nor he gave possession of the same to me rather he kept the matter pending on one pretext or other. On my persistence Sh. Champatlal told me that he is not having enough money to complete the project and as such he requested me to give Rs.2/2-1/2 crores as loan on interest a short duration so that he can complete the project and transfer the property in my name. He also promised me return the loan· shortly along with interest @ 18 p.a. Though I was not in a position to pay the said amount at that time but still keeping in view the fact that I had already in vested a lot of money in the project and he is my close relation, I gave him a loan of its. 2,38,00,000/- which was also paid from the aforesaid bank at Delhi. On 04.06.2011, I demanded back my loan amount of Rs.2,38,00,000/- from Sh. Champatlal alongwith interest @ 18% p.a. amounting to its. 56,99,047/- total amounting to Rs.2,94,99,047/- and also requested him to transfer the property in name by executing relevant documents for which I have already paid the entire sale consideration. But surprisingly even after the entire sale consideration, transfer fee and loan, Sh. Champaklal did not transfer the property in my name nor he returned my loan amount rather he started avoiding my phone calls. On that I got suspicious and personally visited his office at Vijayavada and clearly total him to transfer the property and return the loan amount immediately but he did not give any satisfactory answer. I also sent him a legal notice on 20.07.2011 which was not replied by him and also raised the issue within my larger family as he was closely related to me. Due to the intervention of family as he was closely related to me. Due to the intervention of family members and friends. Sh. Champatlal apologized for the delay and promised me to transfer the property and return the loan money with interest within a period of 1-1/2 years i.e. unto January -February 2013 and also requested that I should not file any case against him or his company in this regard as it would cause serious harm to his reputation and projects. 9. After January 20 13, I made several telephone calls *to* Sh. Champatlal from Delhi and every time he told me that construction is going on at the site and he will keep his words. As the matter had already been raised within the family. I believed his words and did not take any legal action against him. 10. On. 11.09.2013, when I was browsing the internet regarding commercial property prices in India. I was shocked to see that the website with request to the aforesaid mall was in existence as *htto://*www.ripolesindia.in and it was showing that the Mall is already completed and functional and in fact many leading brands have already opened there showrooms in the said mall. 11. I was deep shock to see the same and immediately I personally visited the Mall site at Vijayavada and found that the all was functional and many showrooms were there. I immediately went to the office of Sh. Champatlal and asked him *to* allot my space in the mall and return my 'loan amount. On that Sh. Champatlal clearly told me that the entire space in the aforesaid Mall has been sold out and he simply cannot give my any space in the mall. I also asked Mr. Champaklal me to return back my money in case space is not available in the mall by making reverse RTGS in my bank account at 'Delhi from which the money was paid to him. But he clearly told me that neither he would give any space to me in the mall nor he will return my loan amount and I can do whatever I can do. He further told me that he has got high connections in police and mafia and if I raise my voice. I will be eliminated or sent behind the bars in a false case. 12. That by making false and frivolous representations, Sh. Champatlal induced me to enter into an agreement at my house E-88, Kirti Nagar Delhi on 20.04.2007 by making false representation that he would allot me space as stated above in the Nipple Mall at Vijayavada and also, look 100,000/- at the time of signing the agreement. It is clear that right from the beginning and also at the time of entering into the agreement, the intention of Sh. Champatlal was bad and he never intended to honour the agreement dated 20.04.2007. His only intention from the beginning was to cheat and defraud me for causing wrongful less to me and wrongful gain to himself. 13. That right from the beginning it was in his mind to win my confidence by making false representations so that he can extract money and cheat me. Right from the beginning. It was within the knowledge or Sh. Chumputlal that he would not allot any space to me in the mall after its completion but despite that he took money from me time to time on the assurance and representations that he would allot space to me in Ripple Mall as soon as the construction is completed. 14. The net result of the matter is that Sh. Champaklal sold total 8000 sq. ft. space in Ripple Mall, Vijayavada to me and took more than 7 crores as sale consideration and 2,38,00,000/- as loan (Total more than 9 crores) but after completion of construction, he sold the same space to other persons him and the en tire sale consideration has also been taken. 15. It was in the knowledge of Sh.Champatlal since beginning that he would not allot me any space in Mall but despite that he made fake and frivolous representations to cheat and defraud me to the tune of more than 9 crores. Had the actual position been represented to the me, I would not have given any money to Sh. Champatlal. 16. I have also come to know that he and his other associates are professional Cheaters and they have cheated a larger, number of people to the tune of crores of Rupees by using similar modus operandi. The exact quantum of fraud and other persons who are involved in criminal conspiracy with Sh. Champatlal can only be determined by your good self by conduction details investigation in the matter. 17. Till date, neither the space has been allotted to me in the Mall nor the payment/ money has been returned me by Sh. Champatlal. Payments have been made through proper baning channels from Delhi and I have got all the proofs to support my contentions. 18. Sh.

Champatlal has failed to protect my interest in the transactions from which he legally bound. 19. Sh. Champatlal has cheated me in a planned manner and he has also betrayed my trust and as such he deserves to be punished for his acts."

5. After the complaint, the following events happened from time to time as per the details provided by the parties. Details of dates of events are given as under:

20.12.2013	The Investigating Officer issued a notice under Section 41A to Petitioner No.1 i.e. Champatlal directing him to appear before the Investigating Officer on or before 13.01.2014.
21.02.2014	A letter was sent by the Petitioner No.1 to the Investigating Officer in response to the notice dated 20.12.2013 as he was in Rajasthan attending a family wedding, and he had only received the notice upon his arrival on 30.01.2014: Petitioner No.1 provided the true and correct facts in relation to the case and rebutted the allegations made by the Complainant. He informed the IO that the Complainant himself sought cancellation of the allotment space in Ripple Mall and that the Complainant vide his letter dated 22.03.2011 had requested that Rs.9.5 Crores be transferred to M/s Fuso Glass India Pvt. Ltd. for allotment of shares in lieu of the amount paid by him to M/s Suraj Constructions and had also agreed to forfeit Rs.6.75 Lakhs as compensation for cancellation. Accordingly, through its letter dated 20.05.2011, M/s Suraj Constructions cancelled the transaction and an amount of Rs.9.5 Crores was transferred as per the Complainant's request. He further informed the IO that M/s Fuso Glass India Pvt. Ltd. in its letter dated 12.02.2014 confirmed

	that share certificates for the amount of Rs.9.5 Crores had been issued in the name of the Complainant for the years 2010-11 and 2011-12.
11.03.2014	The IO filed his reply to the application under Section 156(3) wherein he mentioned that Petitioner No.1 produced the original agreement and the same couldn't get verified as it was on the letter head of M/s Suraj Construction. He further noted that all the details of the payments made by alleged persons are a matter of record and all the evidence i.e., bank statements, agreement etc. are within the reach and possession of the Complainant and no field investigation was required in the matter. Further, with regard to the letter dated 20.04.2007, the IO observed that the said agreement seemed to be a letter and as per language of Para(e) and the concluding paragraph, it did not seem to be an agreement. He noted that it has neither been registered nor mentions any plot.
11^{th} – 12^{th} May, 2014	Petitioner No.1 departed for New Jersey, USA to attend a close Family friend's wedding for which he had booked tickets on 15.02.2014.
12.05.2014	FIR No. 313/2014, P.S. Kirti Nagar, West Delhi was registered in compliance with order dated 10.05.2014.
28.05.2014	Order passed by Metropolitan Magistrate, Tis Hazari Court changing the Investigating Officer and issuing show cause notice under the Contempt of Courts Act, 1971 against the outgoing IO Kuldip Singh and SHO Kirti Nagar on the allegation of the Complainant that inaction on their part had led to Mr. Champatlal Jain fleeing the country. The Metropolitan Magistrate held that though the FIR was registered within the time frame directed by this

	court, the investigating agency had still not taken a single step for collection of necessary evidence and to ensure that the accused should not run away or dispose off his belongings and proceeds of cheat. The Metropolitan Magistrate further noted that there is no need to doubt the submission of the Complainant as Petitioner No.I and the Complainant are near relatives.
18.06.2014	The new Investigating Officer issued a letter dated 18.06.2014 for stopping the sale and purchase of property in Ripple Mall, Vijayawada.
19.06.2014	A notice was sent through S.I. Rajpal requiring the attendance of Petitioner No.1 at P.S. Kirti Nagar for investigation.
20.06.2014	Notice under Section 91 was sent to Mr. Champatlal Jain to produce documents on or before 02.07.2014.
21.06.2014	A letter was sent in response to the notice dated 19.06.2014 stating that Petitioner No.1 had gone to USA to attend a wedding and was likely to return on the first or second week of July. It was also reiterated that all documentation would be produced before the Investigating Officer as and when directed by him and that Mr. Champatlal Jain would appear before him and cooperate in the investigation upon his return to India. This letter was delivered on 24.06.2014.
	A reply to the show cause notice under the Contempt of Courts Act, 1971 was filed by SHO Kirti Nagar wherein it was stated inter alia that the present case was between two relatives and needed a deep and diligent investigation. The SHO was of the opinion that on the basis of mere allegations, arrest, LOC and other coercive steps were not advisable

	and the steps suggested by advocate of the Complainant would be advisable only after ascertaining the facts. The SHO further noted that till date the Complainant had not produced any agreement to sell or any loan agreement except the letter dated 20.4.2007.
24.06.2014	I.O. Kuldip Singh also filed his reply to the show cause notice stating that there was no reasonable ground to arrest the alleged person except the allegations raised by the Complainant in his complaint and the FIR. He further stated that unless and until there are sufficient grounds to arrest a person, there is no need to open the LOC and stop anyone from going abroad and curtail the fundamental right of an individual and there is no untoward urgency to take steps to stay the sale of the mall. Unless and until the authenticity of the Complainant is verified and ascertained, such steps were not advisable. The IO noted that Complainant wanted the police to take steps to prevent Petitioner No.1 from selling property in the mall but also alleged in his Complaint that all the space in the mall had already been sold.
24.06.2014	An anticipatory bail application under Section 438 of the Code of Criminal Procedure, 1973 was instituted on behalf of Petitioner No.1 on 24.06.2014 wherein the correct factual position was reiterated to highlight how the Complainant had persistently and deliberately misled the Metropolitan Magistrate from time to time whilst also suppressing material facts and documents in order to lend some false credibility to his otherwise false and concocted case. Relevant documents that showed the true and correct factual position were also filed along with the said bail application.
25.06.2014	The investigating officer filed his reply to the

	bail application detailing the steps taken by him in the investigation. It was stated that the Chief Manager of Tamil Nadu Merchant Bank Vijayawada has been requested to stop further transactions in the account of Petitioner No.1. It was also stated that Petitioner No.1 was not found when raids were conducted in his office and residence the IO was informed that Petitioner No.1 was abroad and that a notice has been served to the manager of his office with directions to join investigation and to produce relevant documents. It was also stated that the District Registrar, MG Road, Vijaywada has been requested to stop further sale and purchase of property in Ripple Mall till the disposal of the present case. It was further stated that Asst. Director, Bureau of Immigration, New Delhi was asked to provide details of arrival of Petitioner No.1 and the Regional Passport Officer has been requested to provide passport details. In conclusion, it was noted that Petitioner No.1 was evading arrest and was sending his representations through his manager via courier/speed post, despite the fact no warrant for arrest had been issued against him and the fact that through letter dated 21.06.2014, which had been delivered on 24.06.2014, he had been informed that the Applicant was abroad and would join investigation as soon as he returned.
25.06.2014	Additional Sessions Judge passed an order stating that till the next date of hearing, in which time the Investigating Officer would have to verify all the documents filed along with the bail application, Petitioner No.1 would not be arrested.
02.07.2014	Petitioner No.1 joined investigation before the

	Investigating Officer at Chennai who recorded his statement. The statement of Petitioner No.5 was also recorded by the I.O. The other Petitioners were also present at their office premises at the time, and offered their cooperation.
03.07.2014	Petitioner No.1 produced several documents, including originals, relating to the transfer of shares of *MIS* Fuso Glass to the Complainant, which were seized by the investigating officer through two seizure memos.
07.07.2014	Status report/further reply was filed by the IO in the bail application of Petitioner No.1 in which it was stated that the documents produced by him had been shown to the Complainant who had denied all signatures and documents as being forged and fabricated. It was stated that the original documents were being sent to the FSL for expert opinion and that other partners of M/s Suraj Constructions were to be interrogated at length. Further, it was requested that Sections 467/468/471 be added to the present case.
08.07.2014	Anticipatory bail application filed by Petitioner No.1 was rejected by the ASJ, Tis Hazari Court, since it was a cheating case of more than Rs.9 Crores and the Complainant had denied his signatures on the documents transferring shares and custodial interrogation was required.
15.07.2014	Petitioner No.1 produced 47 documents including original documents relating to the transactions of transfer of shares. These documents included the original gift deed executed by the Complainant himself in favour of the Naina and Ashok Jain. These were seized by the Investigating Officer vide a seizure memo.

02.08.2014	The Complainant filed an application on 02.08.2014 for direction for surrender of the passports of the accused persons arraigning the other Petitioners herein as well, despite the fact that only Petitioner No.1 had been named in the FIR. The Complainant sought similar direction against the other Petitioners as well. The Metropolitan Magistrate dismissed the said application vide order dated 2.08.2014.
25.08.2014	Petitioner No. 1 through a letter dated 25.08.2014, submitted the original share application forms for issuance of equity shares of the concerned amount in favour of the Complainant which were seized by the IO vide seizure memo dated 18.09.2014.
11.09.2014	The I.O sought issuance of non-bailable warrants against the Petitioners. The Metropolitan Magistrate vide order dated 11.09.2014, issued non- bailable warrants against the Petitioners despite the fact that no notice or summons were issued.
15.09.2014	Status report dated 15.09.2014 stating that the petitioners, were evading arrest and hence non-bailable warrants had been obtained against them.
18.09.2014	Documents that were sent by the Petitioner No. 1 on 25.08.2014 were seized and a seizure memo was recorded.
27.10.2014	The Police sought issuance of coercive steps under Section 82 of the Code of Criminal Procedure 1973 alleging that the Petitioners were evading arrest. The Metropolitan Magistrate was pleased to issue process under Section 82 of the Code of Criminal Procedure.
07.11.2014	The anticipatory bail applications of Petitioner Nos. 2-5 were rejected on the ground that coercive steps had already been issued and they were not cooperating with the

	investigation.
03.12.2014	Fresh process was issued under Section 82 Cr.P.C. as the previous process could not be executed owing to paucity of time. The Metropolitan Magistrate issued process returnable on 27.01.2015.

6. It is the admitted position that after filing of the complaint, the complainant Mr.Hitesh Kothari had also issued the notice dated 20th June, 2014 under Sections 271/272 of the Companies Act, 2013 for winding up the company, to Fuso Glass India Pvt. Ltd. and Mr.Ashok Babulal Chowatia, Director of the said Company. The contents of the said notice read as under:-

> "1. That my client is a businessman by profession and due to his fair transactions and professional attitude, he has earned excellent goodwill in the national as well as in the international front.
>
> 2. That you the addressee No.1 is a Private Limited Company incorporated under the Companies Act, 1956, having its registered office at FUSO House, 4th Floor, 91, Poonamallee High Road, Egmore, Chennai-600084.
>
> 3. That you notice address No.2 being a close relative of my client, approached my client in capacity of Director of addressee No.1 and took total amount of Rs.9,64,69000/- (Rs.Nine Crore Sixty Four Lacs and Sixty Nine Thousands only) as loan from my client on various dates in the name of addressee No.1 with an assurance that the said loan shall be repaid on demand and besides that my client shall be paid interest @18% p.a. Needless to say that the entire amount was paid through proper banking channels and as such the payment of said amount cannot be disputed.

4. That despite specific demands and requests of my client, you failed to make repayment of loan amount to my client alongwith interest. My client also issued a notice dated 20.07.2011 in this regard but till date you have failed to make the payment of loan amount and/or interest.

5. That it has also come to the knowledge of my client that the amount which was transferred to the addressee No.1 purely as a loan on interest basis, has been misappropriated and some shares has been allegedly allotted in the name of my client against the said loan amount. It is made clear that my client has never ever applied for any kind of allotment of shares in addressee No.1 and my client apprehends that some documents have been forged and fabricated to misappropriate the loan given by my client. The alleged allotment is nothing but an illegal amount on the part of you addressee No.1/its Directors/employees etc. to swallow and misappropriate the loan amount of my on the basis of false and fabricated documents. My client reserves his right to initiate appropriate criminal proceedings in this regard. My client has already issued a separate notice dated 20.07.2011 in this regard.

6. That it is also a matter of fact that my client has also made a separate complaint of cheating and fraud to the tune of more than Rs.9,50,00,000/- (Rs.Nine Crore Fifty lacs only) against M/s Suraj Constructions and its partner Sh. Champatlal Babulal Jain for which FIR No.313/2014 U/s 406/420 IPC, PS Kirti Nagar, Delhi has already been registered. Suffice would it be to say that Sh. Champatlal Babulal Jain (Partner in M/s Suraj Constructions) is also the Managing Director of addressee No.1 M/s Fuso Glass India Private Ltd.

7. That it is also a matter of fact that during the investigation of aforesaid FIR, a letter dated 21.02.2014

issued by you addressee no.1 to M/s Suraj Constructions and signed by its authorized signatory and a reply has been submitted before the police authorities stating therein that you addressee No.1 (M/s. Fuso Glass India Private Ltd.) has received an amount of Rs.9,50,00,000/- (Rs. Nine Crore and Fifty Lacs Only) from M/s. Suraj Constructions on account of my client share application money in Fuso Glass Pvt. Ltd. in the year 2010-11 & 2011-12 and subsequently shares were allotted to my client.

8. That it is a matter of fact that my client has never applied for allotment of shares in addressee No.1 nor any request for transfer of money was made to M/s Suraj Constructions by my client. From the facts and circumstance it is clear that you addressee No.1 has issued a false and fabricated letter dated 12.02.2014 to cover up the illegal misappropriation and cheating by M/s. Suraj Constructions and its partners. Not only this, it is apparent that various false, forged and fabricated documents have been prepared by you addressee No.1 and 2 and other directors/Managing Directors employees etc. of addressee No.1 to cover up illegal acts of misappropriation, cheating and forgery.

9. That it also important to note that the partners of M/s Suraj Constructions and Directions/Managing Director of Fuso Glass India Private Ltd. belongs to the same family.

10. That from the aforesaid facts and circumstances, it is clear that you the addressee No.1 company is unable, neglected and failed to pay the total outstanding amount/debt of Rs.9,64,69,000/- alongwith interest @ 18% p.a. due and payable to my client, despite it being an admitted amount. Moreover it is clear that the affairs of the company have been conducted in a fraudulent manner and the persons concerned in the management

> of affairs of addressee no.1 are involved in fraud, cheating and misappropriation.
>
> By this legal notice, I herby call upon you to pay the amount of Rs.9,64,69,000/- (Rs.Nine Crore Sixty Four Lacs and Sixty Nine Thousands only) alongwith interest @ 18% p.a., within a period of 14 days from the receipt of this notice, failing which my client shall be constrained to initiate winding up proceedings against you in the competent court of law besides taking other remedies as available under the law, which shall be entirely at your own cost and expense."

7. The complainant submits that after having come to the said notice, the complainant issued the winding up notice to Fuso Glass India Pvt. Ltd. on 20th June, 2014 on the basis of the reply filed by Champatlal Jain dated 21st February, 2014 and the letter issued by the Fuso Glass India Pvt. Ltd. dated 12th February, 2014.

8. The petitioners (the petitioners herein refer to all the parties of M/s. Suraj Constructions and Director of the Company M/s. Fuso Glass India Pvt. Ltd.) during the course of arguments have not denied the fact of entering into the agreement on 20th April, 2007 through Champatlal Jain who is the Managing Partner of M/s Suraj Constructions with the complainant-Hitesh Kothari. It is also not denied that said Champatlal Jain offered to sell 5000 sq. ft. of super built up area on the ground floor at Rs.9500/- per sq. ft. and 3000 sq. ft. of super built up area on the first floor at Rs.8,000/- per sq. ft., i.e. for a total consideration of Rs.7,15,00,000/- to the complainant. The petitioners have not denied the fact that the entire payment of Rs.7,15,00,000/- as sale consideration and Rs.3,75,000/- as transfer

fee for the said space has been received from the complainant. It is also not denied by the petitioners that the complainant had further advanced a loan of Rs.2,38,00,000/- to Champatlal Jain, partner of M/s Suraj Constructions. They have also not denied that the said space has not been allotted to the complainant as per the agreement, nor the petitioners have returned the loan amount of Rs.2,38,00,000/

9. The case of the petitioners with regard to return of the money is as under:-

(a) In relation to the transaction evidenced by the letter dated 20th April, 2007, the complainant had himself sought a cancellation of the allotment of space in Ripple Mall through his letter dated 22nd March, 2011.

(b) In the said letter dated 22nd March, 2011, the complainant had requested that Rs.9.5 crores paid by him to Suraj Constructions be transferred to M/s Fuso Glass India Pvt. Ltd. for allotment of shares in his name.

(c) The complainant through the aforesaid letter dated 22nd March, 2011 also agreed to forfeit Rs.6.75 lakhs as compensation for the cancellation. The complainant has not claimed this amount, neither has he made any allegations of cheating with respect to this amount.

(d) Pursuant to the aforesaid request of the complainant, Suraj Constructions through its letter dated 20th May, 2011 informed the complainant that an amount of Rs.9.5 crores was transferred to M/s Fuso Glass India Pvt. Ltd. It was also stated that in the years 2010-11 and 2011-12 share certificates had been issued in the name of Hitesh Kothari.

(e) The aforesaid factual position was further confirmed by M/s Fuso Glass India Pvt. Ltd. in its letter dated 12th February, 2014 wherein it confirmed that share certificates for the amount of Rs.9,50,00,000/- had been issued in the name of the complainant for the years 2010-11 and 2011-12.

(f) Around the same time, as making payments to Suraj Constructions, the complainant had also made payments of a sum of approx. Rs.9,64,00,000/- to M/s Fuso Glass India Pvt. Ltd.

10. The submission of learned Senior counsel appearing on behalf of the petitioners is that the sum of Rs.19,21,44,000/- was adjusted towards the issuing of shares and the necessary steps by way of Form-2 and annual return under Section 159 were taken and nothing more is due from the petitioners side and all documents referred by them are genuine.

11. The said documents referred by the petitioners and submissions thereto are denied by the complainant by submitting that all those documents are forged documents which are allegedly signed by the complainant. It is further stated that whatever steps have been taken with regard to submitting the Form-2 and Annual Return under Section 159, it was not within the knowledge of the complainant as these actions taken by the petitioners themselves without the consent of the complainant.

12. It appears from the said notice that during the same period, the complainant has also given the amount of Rs.9,64,69,000/- to Fuso Glass India Pvt. Ltd. as loan amount by RTGS and the total amount thus would come to Rs.19,21,44,000/- as per complainant who says that no space was given to the complainant till July, 2011. Legal notice was issued on 20th July, 2011 for possession and return of the loan amount along with interest. In the month of September, 2013, it has come to the notice of the complainant that the side area of the first floor was allotted to many leading brands and the mall was completely functional. No space was given to the complainant by the petitioners who have cheated the complainant. Therefore, the complainant left with no other option but to file the criminal complaint to EOW on 18th October, 2013 under Section 156(3) Cr.P.C.

13. It is the case of the complainant that during the investigation, Mr.Champatlal Jain filed his statement under Section 41 on 21st February, 2014 along with M/s Fuso Glass letter dated 12th February, 2014, confirming thereby no balance of the complainant in Suraj Constructions and fund transfer Rs.9,50,00,000/- to Fuso Glass and other Rs.6,75,000/- was forfeited as per the complainant's cancellation letter dated 22nd March, 2011. In the meanwhile, the aforesaid FIR was registered against the petitioners on 12th May, 2014.

14. Learned APP for the State as well as the learned counsel for the complainant have argued before Court that all the documents produced by the petitioners are forged, fabricated, manipulated and most of them were not in the knowledge of the complainant at the

time of filing the complaint. The details of the said documents are given as under:-

(i) Cancellation letter dated 22nd March, 2011 filed by Champatlal Jain in his bail application.

(ii) The affidavit issued on 24th September, 2011 and 2,60,000 shares applied on the same date and the affidavit also attested on the same date.

(iii) No date is mentioned on receipt of share received 1,20,000.

(iv) On the Gift deed agreement, the date mentioned was as 30th September, 2011 and the same was attested by Notary on 24th September, 2011, distinctive Nos. From 4351611 to 4413610 and from 4513611 to 467360 on page No.20 and 3796101 to 3896934 and 4038285 to 4132684 on page 21 total shares gifted to Ashok B Jain – 417234, on 24th September, 2011. Affidavit Nos.R218703 and R218702 issued on 23rd September, 2011.

(v) On the Gift deed agreement, the date mentioned was 30th September, 2011 and the same was attested by Notary on 24th September, 2011, distinctive Nos. From 4293611 to 4351610 and from 4413611 to 4513610 on page No.22 and 3596101 to 3796100 on page 23 total shares gifted to Naina Jain – 358000, on 24th September, 2011. Affidavit Nos.R218679 and R218700 issued on 23rd September, 2011.

(vi) Annual General Meeting Document: Company incurred losses in the year 2010-11.

(vii) 31st March, 2012 balance sheet filed in ROC : No name of Sh.Hitesh Kothari was found in more than 5% shareholders list up to 31st March, 2011 balance sheet.

(viii) Shareholders list

(ix) Form-2 allotment of shares on 28th February, 2011 to 12 persons on Rs.10/- face value (Premium – Nil) signed by Ashok B. Jain and same date 94400 shares issued to Hitesh Kothari Rs.10/- face value with Premium – Rs.240/- signed by Ashok B. Jain.

(x) Form-2 filed by company in ROC, allotted shares 2,60,000 to Hitesh Kothari on 26th September, 2011 signed by Ashok B. Jain.

15. In a nut-shell, the case of the complainant is that the petitioners have cheated him by adjusting Rs.9,64,69,000/- given to M/s Fuso Glass India Pvt. Ltd. as loan amount as well as the total amount of Rs.9,56,75,000/- for the purpose of space in the Mall at Vijaywada. Learned counsel for the complainant submits that as far as the amount of Rs.19,21,44,000/- is concerned, the petitioners cannot deny the factum of the said amount as the petitioners themselves have adjusted the said amount towards the shares allotted to him. As the said documents are forged, fabricated and manipulated by the petitioners, the case of forgery and cheating is made out. It is also argued by the learned counsel for the complainant that the value of the shares allotted by the petitioners is

almost nil against the amount adjusted where the petitioners have shown the value with premium of Rs.240/-. The value with premium on the respective dates was very negligible and actually fraud has been played upon the complainant.

16. I have been informed by the learned APP for the State that all the documents have been sent to FSL, Rohini, for verification/ comparison of signatures and the reports are likely to be received very shortly. According to the learned counsel for the complainant and the learned APP for the State, on the face of said documents, they are forged and fabricated. Therefore, no relief should be granted to the petitioners unless the amount of Rs.19,21,44,000/- is secured by the petitioners.

17. The law relating to pre-arrest is quite settled. The following decisions can be relied upon:-

i) In the case of ***Muraleedharan v. State of Kerala***, reported in AIR 2001 SC 1699, it is held that if pre-arrest bail is granted to appellant merely on grounds that investigating agency would not be able to collect any material to connect appellant with crime except confessional statement of co-accused then there is misuse of discretion by Sessions Judge under Section 438 Cr.P.C.

ii) In the case of ***Ravindra Saxena v. State of Rajasthan,*** reported in (2009) 1 SCC 684, it is held that anticipatory bail cannot be denied merely because allegations of cheating and forgery have been made. Further held on facts, High Court could not ignore appellant's plea that dispute between him and complainant regarding sale of specific flats, was purely of civil nature and complainant had already filed suit for specific performance.

iii) In the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.***, reported in (2011) 1 SCC 694, it is held:

> **"109.** A good deal of misunderstanding with regard to the ambit and scope of Section 438 CrPC could have been avoided in case the Constitution Bench decision of this Court in *Sibbia case* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] was correctly understood, appreciated and applied. This Court in *Sibbia case* [(1980) 2 SCC 565: 1980 SCC (Cri) 465] laid down the following principles with regard to anticipatory bail:
>
> (*a*) Section 438(1) is to be interpreted in the light of Article 21 of the Constitution of India.
> (*b*) Filing of FIR is not a condition precedent to exercise of power under Section 438.
> (*c*) Order under Section 438 would not affect the right of police to conduct investigation.
> (*d*) Conditions mentioned in Section 437 cannot be read into Section 438.
> (*e*) Although the power to release on anticipatory bail can be described as of an "extraordinary" character this would "not justify the conclusion that the power must be exercised in exceptional cases only". Powers are discretionary to be exercised in the light of the circumstances of each case.
> (*f*) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-examined after hearing. Such ad interim order must conform to

requirements of the section and suitable conditions should be imposed on the applicant.

110. The Law Commission in July 2002 has severely criticised the police of our country for the arbitrary use of power of arrest which, the Commission said, is the result of the vast discretionary powers conferred upon them by this Code. The Commission expressed concern that there is no internal mechanism within the Police Department to prevent misuse of law in this manner and the stark reality that complaint lodged in this regard does not bring any result. The Commission intends to suggest amendments in the Criminal Procedure Code and has invited suggestions from various quarters. Reference is made in this article to the 41st Report of the Law Commission wherein the Commission saw “no justification” to require a person to submit to custody, remain in prison for some days and then apply for bail even when there are reasonable grounds for holding that the person accused of an offence is not likely to abscond or otherwise misuse his liberty. Discretionary power to order anticipatory bail is required to be exercised keeping in mind these sentiments and spirit of the judgments of this Court in *Sibbia case* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] and *Joginder Kumar* v. *State of U.P.* [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172]

Relevant consideration for exercise of the power

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 the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in *Sibbia case* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(*i*) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
(*ii*) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
(*iii*) The possibility of the applicant to flee from justice;
(*iv*) The possibility of the accused's likelihood to repeat similar or other offences;
(*v*) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
(*vi*) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
(*vii*) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the

> accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;
>
> (*viii*) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
>
> (*ix*) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
>
> (*x*) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.
>
> **113.** Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

18. After arguments, the suggestion was made by the learned counsel for the petitioners that let the investigation in the matter be continued, the petitioners undertake to join the investigation and fully cooperate with the investigation agency and shall provide all the

requisite documents which are in their power and possession and they are also ready to provide the signatures as required by any agency and shall appear when the matter would be listed before the trial court but in the meanwhile, anticipatory bail be granted and the order dated 28th May, 2014 as well as the order dated 11th September, 2014 issuing thereby non-bailable warrants against them and also the orders dated 27th October, 2014 and 3rd December, 2014 issuing process against the petitioners under Section 82 Cr.P.C. and all the proceedings emanating therefrom, passed in the above said FIR No.313/2014 and CC No.72/3 by the Metropolitan Magistrate, Tis Hazari Courts, Delhi be quashed so that the truth may come before the Court.

19. The learned counsel for the complainant states that the cheating is pertaining to both sets of the transactions and the investigation is being done for the purpose of both the transactions, therefore, the said amount has to be taken into account in case of striking the balance between the parties at this stage while granting the relief if court is inclined to do so.

20. On the first date of hearing, in order to show the bonafide, the learned counsel for the petitioners has placed on record the affidavit of undertaking filed by Madanlal Babulal Chowatia, partner at M/s. Suraj Constructions whereby the undertaking is given that the partners of Suraj Constructions will not dispose of or otherwise alienate the 8000 sq. ft. of super built up area in Ripple Mall, Vijayawada, shown in yellow in the attached site plan which area is

under the possession and ownership of Suraj Constructions, without permission of this Court, during the pendency of the present FIR.

21. After filing of the said affidavit, another suggestion is also given at the time of rejoinder argument and it was agreed that apart from the said undertaking, the petitioners shall also furnish a security for the sum of Rs.8,50,00,000/- of an immovable property which is owned by the wife of Champatlal Jain having the clean titles having no encumbrance in any manner, with the satisfaction of the trial court, they shall also submit the Bank Guarantee to the tune of Rs.1 crore before the trial court during the pendency of the case which is subject matter of FIR.

22. Learned counsel for the petitioners states that as far as the amount of Rs.9,64,69,000/- is concerned, that is not the subject matter of the FIR. With regard to the super area in Ripple Mall, they restrict to their suggestion not to dispose of the area in the mall and also to give security of Rs.8,50,00,000/- with the satisfaction of the Registrar General of this Court and Rs.1 crore by way of Bank Guarantee.

23. The said suggestions are not acceptable to the learned counsel for the complainant who submits that as regards the 8000 sq. ft. of super built up area in Ripple Mall, Vijayawada, the possession would remain with Suraj Constructions and they will earn the huge rent, out of the said area, without any fault of complainant who is actually entitled thereto. As regards the security of immovable property of Rs.8,50,00,000/- is concerned, similar is the reply of the complainant that against the admitted amount paid to the petitioners, the security

of immovable property is not sufficient and the complainant does not believe that the titles of the property are clear in view of past experience and why they should enjoy the area of the mall by not paying the admitted amount of Rs.19,21,44,000/- received by the petitioner from the complainant. It is submitted that at least, the petitioners should furnish the Bank Guarantee for the amount due or any other condition be imposed by the court in the interest of the complainant.

24. Having considered the entire gamut of the matter as well as the grounds of quashing petition under Section 482 Cr.P.C. for setting-aside the order dated 27th October, 2014 and 3rd December, 2014, there is a merit in the submissions of the learned counsel for the petitioners. Considering the overall facts and circumstances of the present case, coupled with the fact that the petitioners and the complainant are related to each other and being a family dispute, in view of undertaking given by the petitioners to join the proceedings and to produce all the necessary documents required by the Investigating Agency, without deciding anything on merit, I am inclined to grant anticipatory bails to them in view of peculiar facts and circumstances in the matter; it is directed that in the event of their arrest, the petitioners shall be released on bail subject to their furnishing personal bonds in the sum of Rs.50,000/- each with one surety each of the like amount to the satisfaction of the Investigating Officer (IO) and further, the said relief is being given to them, subject to the following conditions:-

(i) In order to secure the amount and strike the balance between the parties, at this stage, M/s Suraj Constructions/its partners shall give the Bank Guarantee of Rs.9,56,75,000/-, initially for a period of three years, within four weeks from today to the satisfaction of the trial court.

(ii) The undertaking given on behalf of M/s Suraj Constructions by way of affidavit of one of its partners, namely, Madanlal Babulal Chowatia is accepted to the effect that the partners of Suraj Constructions will not dispose of or otherwise alienate the 8000 sq. ft. of super built up area in Ripple Mall, Vijayawada, shown in yellow in the attached site plan which area is under the possession and ownership of Suraj Constructions, without permission of this Court during the pendency of the present FIR.

(iii) All the petitioners shall join the investigation and produce the documents as required by the Investigating Agency and shall cooperate with the agency.

(iv) The petitioners shall provide their signatures before the IO for the purpose of comparing the same if so required in future.

25. Subject to the aforesaid compliance, the order dated 28th May, 2014 as well as the order dated 11th September, 2014 issuing thereby non-bailable warrants against them and also the orders dated 27th October, 2014 and 3rd December, 2014 issuing process against

the petitioners under Section 82 Cr.P.C. and without expressing any opinion on merit in the matter in the above said FIR No.313/2014 and CC No.72/3 by the Metropolitan Magistrate, Tis Hazari Courts, Delhi are quashed.

26. In case of violation of any of the conditions above, it will be open to the State to apply for cancellation of the bails and revival of petition being Crl.M.C. No.231/2015.

27. All the petitions are accordingly disposed of. Pending applications also stand disposed of.

28. *Dasti*, under the signatures of the Court Master.

(MANMOHAN SINGH)
JUDGE

MARCH 05, 2015