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

Judgment reserved on: 14.07.2016

% **Judgment delivered on: 25.07.2016**

+ **BAIL APPLN. 626/2015**

SMT RAMESH KUMARI

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with Mr.
V.P. Rana, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Radhika Kolluru, APP for State
a/w SI Balihar Singh

Mr. K.K. Sharma, Sr. Adv. with Mr.
K.K. Malhotra and Ms. Ayush
Chourasia, Adv. for the complainant

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. This application under section 438 Cr PC has been filed by the applicant Smt. Ramesh Kumari Bhardwaj to seek anticipatory bail apprehending arrest in case FIR No.33/2014 registered with PS-EOW, Mandir Marg, New Delhi under section 419/420/467/ 468/471/120B IPC.

The applicant states that she is a 65 years old lady and is managing a school with approximately 2000 children and 80 staff members. She is associated with the said school for the past 25 years i.e. from its inception. The applicant has respect and roots in the society, and she has joined the investigation as and when called upon to do so in the aforesaid case.

The background facts

2. One Inder Singh Bindra, aged 76 years living in New York, USA got the FIR in question registered against one Jaswant Singh Bhullar (JS Bhullar), who is now dead, against the late husband of the applicant Deepak Bhardwaj and a few others, including the petitioner - who was shown as accused no.8 in her capacity as shareholder and director of a company, namely, Delhi Apartments Pvt. Ltd.

3. The case of the complainant was that he had purchased approximately 33 bigas 9 biswas of agricultural land situated in village Samalkha, Tehsil Mehrauli, New Delhi vide three sale deeds. The same were executed in favour of the complainant through JS Bhullar, who was holding a General Power of Attorney (GPA) on behalf of the sellers. The complainant's other friends, also living in USA, also purchased contiguous lands in the same area through JS Bhullar. The complainant claimed that over the years, JS Bhullar gained his confidence, and introduced Deepak Bhardwaj to him as a nice person, who also owned lands in the vicinity. The complainant was told that Deepak Bhardwaj was an influential person and that he would look after the complainant's land and ensure that the same is not trespassed. Like the complainant's other friends, the complainant too allowed Deepak

Bhardwaj to look after his land while the complainant was overseas. He claimed that Deepak Bhardwaj was looking after the land as a caretaker, since he had won over the trust of the complainant and his friends, who had similarly purchased contiguous lands.

4. The complainant claimed that he came to know in July 2013 of a fraud played upon him. He claimed that he learnt from Dr. Amarjeet Singh – who had purchased contiguous lands, that Dr. Amarjeet Singh, the complainant and others had been defrauded. Their lands had been fraudulently sold to Deepak Bhardwaj through forged and fraudulent documents, and that the family of Deepak Bhardwaj and their accomplice are claiming to be owners of the said lands including that of the complainant.

5. The complainant stated that he learnt that late JS Bhullar along with other accused had forged his signatures on a GPA allegedly executed by the complainant at Chandigarh on 24.07.1987. He claimed that he neither signed the GPA in favour of JS Bhullar, nor was he in Chandigarh on 24.07.1987. He did not even remember having come to India in July 1987 and, in any case, he never went to Chandigarh in July 1987. He stated that somebody impersonated him, and his signatures were forged on the GPA dated 24.07.1987 on the strength of which JS Bhullar sought to transfer the lands to Deepak Bhardwaj. He never lived on the address, nor any of his relatives stay or stayed at the address mentioned in the GPA as his address. He also stated that before forging the said GPA, Deepak Bhardwaj and others of SRA Farms on 23.07.1987 also got confirmed from the registering authority that there was no contravention of Section 8 of the Delhi Land

(Restriction) Act, 1972 in respect of his land. This was done without the signature of the complainant on the declaration form, as was required under the Delhi Land Reforms Act, 1954. By using the forged GPA, JS Bhullar acted as the vendor of the complainants land, and collusively executed sale deeds dated 16.09.1988, registered on 30.09.1988, in favour of Deepak Bhardwaj and his nominee/ henchmen without making reference to payment of sale consideration. The sale deeds simply stated that sale consideration had been paid to the vendor (JS Bhullar) before the Sub-Registrar. No details of any cheque number, bank etc. were stated in the fraudulent and collusive sale deeds. He also stated that he had not received any sale consideration for sale of the said land. He stated that Deepak Bhardwaj continued to take care of the land as a caretaker - having won his trust, and he never disclosed the factum of the execution of the sale deeds in his favour.

6. On the basis of the said complaint, the aforesaid FIR came to be registered. Investigation was conducted by the police, and status reports have been filed by the police, disclosing the information gathered as a result of its investigation.

Gist of the Status Reports

7. During the investigation, the ownership of the complainant in respect of the agricultural land admeasuring 33 bigas 9 biswas was got verified. In respect of the GPA allegedly executed by the complainant on 24.07.1987, it was found that his address had been shown as House No.175, Sector-11A, Chandigarh. Investigation revealed that during the relevant period, the said

house was rented to JS Bhullar, and was used by him for his own residence. The complainant had never lived at the said address. On the basis of the said GPA, JS Bhullar executed 13 sale deeds in respect of the entire land of the complainant admeasuring 33 bigas 9 biswas, which were got registered in the office of the Sub-Registrar, Delhi on 30.09.1988. Amongst others, the following sale deeds were executed by JS Bhullar in favour of:

- i) Deepak Bhardwaj – 5 bigas 11 biswas (two sale deeds);
- ii) Deepak Bhardwaj and S.K. Sethi – 2 biga 16 biswas;
- iii) Deepak Bhardwaj & Sons HUF and Jagdish Lal Malhotra – 13 bigas and 10 biswas (five sale deeds)

8. Investigation revealed that JS Bhullar died in the year 1993 and Deepak Bhardwaj was murdered in the year 2013, allegedly by his son Nitish Bhardwaj, who is facing trial for his murder. The applicant is one of the prime suspects in the said case.

9. The status report discloses that the GPA dated 24.07.1987 - purportedly executed by the complainant in favour of JS Bhullar, was sent to the FSL for forensic examination of the signatures of the complainant appended on it. After examination, the expert has opined that the signatures on the GPA dated 24.07.1987 attributed to the complainant are not his.

10. Investigation also revealed that on 03.10.1988, the applications for mutation of the land in question - which was sold to different persons, were got filed through one Anil Kumar, S/o. Umrao Singh, who is the brother of the applicant. In these applications, Anil Kumar claimed himself to be the

Power-of-Attorney holder of the complainant. These applications for mutation were filed on behalf of the seller i.e. the complainant, as against the normal practice where applications for mutation are usually filed by the purchasers, or their nominee.

11. Investigation also revealed that notices for mutation - which were issued in each of the cases to the seller/ vendor i.e. I.S. Bindra - the complainant at 3, Wellington Crescent, New Delhi, as also to the purchasers/ vendees (who were shown to reside at different places including Agra, Lucknow, Moradabad etc.) were received and acknowledged by one and the same person under the same signature/ initial which could not be identified- as the name and address of the recipient was not disclosed. Anil Kumar was interrogated and he identified the initials as that of Deepak Bhardwaj, his brother-in-law. Thus, the notices issued by the revenue authority in the name of various persons i.e. the vendor and vendees - who were shown to be residing at various places, were received by one and the same person. In all the cases of mutation, only Anil Kumar, the brother of the applicant appeared before the competent authority, and that too, on behalf of the seller only.

12. The status report reveals that the accused Anil Kumar was arrested on 29.03.2015. During his interrogation, the accused Anil Kumar disclosed that he acted on the directions of the applicant and Deepak Bhardwaj, who remained present with him throughout the mutation proceedings and after completion of mutation, he handed over the documents to them.

13. During investigation, one A.S. Sethi, who had signed the allegedly

forged GPA dated 24.07.1987 was also identified and interrogated. During interrogation, he identified his signatures and admitted his appearance before the Sub-Registrar. He stated that he did not know the complainant I.S. Bindra at that time, and he had signed the GPA and appeared before the Sub-Registrar on the presentation of JS Bhullar. He further disclosed during his interrogation that at the time of registration of the GPA, Deepak Bhardwaj and Mrs. Bhardwaj, namely, the applicant remained present with JS Bhullar in the capacity of prospective buyers of the said land.

14. The status report further discloses that in the course of investigation, a notice under section 91 Cr PC was issued to the applicant for the production of the original title documents of the property. However, initially, she did not produce the same. I may observe that only when the present bail application was listed for first time before the Court on 07.04.2015, the applicant handed over seven original sale deeds to the IO in Court. As regards the eighth sale deed, it was submitted that the same was not traceable and the same shall be handed over to the IO as soon as the same is traced out.

15. The status report further states that, till date, the original GPA allegedly executed by the complainant in favour of JS Bhullar in Chandigarh- which has been found to be forged; the original SPA executed JS Bhullar in favour of Anil Kumar to enable him to apply for mutation of the land in question, and; proof of payment of consideration, have not been provided. The said report further states that during investigation, the applicant had admitted that she is in possession of the entire property, including that which had been registered and mutated in favour of different

persons other than in favour of Deepak Bhardwaj and his HUF. However, she did not give any satisfactory reason for the same.

16. As per the status report, the investigation conducted so far has revealed that an elaborate conspiracy through active connivance of JS Bhullar, Deepak Bhardwaj and his family members was hatched to grab the property of the complainant by preparing forged documents. The respondent also states that there are reasons to believe that though the entire land of the complainant was sold to eight different persons, but actually the entire transaction was benami in nature, since none of the purchasers appeared before the Sub-Registrar at the time of the execution of the sale deed; the alleged bank drafts for all the 13 sale deeds were presented by Deepak Bhardwaj before the Sub-Registrar; none of the purchasers filed applications for mutation of the land; only Anil Kumar (brother of the applicant) did so, and that too on behalf of the seller; none of the purchasers bothered to take possession of the land allegedly purchased by them; none of the purchasers got the land demarcated; the entire land from the beginning remained in possession of Deepak Bhardwaj, who enjoyed the benefits arising therefrom, and after his death, the applicant is enjoying the same. The stamp paper in respect of the 13 sale deeds were purchased on the same date, apparently, from the same vendor, and all the sale deeds were registered on 30.09.1988 with the same set of witnesses.

17. A second status report was also filed in the matter, disclosing that the applicant had provided a photocopy of the GPA dated 24.07.1987 which was found to be forged by the FSL. However, she has not provided the original document to the IO. To unearth the entire conspiracy, her custodial

interrogation is necessary. She is the most vital link who could provide the vital leads about the conspiracy.

18. The State has filed a third status report which shows that JS Bhullar sought to transfer the complainants property on the basis of two alleged GPAs, allegedly executed by the complainant in the year 1986 and 1987. He earlier entered into agreements to sell the property in question to Sh. Raman Kumar Sood, Ajay Kumar Sood and Satish Kumar Sood (Sood Brothers), and on the basis of the second GPA, he entered into the sale deeds taken note of herein above, inter alia, with late Deepak Bhardwaj, his HUF and other entities/ associates. Copy of the original GPA was produced by Sood Brothers.

19. This status report also states that the applicant has been evasive in replying to the questions pertaining to the fraudulent transactions- by stating that all these acts were done by her late husband Deepak Bhardwaj and JS Bhullar. The report further states that she has been actively continuing the conspiracy to keep hold on the fraudulently acquired land by entering into settlements with Sood Brothers on behalf of the other registered owners of the land in question, who are believed to be either dead or untraced. She is not disclosing the whereabouts of the alleged registered land owners, and the authority obtained from them to enter into settlement on their behalf with the Sood Brothers. The applicant entered into settlement in suits filed by Sood Brothers against the accused persons, as well as the complainant. The complainant had stated that he was not aware, and he was not served with any notice of the civil suit till 2013. However, since he learnt of the same and appeared before the Court, the applicant settled the matter immediately

with Sood Brothers. The complainant also stated that he was being represented through lawyers in the said civil suit without his consent or authority. The said aspect was also under investigation. In this status report, the police also disclosed that 6 of the sale deeds executed in favour of Deepak Bhardwaj and S.K. Sethi, Amita Bansal and Uma Aggarwal, Aditya Prakash Aggarwal, Kusumlata Jindal and Meena Goel, Balkishan Singhal and Sona Devi have not been recovered.

20. The fourth and the last status report, inter alia, discloses that the second FIR No.187/2013, PS-EOW has also been quashed on compromise. The State discloses that the applicant was a Director in 18 companies since 1996. She continues to be a Director in 16 of those companies, including Deepak Resorts and Hotels Pvt. Ltd., since 07.02.1996. Consequently, she is not an ordinary housewife. She is a businesswoman, and was actively involved in the fraudulent transactions. Two more cases had been registered against the same accused persons - being FIR No.185/2013 and 187/2013 at PS-EOW Cell, making similar allegations of land grabbing by forging documents. In the said case, approximately 11 bigas 2 biswas and 9 bigas 12 biswas of lands respectively of NRIs/ senior citizens is involved. Case FIR No.185/2013 has been quashed by this Court on a settlement.

Applicants Submissions

21. The submission Mr. Uppal, learned senior counsel for the applicant is that a perusal of the status reports shows that the custodial interrogation of the applicant is being sought, primarily, to force her to deliver the 8th sale deed (which is not traceable and in respect whereof a non-cognisable report

(NCR) has been filed); the GPA dated 24.07.1987; the SPA in favour of Anil Kumar, and; other sale deeds. The submission is that custodial interrogation cannot be sought for the purpose of recovering documents. Mr. Uppal submits that whatever original documents were available with the applicant, have already been delivered by her to the police and she is not possessed of any other original documents. Mr. Uppal further submits that she has repeatedly been called for interrogation and she has joined the investigation on several occasions.

22. Mr. Uppal further submits that so far as the registered documents - which are not available with the applicant are concerned, the IO can always obtain the signed documents from the office of the Sub-Registrar, where a signed copy is tendered at the time of registration. He further submits that the FSL has already opined that the GPA dated 24.07.1987 does not bear the signature of the complainant I.S. Bindra. Therefore, non production of the said document (which is not available with the applicant) is of no avail. He submits that no useful purpose would be served in permitting custodial interrogation of the applicant.

23. Mr. Uppal submits that the applicant is not a beneficiary under the sale deeds executed by JS Bhullar in favour of late Deepak Bhardwaj, or the other transferees/ vendees. He submits that even if a fraud was played, and documents fabricated, the same was done by JS Bhullar and late Deepak Bhardwaj. The applicant had no role to play, as she has not executed or signed the said documents in any capacity whatsoever. There is nothing to connect the applicant with any of the alleged offences. Mr. Uppal submits that the statement of a co-accused, namely, Anil Kumar, cannot form the

basis for prosecution of the applicant, as there is no other corroborative material found by the IO during investigation. He further submits that the FIR itself was highly belated inasmuch, as, it came to be registered in the year 2014, whereas the GPA was got registered in favour of JS Bhullar on 24.07.1987 and, on that basis, the sale deeds were executed in favour of Deepak Bhardwaj and others on 16.09.1988, and registered on 30.09.1988. He further submits that on the land in question, a prominent banquet hall has been running since 2001 and it is unbelievable that the same has not been noticed over the years by the complainant. He submits that the applicant has a prima facie case to seek quashing of the FIR in the aforesaid circumstances.

24. In support of his aforesaid submissions, he has placed reliance on:

- i) ***Gurbaksh Singh Sibbia v. State of Punjab***, 1980 SCC (Cri) 465;
- ii) ***R. Janakiraman v. State***, AIR 2006 SC 1106;
- iii) ***Samrat Singh Narula & Ors. V. State of NCT of Delhi***, in Bail Appln No.146/015 decided on 12.05.2015.

State's and Complainants' Submissions

25. The learned APP has vehemently opposed the grant of anticipatory bail to the applicant. She has placed reliance on the above referred status reports. She submits that the applicant is the only person surviving who was a part of, and present during the hatching and execution of the conspiracy. She submits that her own brother Anil Kumar has disclosed that it was at the instance of, and under the directions of, late Deepak Bhardwaj and the

applicant that he had proceeded to get the mutation of the lands done on the basis of the SPA allegedly executed in his favour by JS Bhullar. Moreover, A.S. Sethi, who signed the allegedly forged GPA dated 24.07.1987 also disclosed that at the time of registration of the said GPA, inter alia, Deepak Bhardwaj and the applicant were present with JS Bhullar in the capacity of prospective buyers. It is further pointed out that it is the applicant who is the actual beneficiary of the entire land covered by all the sale deeds - not only of those executed in favour of Deepak Bhardwaj and his HUF, but also of those covered by sale deeds in favour of others. It is she who is in possession and control of the entire lands of the complainant, and she is using, exploiting, and income therefrom. Moreover, it is the applicant, who had settled with the Sood Brothers on behalf of the other vendees (other than Deepak Bhardwaj and his HUF). It is also submitted that the applicant is not a simple lady or a house wife. She is a businesswoman, is worldly wise and well versed in property dealings and transactions, as she has been a Director of, and continues to be a Director in a large number of companies since 1996. She has herself stated that she is running a school with 2000 children and 80 staff members for the past 25 years, namely, Shiksha Bharti School at Dwarka.

26. Learned APP submits that the custodial interrogation of the applicant is absolutely essential to unearth the conspiracy and the involvement of all others, and the roles played by each of them. It is submitted that the interrogation of an accused under protection of a bail order – which she keeps in his pocket, is not the same as interrogation of an accused who is in police custody, and this fact has been recognized in *Omkar Prasad Mishra*

v. State, 2012 I AD (Del) 821.

27. The complainant has also appeared through counsel to oppose the grant of anticipatory bail to the applicant. Mr. Sharma, learned senior counsel for the complainant has supported the submissions made by the learned APP. He submits that the complainant is residing in New York, USA and he trusted JS Bhullar, who further introduced Deepak Bhardwaj to him, as a very nice and reliable person. On this premise, Deepak Bhardwaj also got involved in protection and maintenance of the agricultural land in question, while the complainant was residing in USA. Deepak Bhardwaj interacted with the applicant for management of his lands, and the applicant was completely in the dark about the execution of the forged GPAs in favour of JS Bhullar, and of execution of further agreement/ sale deeds on the basis of forged power of attorneys, firstly, in favour of Sood Brothers and thereafter in favour of Deepak Bhardwaj, his HUF, and in the name of third parties.

28. Mr. Sharma submits that there is no delay in filing the FIR and the same was filed soon after the complainant learnt of the fraud played upon him by JS Bhullar, Deepak Bhardwaj, the applicant and others. He submits that the complainant is a retired person, settled in New York, U.S.A. and learnt of the fraudulent sale of his lands through the other purchasers of contiguous lands who are acquainted to the complainant and are also residing in U.S.A. In support of his submission that custodial interrogation is essential in the background facts of the case, Mr. Sharma has placed reliance on *Sudhir v. State & Anr.*, CrI. A. No.1286-87/2015 decided on 01.10.2015.

Discussion

29. I have heard learned senior counsel for the applicant, learned APP and the learned senior counsel for the complainant and considered the rival submissions.

30. In *Gurbaksh Singh Sibbia* (supra), the Supreme Court disagreed with the Full Bench judgment of the Punjab High Court giving restrictive meaning to Section 438 Cr.P.C. The Supreme Court held that the question whether to grant anticipatory bail depends for its answer on a variety of circumstances, the cumulative effective of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. The High Court or the Court of Session – to whom the application for anticipatory bail is made, ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant, on considerations similar to those mentioned in Section 437 or which are generally considered to be relevant under Section 439 of the Code. The judicial discretion vested under Section 438 should not be read down by reading into the statute, conditions that are not to be found therein. The Supreme Court held that there is no warrant for reading into Section 438 the conditions and limitations subject to which bail can be granted under Section 437(1). The Supreme Court in paragraph 41 of its aforesaid decision, *inter alia*, observed:

“... .. there is an important principle involved in the insistence that facts, on the basis of which a direction under

Section 438(1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided. A blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum.”

31. This Court in ***Samrat Singh Narula*** (supra) digested several earlier decisions of the Supreme Court including the judgment in ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Others***, (2011) 1 SCC 694. In ***Siddharam Satlingappa Mhetre*** (supra), the Supreme Court, *inter alia*, observed:

“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 an 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.”*

32. This Court in ***Samrat Singh Narula*** (supra) also took note of ***Ravindra Saxena Vs. State of Rajasthan***, (2010) 1 SCC 684, wherein it was held that anticipatory bail cannot be denied merely because allegations of

cheating and forgery have been made. The plea that dispute between the accused and the plaintiff was of purely civil nature also requires consideration. The Supreme Court, inter alia, observed in para 10:

“10. In our opinion, the High Court committed a serious error of law in not applying its mind to the facts and circumstances of this case. The High Court is required to exercise its discretion upon examination of the facts and circumstances and to grant anticipatory bail “if it thinks fit”.

33. Reference was also made to ***Muraleedharan Vs. State of Kerala***, AIR 2001 SC 1699, wherein the Supreme Court condemned the “*waivered thinking emanating from the Sessions Judge*” when the Sessions Judge observed “*no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the accused*”. The Court held that the Sessions Judge while granting anticipatory bail under Section 438 Cr.P.C. had misused the discretion conferred upon him.

34. A perusal of the judgment in ***Samrat Singh Narula*** (supra) shows that this Court exhaustively dealt with the allegations made against the applicant in the complaint, which formed the basis of the First Information Report registered under Sections 419/ 420/ 467/ 468/ 471/ 506/ 120-B IPC, and the defence of the applicant. A perusal of the decision shows that there were allegations and counter-allegations with regard to payment of very large amounts of money in cash by the complainant to the accused and the denial thereof by the accused. The cash transactions were not reflected in the accounts books or in the tax returns of the complainant. The original documents were stated to be not available, either with the complainant or

with the accused. The applicant seeking anticipatory bail had filed affidavits in response to the status report filed before the Court by the State. The Court while granting anticipatory bail to the accused, *inter alia*, observed:

“29. the facts in the present case are very peculiar, i.e. both the parties are making the allegations against each other for forging the documents, viz. agreements, MOUs. They do not have any original documents in their possession. The statement of asserted accused are referred by the counsel for complainant which was recorded in police custody. It is very difficult, under these circumstances, to assess the real position as to who is misleading the Court. It is also correct that one of the parties has forged the documents. In case the complainant would have able to show the source of Rs.10 crores to the Court, even prima facie at this stage, the version of the complainant could have been believed. The substantial amount was allegedly paid in cash. It is cash transaction. Both the parties are dealing in real-estate business and are known to each other. They did many previous transactions. It is difficult to believe that a party would give huge money in cash to another party and would not keep the original documents in its possession who is dealing in property business for a long period. This Court does not want to express any opinion. The petitioners are ready to give their signatures and send the documents to FSL for verification of the signatures. The complainant is not able to prima-facie satisfy the Court as to why he and his wife have not disclosed allegedly Rs.10 crores to the petitioners, in their books of accounts and show the said amount before the Income-Tax Office.”

35. There were several other factual aspects taken into consideration by the Court. It is in the aforesaid circumstances that the Court granted anticipatory bail to the applicant.

36. The facts of the present case are, however, starkly different. The forgery and fabrication of the General Power of Attorney of the

complainant, on the basis of which J.S. Bhullar sought to dispose of the property of the complainant has, prima-facie, been established. The forensic examination of the said document shows that the complainant had not signed on the said General Power of Attorney dated 24.07.1987 registered before the Sub-Registrar at Chandigarh. Investigation has shown that the particulars of the address of the complainant disclosed in the said General Power of Attorney was that of J.S. Bhullar himself. Even the statement of the witness to the said GPA, namely, A.S. Sethi appears to be that he did not know the complainant Inder Singh Bindra, and he had signed the GPA and appeared before the Sub-Registrar at the instance of J.S. Bhullar. Pertinently, he is reported to have stated that at the time of registration of the GPA, apart from Deepak Bhardwaj, his wife, namely, the applicant was present with J.S. Bhullar in the capacity of a prospective buyer. Contrary to the normal practice – where the purchaser applies for mutation of the revenue record consequent to the execution of the sale deed, in the present case, Anil Kumar– brother of the application pursued the matter of mutation of the lands in question in favour of the respective purchasers in the revenue records on the basis of a purported power of attorney executed in his favour on behalf of the vendor/ complainant/ Inder Singh Bindra. Anil Kumar is none other than the brother of the applicant. Anil Kumar is reported to have stated to the police during interrogation, that he acted on the directions of his sister, i.e. the applicant and Deepak Bhardwaj who remained present with him throughout the mutation proceedings, and after completion of the mutation, he handed over the documents to them. Though, lands were purported to be transferred not only in the name of Deepak Bhardwaj and his HUF, but also in the names of other vendees, as a matter of fact, Deepak

Bhardwaj and, thereafter, the applicant have acted as the ostensible owners of the entire land. None appeared for the other vendees at the time of mutation of the lands in the revenue record. The entire exercise was carried out with the involvement of Anil Kumar and Deepak Bhardwaj. Pertinently, it is the applicant who settled claims in suits against ostensible other independent owners in favour of the plaintiffs, namely, the Sood brothers. Though Anil Kumar is claimed to have stated that he handed over all the title documents to Deepak Bhardwaj and the applicant after the mutation was got done of the lands in question, only 7 out of the 13 original sale deeds have been produced by the applicant, and that too after the filing of the present application and not in response to the notice given to her. The original GPA, the original of the SPA given to Anil Kumar – on the basis of which he got the mutation carried out, and other related documents had not been produced by the applicant. The applicant also appears to be the only person now available after the demise of J.S. Bhullar and the Deepak Bhardwaj who can throw light and make disclosures in relation to the conspiracy. Pertinently, it is the applicant who is reaping the benefits and enjoying the usufruct from the entire land, and not just the land ostensibly purchased by Deepak Bhardwaj and his HUF. The other ostensible owners are not traceable at all.

37. As observed by the Supreme Court in ***Gurbaksh Singh Sibbia*** (supra) an order granting anticipatory bail cannot be allowed to become a charter of lawlessness and a weapon to stifle prompt investigation into the offences. ***Ravindra Saxena*** (supra) does not lay down that in every case where allegations of cheating and forgery are made, the accused would be entitled

to anticipatory bail. The Supreme Court examined the facts of that case before granting anticipatory bail to the applicant. In that case, the complainant was a property broker, who had already filed a civil suit for specific performance arising from the same cause of action. The parties were known to each other. The accused included a retired police officer. The defence of the accused was that investigation of the case was entrusted to an investigating officer who was related to the complainant. The accused also stated that the FIR was lodged to pressurize them to not contest the civil litigation. It was in that background that the Supreme Court granted anticipatory bail to the accused. Pertinently, in the present case, the dispute is not a civil dispute inasmuch as, prima-facie, there has been no transaction between the complainant and Deepak Bhardwaj, much less between the complainant and the applicant.

38. The decision in *Muraleedharan* (supra), in fact, supports the submissions of learned APP and the complainant. This was a case of an alleged kingpin in a series of grave crimes, including the offence under Section 8 of the Kerala Abkaari Act, who had been granted anticipatory bail by the Sessions Judge. The High Court had reversed the orders of the Sessions Judge and, consequently, the appellant approached the Supreme Court to seek the same relief, namely, of pre-arrest bail. Apart from observing that Section 41 A of the Kerala Abkaari Act, like Section 37 of the Narcotic Drugs and Psychotropic Substances Act, places a statutory embargo against release of the accused on bail if he is accused of an offence which is punishable for a term of imprisonment of 3 years or more, unless the Public Prosecutor, has been given an opportunity to oppose the

application for such release, the Supreme Court observed:

*“7. The above provision is in pari materia with Section 37 of the Narcotic Drugs and Psychotropic Substances Act. This Court has held, time and again, that no person who is involved in an offence under that Act shall be released on bail in contravention of the conditions laid down in the said section (vide Union of India v. Ram Samujh [(1999) 9 SCC 429 : 1999 SCC (Cri) 1522]). If the position is thus in regard to an accused even after arrest, it is incomprehensible how the position would be less when he approaches the court for pre-arrest bail knowing that he would also be implicated as an accused. Custodial interrogation of such an accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy. We express our reprobation at the supercilious manner in which the Sessions Judge decided to think that “no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused”. Such a wayward thinking emanating from a Sessions Judge deserves judicial condemnation. **No court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against an accused.** We are at a loss to understand what would have prompted the Sessions Judge to conclude, at this early stage, that the investigating agency would not be able to collect any material to connect the appellant with the crime. The order of the Sessions Judge, blessing the appellant with a pre-arrest bail order, would have remained a bugbear of how the discretion conferred on Sessions Judges under Section 438 CrPC would have been misused. It is heartening that the High Court of Kerala did not allow such an order to remain in force for long. By the impugned order passed by the learned Single Judge of the High Court an unwholesome benefit wangled by the appellant was rightly reversed.” (emphasis supplied)*

39. The factors and parameters which could be taken into consideration

while dealing with an application for anticipatory bail, set out in *Siddharam Satlingappa Mhetre* (supra) in paragraph 112 have been extracted above. The nature and gravity of accusations and the alleged role of the applicant is indicated in the status reports founded upon investigation carried out till now. Not only her involvement and presence in the allegedly fraudulent transfer of the lands of the complainant is indicated, the fact that she is the beneficiary of the said alleged fraud is also, prima facie, apparent. The complainant is a stranger to the applicant and, therefore, there is no question of the complainant harboring any ill-will or malice in falsely implicating the applicant. Therefore, it cannot be said that the object of the complainant or the police is merely to injure or humiliate the applicant. The submission that the complainant waited for over two decades to initiate this complaint – which raises doubts about his *bonafides*, prima facie, does not stick. This is because the complainant was a resident of New York, U.S.A. and he was not in a position to look after his land. The forgery and fabrication of his GPA has been prima facie established. There is nothing to show from his conduct that he received any part of the sale consideration; he was aware of the sale of his land, or; that he consented to and acquiesced in the appropriation of his land by Deepak Bhardwaj or the applicant. No doubt, it may not be possible to reasonably suspect that the applicant would flee from justice, and there are no known antecedents of previous involvement, imprisonment or conviction qua the applicant, but, at the same time, the investigation in the case which is at a crucial stage would certainly be hampered if the applicant is not taken into custody for her interrogation. The alleged fraud is of a reasonably large magnitude.

40. In ***Omkar Prasad Mishra*** (supra), the property involved was situated in a posh locality of Delhi, namely, Golf Links. The claim of the accused was premised on documents which, prima-facie, appeared to be forged or purported to have been executed after the death of the original owner of the property. When an application for mutation was made to the L&DO in respect of the plot, the L&DO got the FIR registered for the offence of cheating and forgery, and for using forged documents as genuine. The applicant in that case had failed to produce the original title documents, namely, the gift deed on the basis of which he was claiming ownership. In this background, the learned Judge observed:

“7. The question, which now arises for consideration is as to whether, the petitioner deserves to be enlarged on bail in respect of these allegations or not. Obviously, there is no allegation that the petitioner is going to flee from the processes of law or tamper with the evidence but at the same time the nature of allegations which are levelled against the petitioner are of such a nature that in my view would require custodial interrogation because the petitioner has not been forthcoming and cooperating with the investigating agency by producing the original documents with regard to his ownership purported to have been executed by the actual owner Smt.Raseel Kohli. He is further taking false pleas that these documents have already been handed over to the complainant. The property situated in Golf Links is a valuable property. The legal heirs of Smt.Raseel Kohli are stated to have filed a suit against the petitioner also. This, prima facie, shows that the petitioner needs to be interrogated not with a bail order in his pocket.” (emphasis supplied)

41. In the present case, the allegations against the applicant are serious, which appear to the Court to be weighty. The investigating agency, in order to complete the investigation, requires the custodial presence and

availability of the accused. Interrogation of an accused while in custody is qualitatively different from that undertaken while the accused is enjoying protection under an order of a Court against his arrest.

42. In *Sudhir* (supra), the Supreme Court relied upon an earlier decision in *State of A.P. Vs. Bimal Krishna Kundu and Another*, (1997) 8 SCC 104, wherein the Supreme Court had, *inter alia*, observed:

“10. x x x x x x x x

12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. ***It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code,***

by favouring the respondents with such a pre-arrest bail order.” (emphasis supplied)

43. In ***Sudhir*** (supra), the Supreme Court declined to grant pre-arrest bail to the appellant while observing:

“13. Having considered the submissions made by learned counsel for the parties, and after considering the gravity of the offence, circumstances of the case, particularly, the allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the appellants and the fact that the investigation is held up as the custodial interrogation of the appellants could not be done due to the anticipatory bail, we are of the opinion that the High Court has rightly cancelled the anticipatory bail granted to the appellants by the Additional Sessions Judge, Jalgaon.”

44. In the present case, no doubt, the applicant is a 65-year old lady, and that is a factor in favour of the applicant. However, the law does not, generally, discriminate in the matter of investigation, or trial, or even sentencing on the basis of sex. The applicant, according to her own showing is a seasoned businesswoman. She has herself claimed in her application that she is running a large school with 2000 children and approximately 80 staff members for the last 25 years. The status report discloses that she has also been a Director and continues to be Director in about 16 companies. Thus, the applicant is not a person who cannot face and put up with the adversity involving incarceration and custodial interrogation. She is worldly wise and would also be well-aware of her rights and obligations. In any event, the consideration that she is a lady aged 65 years would have to give way to the need for expeditious completion of investigation and unearthing

of, and unraveling the complete truth relating to the conspiracy, fraud and forgery alleged in the present case.

45. For all the aforesaid reasons, I am of the view that the applicant is not entitled to any relief and the present application is, accordingly, dismissed. Dasti.

VIPIN SANGHI, J

JULY 25, 2016

SI/B.S. Rohella