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

Reserved on : 21st October,2020
Pronounced on: 3rd November,2020

\+ BAIL APPLN. 2017/2020 & CRL.M.(BAIL) 7782/2020

VED PRAKASH ..... Applicant

Through: Mr. Pashupati Nath Razdan, Mr. Pulkit Agarwal, Mr. Palav Agarwal and Mr. K.P. Jayaram, Advs.

Versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Raghuvinder Varma, APP Mr. Sudhir Naagar, Mr. Narveer Dabas and Mr. Rajesh Sharma, Advs. for the Complainant

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT

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1. The applicant seeks anticipatory bail.

2. FIR No. 48/2020, registered on 24th February, 2020 at P.S. Preet Vihar, arose out of a complaint filed by Mr. B.K. Verma, Managing Director of M/s. Espan Infrastructure (I) Ltd, Respondent No. 2 in the present application. The complaint alleged that (i) Shop No. 31 and 32, Ground Floor, CSC, Block-C, Nirman Vihar, Delhi -

110 092, were purchased by Respondent No. 2 in 2017, and Respondent No. 2 was, therefore, the sole and absolute owner thereof, (ii) Mr. Verma was informed, on 5th November, 2019, that the properties had been illegally transferred by the applicant in his name, (iii) on visiting the properties, Mr. Verma found that the applicant was illegally making constructions and alterations in the shops, (iv) enquiry, with the office of the Sub-Registrar revealed that the properties had illegally been transferred, by the applicant, in his name, with the help of Anand Kumar, a former employee of Respondent No. 2, using forged and illegal documents, bearing fake rubber stamp and seal, (v) Anand Kumar had resigned from the services of Respondent No. 2 in July, 2019, and was not authorised to sell the properties, (vi) no payment had been made, by the applicant to Respondent No. 2, by way of consideration for such sale and (vii) the applicant had, thereby, cheated Respondent No. 2, by transferring its property to himself using fabricated documents.

3. As against this, the version put forth by the applicant, in the present application, is as follows:

(i) The applicant was a civil contractor.

(ii) Respondent No. 2 was in need of money. The applicant was approached, by Respondent No. 2, with an offer that, if he furnished a Bank Guarantee for ₹ 6 crores, in favour of Respondent No. 2, he would be appointed as a Director of Respondent No. 2, and would also earn returns, on the secured amount, @ 3% p.a. An affidavit, to the said effect, was executed, between Respondent No. 2 and the applicant, on 7th October, 2015. 20,000 equity shares of Respondent No. 2 were issued, in favour of the applicant and his wife, by Respondent No. 2 on 24th December, 2015. A copy of the affidavit, dated 7th October, 2015, has also been placed on record.

(iii) *Vide* Board Resolution dated 29th April, 2016, Respondent No. 2 authorised the applicant, who was, at the time, a Director on the Board of Respondent No. 2, to purchase Shop No. 29. *Vide* similar Board Resolutions, the applicant was authorised, by Respondent No. 2, to purchase Shops Nos. 30, 31 and 32.

(iv) The shops were, therefore, purchased by the applicant, in the name of Respondent No. 2, in 2016 and 2017. Against the said purchase, the applicant paid ₹ 65 lakhs, to Respondent No. 2, between 24th August, 2016 and 17th May, 2017.

(v) Since then, the applicant has been in possession of the said shops.

(vi) Later, on disputes arising between the applicant and Respondent No. 2, Respondent No. 2 falsely represented the applicant as having resigned from its Directorship on 19th September, 2017.

(vii) On the assurance of the remaining Directors of Respondent No. 2, the applicant deposited a further amount of ₹ 30 lakhs in the bank account of Respondent No. 2, as consideration for being given ownership and possession of the aforesaid four shops, by execution of proper Sale Deeds. The applicant has annexed his bank statement, reflecting the payment of ₹ 95 lakhs, in total, in favour of Respondent No. 2.

(viii) On 6th August, 2018, Respondent No. 2 transferred the 20,000 shares, of the applicant and his wife, to one Mr. Satish Mishra and one Ms. Sneha Yadav, without providing any consideration or information to the applicant.

(ix) *Vide* Board Resolution dated 28th January, 2019, Respondent No. 2 authorised Anand Kumar to sell the aforesaid shops and take relevant decisions, in that regard, on its behalf. The said resolution reads thus:

> **"MINUTES OF THE BOARD MEETING OF THE COMPANY HELD ON TWENTY EIGHT DAY OF JANUARY, 2019 AT 2.30 P.M. AT THE REGISTERED OFFICE OF THE COMPANY AT B-405, SECOND FLOOR, NIRMAN VIHAR, DELHI-110092.**
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> Meeting of the Board held to delegate relevant powers and authorities to Shri Anand Kumar S/o Sh. Sudheer Kumar Birthare to complete relevant administrative, revenue and legal formalities for sale and registration with sub registrar office for Shop Nos. 29-32, CSC Block, Nirman Vihar, Delhi-110092.

"**RESOLVED THAT** Shri Anand Kumar is hereby authorised to complete all administrative, revenue and legal formalities in connection with sale deed, execution and registration on behalf of the company. He is also authorised to effectuate all relevant requisition to sign and execute and collect consideration on behalf of the company in the name of the company.

FURTHER RESOLVED THAT in pursuance of clause 120(2) of the Articles of Association of the company, Shri Anand Kumar (Authorised Signatory) of the Company be and is hereby empowered and authorised to affix a common seal of the company on any documents referred above."

Place: – Delhi
Date:- 28.01.2019

Certified True Copy
For **ESPAN INFRASTRUCTURE (I) LTD.**

For Espan Infrastructure (I) Ltd

(Sd/- with seal and stamp)

Mr. Sagar Verma
(Director)
(DIN No. 00845717)"

(x) On 4th February, 2019, the applicant filed a complaint, before P.S. Preet Vihar, against Respondent No. 2, alleging that he had been duped, by the said respondent and its Directors, of his monies. No FIR was however, registered by the Police authorities, consequent on the said complaint.

(xi) On 9th September, 2019, a Settlement Agreement was executed, between Respondent No. 2 (through Anand Kumar) and the applicant, settling the disputes and differences between them. The Settlement Agreement read thus:

"Memorandum of Settlement

This **SETTLEMENT AGREEMENT** (this "Agreement") is executed on this 9th day of September, 2019:

BY AND BETWEEN

M/s. ESPAN INFRASTRUCTURE (I) LTD., a Company incorporated under the Companies Act, 2013 having its registered office at B-7, SECTOR- 36, NOIDA, UP - 201303, through its authorised signatory **Mr. Anand Kumar**, duly authorised through the Board Resolution dated 28.01.2019 (Annexure-A), which expression unless repugnant to the context or meaning hereof shall be deemed to mean and include its successors and assigns of the **FIRST PART**

AND

Mr. Ved Prakash, S/o Late Shri Shivji Singh, R/o- H. No. B-405, 2nd Floor, Nirman Vihar, Delhi - 110092, which expression unless repugnant to the context or meaning thereof shall be deemed to mean and include its directors, nominees, shareholders, affiliated, successors and permitted assigns of the **SECOND PART.**

RECITALS :

WHEREAS "ESPAN" is a Company engaged in the business of undertaking development and construction of Civil/ Commercial projects, including doing Road Infra project etc. all across India.

AND WHEREAS "Second Party" is also a Civil work/Infra work sub contractors and does mainly the execution of the work as sub vendor in different parts of the India.

AND WHEREAS there were financial differences between the parties related to work and other working of the present company and parties wants to settle the dispute for better relation and understanding so that there shall be ease in doing business being part of the same trade Industry.

AND WHEREAS Second Party is the owner of the residential floor having its address as B-405, 2nd Floor, Nirman Vihar, Delhi-110092, (Herein after the 'Residential Property') which Second Party has mortgaged with Kotak Mahindra bank, Delhi to the tune of Rs.6,00,00,000/- (Rupees Six Crore) at the instance of the First Party for the better Financial backing of the First Party enabling them to obtain the huge Bank Guarantee facility (in short BG Facility) in favour of the First Party whereas in turn the Second Party was to be appointed as Director in the First party and was also entitled to get some fix amount of approximately Rs.2,00,000/- per month from the First Party since year 2015 plus 3% premium per annum on the BG amount.

In meanwhile the First Party also purchased some commercial property bearing shop nos. 29-32, in the DDA Market, CSC, Nirman Vihar, New Delhi-110092 and gave the control and development rights and further right to use these properties to the Second Party from the respective dates of its purchase. It is further pertinent to mention here these shops in questions were purchased somewhere in the year 2016 and since then these shops are in the possession of the Second Party.

It is further admitted by the First Party that for the purchase of these commercial properties (Shops) some amount to the tune of Rs.50,00,000/- (Rupees Fifty Lakhs), was paid to the First Party by the Second Party before the purchase of the said property.

AND WHEREAS First Party still enjoys the BG arising out of the residential property of the Second Party and pays nothing to the First Party as promised at the time of creating charge on the property in favour of Second Party through Banks.

AND WHEREAS Parties have agreed to clear this financial issues and settle the differences amongst each other.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS, SUFFICIENENCY AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEGED, AND INTENDING TO BE LEGALLY BOUND, THE PARTIES AGREE AS FOLLOWS:

1. That the First Party admits that in total a sum of Rs.1,38,00,000/- out of which Rs.95,00,000/- was given in the First Party and Rs.43,00,000/- to Director Sh. B.K. Verma of First Party, has been received from the Second Party over a span of 2 years between years 2016-2018.

2. That the Second Party in lieu of these payments are entitled to get those four shops registered in his favour from the First Party for the settlement of the outstanding amount as mentioned in the para 1 of the present settlement agreement.

3. That initially the shop nos. 31 and 32 in the DDA Market, Nirman Vihar, Delhi-110092 shall be registered in the name of the Second Party by the First Party by way of sale deed by this settlement agreement today itself.

4. The remaining two shops i.e. shop nos. 29 and 30 in DDA Market, Nirman Vihar, Delhi-110092 shall be registered in the name of Second Party provided Second Party makes payment of Rs.10,00,000/- to the First Party. Further Second Party shall have right to use the said property or lease out the said property to

any third party and enjoy the rent arising out of the said property, till the conveyance deed is executed in favour of Second Party from the First party.

5. It is agreed that First Party is ready and willing to pay the 3% per annum of the total BG amount issued by the banks in favour of the First Party on the residential property of the Second Party on which BG facility has been offered to the First Party to the tune of Rs.6,00,00,000/- (Rupees Six Crores).

6. That in case for any reason the registry of shop nos. 29 and 30 in DDA Market, Nirman Vihar, Delhi-110092 could not be executed in favour of Second Party by the First Party under such circumstances all the construction cost of the entire shops i.e. shops nos. 29,30, 31 and 32 in DDA Market, CSC, Nirman Vihar, Delhi-110092 shall become payable in favour of the Second Party by the First Party as per the market value of the construction of the said property.

7. That First Party assures the Second Party that it shall make all the endeavour to get clear the residential property of the Second Party from the Banks and shall indemnify the Second Party if it suffers any loss due to default of loan of the First Party due to which if the BG gets invoked.

8. Except to the extent mentioned above, on execution of this Agreement and completion of the actions, the Parties shall stand discharged of all their obligations against each other arising out of or in relation to any claims, suits, notices, complaints by either party against each other, in full and final settlement and no objection shall be raised thereafter by either party against each other."

(xii) On 23rd September, 2019, the applicant handed over two cheques, of ₹ 1 lakh each, to Anand Kumar. Consequent thereto, on 24th September, 2019, the Sale Deed, in respect of Shops No. 31 and 32, was executed and registered at the office of the Sub-Registrar, between Respondent No. 2 (through Anand Kumar) and the applicant. Mr. Mor Mukut was one of the witnesses to the Sale Deed, and is alleged, in the FIR, to be the informant, who informed Mr. Verma of the alleged fraudulent transfer of the shops, by the applicant in his name. The two cheques of ₹ 1 lakh each, were encashed by Respondent No. 2 on 6th December, 2019.

(xiii) Consequent to the execution of the aforesaid Sale Deed, the applicant came into legal possession and occupation of Shops No. 31 and 32.

(xiv) On 26th November, 2019, the applicant sold Shop No. 31.

In this backdrop, the applicant alleges, in the application, that the complaint, dated 24th February, 2020, was tendered, by B.K. Verma, in the Police Station, as a counterblast to the complaint, dated 4th February, 2019, of the applicant. It is further alleged that Anand Kumar is stated to be presently working with M/s Dwarika Infocom Pvt. Ltd., a sister concern of Respondent No. 2, and owned and managed by the brother of Mr. Verma. The application also annexes a copy of a cheque for ₹ 15,000/–, allegedly representing the salary paid to Anand Kumar by the said sister concern.

4. Two applications for anticipatory bail, preferred by the applicant, having been rejected by the learned Additional Sessions Judge, the applicant has preferred the present, third anticipatory bail application, before this Court.

5. Consequent to the issuance of notice, a Status Report has been filed by the SHO, P.S. Preet Vihar, and a reply has also been filed by Respondent No. 2, after obtaining the leave of the Court for being impleaded as a party, and to respond to the application. Rejoinders have also been filed, by the applicant, thereto.

6. The Status Report of the SHO, besides reiterating the facts narrated in the FIR dated 24th February, 2020, alleges that the payments of ₹ 20 lakhs on 22nd March, 2017, ₹ 1 lakh on 23rd September, 2019 (as consideration towards sale of Shop No. 31) were actually against the purchase of the 40,000 shares, transferred in the name of the applicant and his wife, each of which had a face value of ₹ 50/– and that the payments of ₹ 15 lakhs on 17th February, 2017, ₹ 10 lakhs on 17th May, 2017 and ₹ 1 lakh on 23rd September, 2019 (towards sale of Shop No. 32) were relating to business transactions between Respondent No. 2 and the applicant. Reliance has also been placed, in the Status Report, on a statement, dated 24th September, 2019, of Anand Kumar, recorded during investigation, in which he claims to have stated that he was in dire need of a job, and was offered a job, by the applicant, in his office, on 24th September, 2019, in return for his signing the Sale Deed documents relating to Shop Nos. 31 and 32. Anand Kumar is also alleged to have denied having knowledge of the Board Meeting Resolution, authorising him to sell the said shops. The Status Report also doubts the purported sale, of Shops 31 and 32, to the applicant by Respondent No. 2, on the ground that the shops were purchased by Respondent No. 2 on 23rd May, 2017 and 31st May, 2017, and that the applicant could not, therefore, have paid for the shops prior thereto. In these circumstances, the Status Report submits that custodial interrogation of the applicant was required, to unearth the truth.

7. Respondent No. 2 has, in its response to the applicant's bail application, alleged that Anand Kumar and the applicant hatched a conspiracy, and forged the Board Resolution dated 28 January, 2019, authorising Anand Kumar to sell the shops belonging to Respondent No. 2. It is emphasised that the said Board Resolution did not identify the buyer, to whom the shops were to be sold, or the consideration therefor. It is also alleged that the Settlement Deed dated 9th September, 2019, was forged. On the basis of these forged documents, Respondent No. 2 alleges that the applicant had the sale deeds, in respect of the shops, executed and registered in his favour, misrepresenting Anand Kumar as an authorised representative of Respondent No. 2, though he had already resigned from the services of Respondent No. 2 in July, 2019. Respondent No. 2 further submits that the original documents, relating to the aforesaid shops, are still in its possession, which would not have been possible, had the shops been sold to the applicant. It is further pointed out that the original Settlement Deed dated 9th September, 2019, and the Board Resolution dated 28th January, 2019, have yet to see the light of day. For recovery of these documents, it is asserted that custodial interrogation of the applicant would be required.

8. Respondent No. 2 has also placed reliance on the statement, recorded during the investigation of Anand Kumar. Respondent No. 2 also echoes the submission, of the SHO in his Status Report, that Shop No. 31 was purchased by Respondent No. 2 from its previous owners, and payment was made, thereagainst, *vide* cheques dated 26th May, 2016 and 5th October, 2016. As such, it is submitted, the applicant could not have made payments, for the purchase of the said shops, prior to the said dates. Respondent No. 2 has also questioned the price, at which the applicant claims to have purchased Shop Nos. 31 and 32, as being unbelievably low.

9. The applicant has filed rejoinders, to the Status Report of the SHO, and the reply of Respondent No. 2. The applicant alleges that the FIR, dated 24th February, 2020, is a counterblast to the criminal complaint, filed by the applicant against Respondent No. 2 in February 2019. It is also pointed out, in this context, that, though the alleged complaint was made, by Respondent No. 2, on 28th November, 2019, the FIR was registered only on 24th February, 2020. The applicant further points out that he has filed CS (Comm) 99/2019, before the Karkardooma District Court, New Delhi for specific performance of the Settlement Agreement. It is also highlighted, in the rejoinder of the applicant, that the FIR does not allege that the signatures of the Director of Respondent No. 2, as contained on the Board Resolution, are not genuine. Further, submits the applicant in his rejoinder, the Status Report of the SHO wrongly cites the face value of each of the 20,000 equity shares, allotted to the applicant and his wife, on 24th February, 2015, to be ₹ 50/–. In fact, it is submitted, the value of each share was only ₹ 10/–, in support of which the rejoinder annexes the balance sheet of Respondent No. 2.

10. The unsustainability of the stand of the respondents, the rejoinder further seeks to submit, is borne out by the fact that, though the applicant had purchased four shops, namely Shops Nos. 29, 30, 31 and 32, the FIR was limited to Shops Nos. 31 and 32. It is further highlighted that the applicant paid almost ₹ 97 lakhs, into the account of Respondent No. 2, as consideration for the purchase of the said shops. As against this, the applicant highlights the fact that Respondent No. 2 did not, prior to lodging of the FIR dated 24th February, 2020, serve any notice, to the applicant, to vacate the premises, or file any proceeding, before a civil court, for declaration or permanent injunction. The rejoinder reiterates the fact that Respondent No. 2 in fact encashed the two cheques, dated 23rd September, 2019, of ₹ 1 lakh each, tendered by the applicant, which, according to the rejoinder, clearly indicates passing of consideration, from the applicant to Respondent No. 2, against sale of the shops.

11. The rejoinder further asserts that custodial interrogation of the applicant would serve no purpose, as the Board Resolution dated 28th January, 2019, is an internal document of Respondent No. 2, the original of which would either be in the possession of Respondent No. 2, or in the office of the Sub-Registrar, but would not be in the possession of the applicant.

Failed attempt at mediation

12. It is important to note that, during the course of these proceedings, an attempt was made to amicably settle the dispute, albeit unsuccessfully. On 18th August, 2020, the learned APP submitted that the issue in controversy was, essentially, between Respondent No. 2 and its directors, and that it would be better if the dispute was amicably settled between them. She, therefore, undertook to get in touch with learned counsel for the petitioner as well as for Respondent No. 2, and encourage them to explore the possibility of mediation. On the next date of hearing, i.e. 21st August, 2020, the learned APP submitted that she had discussed the matter with learned counsel for the applicant and Respondent No. 2, who expressed their willingness to try and resolve their differences amicably, through mediation. For this purpose, the matter was adjourned, in order to enable the parties to settle their disputes. Learned counsel for the applicant and Respondent No. 2 were also present, on the said occasion.

13. However, on 29th September, 2020, it was reported that attempts at mediation had failed. The matter was, thereafter, heard, at length, on merits.

14. Submissions, on behalf of the applicant, were advanced by Mr. Pashupati Nath Razdan, learned counsel for the applicant, Mr. Raghuvinder Verma, learned APP appeared on behalf of the State, and Mr. Narveer Dabas, learned Counsel representing Respondent No. 2.

15. Mr. Razdan, besides reiterating the contentions advanced in the application for anticipatory bail, and the rejoinder, filed by the applicant in response to the replies of the respondents to the anticipatory bail application, submits that, in any event, no case, for alleging commission of offences, by the applicant, under Sections 465/468 of the IPC, could be said to be made out on the facts, even as alleged by the respondents. At worst, he submits, Section 471 of the IPC may, arguably, come into the reckoning, but would apply only if the existence of knowledge, or reason to believe, that the document in issue was forged, is proved to exist. He submits that a holistic appreciation of the facts would disclose that, far from his client having committed any cognizable offence, the imbroglio is merely the result of an *inter se* commercial transaction having gone astray, and having, willy-nilly, been accorded a criminal hue. He also points out that, even as per the Status Report, all the documents are in the custody of the Investigation Officer, so that no justification for the custodial interrogation of the applicant can be said to exist.

16. Mr. Razdan further refutes the allegation that the applicant had paid, for the shops, to Respondent No. 2, prior to Respondent No. 2 having itself purchased the shops, as incorrect on facts. He points out that the Status Report acknowledges, regarding Shop No.31, that the payment was made, by Respondent No. 2, for the said shop, on 26th May, 2016 and 5th October, 2016. As against this, he submits that the Ledger of the applicant clearly indicates that he had paid Respondent No. 2, for the said shop, on 22nd March, 2017. Similarly, *qua* Shop

No. 32, Mr. Razdan submits that Respondent No. 2 purchased the shop on 31st May, 2017, consequent to payments having been made, by it, on 30th November, 2016, 23rd January, 2017 and 24th May, 2017, as per the Status Report of the SHO. As against this, he submits that his client had paid, to Respondent No. 2, against purchase of the said shop, ₹ 15 lakhs on 17th February, 2017 and ₹ 10 lakhs on 17th May, 2017. Consequent thereto, the Sale Deed was registered on 31st May, 2017.

17. Mr. Razdan submits, finally, that subjecting his client to incarceration, in such facts, would be a travesty of justice.

18. Mr. Raghuvinder Verma, learned APP, merely chose to submit that custodial interrogation of the applicant was necessary to unearth the conspiracy.

19. Mr. Dabas, learned counsel appearing for Respondent No. 2, essentially reiterated the contentions advanced in the reply, filed in response to the anticipatory bail application. He contended that, as his client had questioned the veracity of the Board Resolution dated 29th April, 2016, the fact that he may not have, separately, disputed the signature of the Director of Respondent No. 2, thereon, made no difference. In any event, he submits, the Board Resolution did not authorise Anand Kumar to enter into any settlement, to transfer the properties of Respondent No. 2. As the contention of the applicant was that the shops had been sold, by Respondent No. 2 to him, Mr. Dabas submitted that it was highly improbable that the originals of the documents, relating to the shops, would continue to remain with Respondent No. 2. That they were, therefore, he submits, indicated that no such sale had taken place.

Analysis

20. Sub-section (1) of Section 438 of the Cr PC, which provides for the grant of bail to a person apprehending arrest, postulates the following factors, as required to be borne in mind by the Court, while passing orders on an application for anticipatory bail:

> "(i) the nature and gravity of the accusation;
>
> (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
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> (iii) the possibility of the applicant to flee from justice; and
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> (iv) whether the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested".

21. ***Gurbaksh Singh Sibbia v. State of Punjab***[1] continues to remain the *locus classicus*, insofar as the precedential law, on anticipatory bail in this country, is concerned. It was observed, in the said decision, that the expression "anticipatory bail" does not find mention in the Cr PC, and was apparently borrowed from the 41st Report of the Law Commission of India, and was a convenient abbreviation for

[1] **(1980) 2 SCC 565**

"bail in anticipation of arrest". The *raison d' etre*, for anticipatory bail, was evocatively captured, in para 8 of the report, thus:

> "No one can accuse the police of possessing a healing touch nor indeed does anyone have misgivings in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sang-frosd, insofar as the ordinary rut of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and, broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. But the crimes, the criminals and even the complainants can occasionally possess extraordinary features. When the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in handcuffs, apparently on way to a Court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973."

22. Thereafter, the Constitution Bench made it a point to emphasise that constricting the wide discretion, conferred on the Court, by Section 438 (1) of the Cr PC, in the matter of grant of anticipatory bail, within artificial confines, or the prescription of any "guidelines" to temper the exercise of such discretion, was to be avoided at all costs. The following words, from para 12 of the report, underscore this point of view:

"The provisions of Sections 437 and 439 furnished a convenient model for the legislature to copy while enacting Section 438. If it has not done so and has departed from a pattern which could easily be adopted with the necessary modifications, it would be wrong to refuse to give to the departure its full effect by assuming that it was not intended to serve any particular or specific purpose. The departure, in our opinion, was made advisedly and purposefully: Advisedly, at least in part, because of the 41st Report of the Law Commission which, while pointing out the necessity of introducing a provision in the Code enabling the High Court and the Court of Session to grant anticipatory bail, said in para 39.9 that it had "considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted" but had come to the conclusion that the question of granting such bail should be left "to the discretion of the court" and ought not to be fettered by the statutory provision itself, since the discretion was being conferred upon superior courts which were expected to exercise it judicially. The legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail because it evidently felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to allow the higher courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory bail. That is why, departing from the terms of Sections 437 and 439, Section 438(1) uses the language that the High Court or the Court of Session "may, if it thinks fit" direct that the applicant be released on bail. Sub-section (2) of Section 438 is a further and clearer manifestation of the same legislative intent to confer a wide discretionary power to grant anticipatory bail. It provides that the High Court or the Court of Session, while issuing a direction for the grant of anticipatory bail, "may include such conditions in such directions in the light of the facts of the particular case, as it may think fit", including the conditions which are set out in clauses (*i*) to (*iv*) of sub-section (2). The proof of legislative intent can best be found in the language which the legislature uses. Ambiguities can undoubtedly be resolved by resort to extraneous aids but words, as wide and explicit as have been used in Section 438, must be given their full effect, especially when to refuse to do so will result in undue impairment of the freedom of the individual and the

> presumption of innocence. It has to be borne in mind that anticipatory bail is sought when there is a mere apprehension of arrest on the accusation that the applicant has committed a non- bailable offence. A person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which it is imperative to protect his freedom, insofar as one may, and to give full play to the presumption that he is innocent. In fact, the stage at which anticipatory bail if generally sought brings about its striking dissimilarity with the situation in which a person who is arrested for the commission of a non-bailable offence asks for bail. In the latter situation, adequate data is available to the court, or can be called for by it, in the light of which it can grant or refuse relief and while granting it, modify it by the imposition of all or any of the conditions mentioned in Section 437."

Para 15 of the report further emphasised this position, by observing that the discretion "so wisely conferred upon the courts", could not be legitimately "cut down", "by employing judicial artifices and techniques … by devising a formula which will confine the power to grant anticipatory bail within a strait-jacket".

23. Interestingly, and illuminatingly, para 22 of the report observes that the power to grant anticipatory bail was, perhaps, "of an extraordinary character", but that it would be wrong to state that the power "must be exercised in exceptional cases only". The general caveat, to any conferment of discretion, that exercise, thereof, was required to be undertaken "with care and circumspection, depending on circumstances justifying its exercise", observed the Supreme Court, was the only precaution that the Section 438 Court was required to observe. Having said that, certain relevant considerations, in para 31 of the report, are highlighted, thus:

"In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail."

24. Echoes of ***Gurbaksh Singh Sibbia***[1] are also to be found in the more recent judgements of the Supreme Court in ***P. Chidambaram v. Directorate of Enforcement***[2] and ***P. Chidambaram v. Directorate of Enforcement***[3], with the caveat that, in matters involving economic offences, grant of anticipatory bail is required to be the exception, rather than the rule. The present case does not involve any such "economic offence", which would denote an offence which impacts the economy of the country, and has widespread public ramifications.

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[2] **(2019) 9 SCC 24**
[3] **AIR 2020 SC 1699**

25. With the Constitution Bench to guide us, it is hardly necessary to refer to other authorities. The only other decision, to which I deem it necessary to allude, is ***Sumit Mehta v. State***[4], chiefly because it examined the nature of the "conditions" which could be imposed, by the High Court, while granting anticipatory bail, and held that such conditions, alone, could be imposed, as would avoid hampering of the investigation. Conditions which had no reference to the fairness or propriety of the investigation or trial, it was held, could not be regarded as permissible to be imposed, in exercise of the power conferred by Section 438(2) of the Cr PC. Having clarified this position, the Supreme Court went on, in para 13 of the report, to reiterate the ***Gurbaksh Singh Sibbia***[1] principle, thus:

> "We also clarify that while granting anticipatory bail, the courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the courts are duty-bound to impose appropriate conditions as provided under sub-section (2) of Section 438 of the Code."

26. The sequelae of penal incarceration are immediate, and devastating. Custodial interrogation cannot be used as an incantation, in every case, to oppose a plea for anticipatory bail, and it is the duty of the court to balance, consciously and with circumspection, the merits of such a plea, if advanced, with the advisability of pre-trial incarceration of the accused, in the light of the overall facts and

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[4] **(2013) 15 SCC 570**

circumstances of the case. While doing so, the liberty of the individual, which has, in our country, been accorded preambular constitutional sanctity, has to be carefully weighed in the balance.

27. Individual business disputes do not, necessarily, justify custodial interrogation or, on that ground, denial of a prayer for anticipatory bail. A conspectus of the facts, as they obtained in the present case, discloses that the dispute pivots around whether the Board Resolution, dated 28th January, 2019, is a fabricated document, or not. It is a matter of record that the FIR, dated 24th February, 2020, lodged by Respondent No. 2 against the applicant, does not specifically allege that the signature of the Director, as it figures at the foot of the Board Resolution, is forged, even while disputing the validity of the seal and stamp of Respondent No. 2. The FIR is premised on the allegation that the Board Resolution is a fabricated document as, if it is not, Anand Kumar would, *prima facie*, stand authorised to sell the shops in question in the present case. The Settlement Agreement, dated 9th September, 2019, purports to have been issued in exercise of the authority conferred by the Board Resolution. Despite specifically seeking impleadment as Respondent No. 2 in these proceedings, and obtaining leave, of this Court, to oppose, by affidavit, the application of the applicant, the counter affidavit, that has come to be filed by Respondent No. 2, does not deny the crediting, of the two cheques, of ₹ 1 lakh each, into the account of Respondent No. 2, on 6th December, 2019, or seek to explain the same. Similarly, there is no traversal to the assertion, in the application, that Anand Kumar has been employed by a sister concern of Respondent No. 2, and has, in fact, been paid salary by the said concern. Equally, the contention, of the SHO, in the Status Report, that the payment made by the applicant was against the purchase of 40,000 shares, transferred in the name of the applicant and his wife by Respondent No. 2, is also highly disputed, as the applicant has placed, on record, the financial statement of Respondent No. 2, which indicates, *prima facie*, the value of the shares to be ₹ 10/– each, and not ₹ 50/– each, as contended in the Status Report. It is also disputed, even by Respondent No. 2 that, prior to lodging of the FIR, against the applicant, on 24th February, 2020, no attempt, even by way of a legal notice, calling on the applicants to vacate Shops 31 and 32, much less any proceedings before a civil court, was issued, or instituted, by Respondent No. 2. Rather, it appears that a civil suit, for specific performance of the Settlement Agreement, has been filed by the applicant against Respondent No. 2, and is pending before the learned Trial Court.

28. The contest, on these aspects, cannot, in the circumstances, be wished away merely by the statement, under Section 161 of the CrPC, tendered by Anand Kumar.

29. A holistic appreciation of the facts inclines me to agree with the submission of Mr. Razdan that, in fact, the present case is, *prima facie*, essentially in the nature of a commercial transaction, which has not fructified, and has left to rancour, in its wake, on both sides. The case hinges around the validity of the Board Resolution dated 28th January, 2019 and the Settlement Agreement dated 9th September,

2019. This is an aspect which would have to be examined consequent to the leading of evidence, by a dispassionate evaluation of the materials on record. It cannot be said, at this stage that, *prima facie*, the allegations in the FIR stand borne out, or that there is any *prima facie* evidence of the commission of a crime, by the applicant, as would justify his incarceration, at the pre-trial stage.

30. The dispute between the applicant and Respondent No. 2 was, fundamentally, commercial, rather than criminal, in nature, and is also, to an extent, borne out by the willingness, expressed by Respondent No 2, before this Court on 21st August, 2020, to explore the possibility of amicable settlement by mediation. That the effort did not meet with success is, of course, a matter of regret; it would, nevertheless, in my view, be harsh and unjust to incarcerate the applicant, behind bars, in such circumstances.

31. It is, moreover, nowhere sought to be suggested, by either of the respondents, that, were anticipatory bail to be granted, there is any likelihood of the applicant fleeing from justice, or failing to cooperate with the investigative process. Nor is it alleged, either by the State or by Respondent No. 2, that there is any apprehension that the applicant may tamper with the evidence, or influence any witness. The bald averment that custodial interrogation of the applicant is necessary "to unearth the truth" is, in my view, too unstable a peg, on which to hang the sanctified right, to personal liberty, of the applicant. In the circumstances of the present case, I am of the opinion that it would be unfair and unjust to deny the prayer for anticipatory bail.

Conclusion

32. Resultantly, the application is allowed, the Applicant will be entitled to be released on bail subject to the following conditions:

(i) The applicant shall furnish a bail bond for ₹ 1 lakh, with one solvent surety for like amount, to the satisfaction of the Investigating Officer (IO).

(ii) The applicant shall also furnish the details of his present residential address, as well as his mobile number, and the mobile number of at least one other responsible person, who may be contacted, at any time, should the necessity arise. The mobile numbers would be kept active and accessible, till the conclusion of the investigation against the applicant. The applicant shall not change his residential address, or the mobile number provided by him, without the leave of the learned Trial Court or this Court, during the pendency of the investigation.

(iii) The applicant shall not leave the peripheries of the city, without the leave of the learned Trial Court, or of this Court.

(iv) The applicant shall surrender his passport to the IO, who would retain it in safe custody, during the pendency of the investigation. Return of the passport to the applicant shall only be by an order of the learned Trial Court or by this Court.

(iv) No attempt shall be made, by the applicant, to tamper with the investigative process, or influence any witness.

(v) The applicant shall render full cooperation with the investigative process, and shall present himself, consequent to any summons being issued to him, for recording of his statement or otherwise.

33. Needless to say, it shall be open to the respondents to apply for modification or revocation of this order, should the need so arise. Any such application, if moved, shall be decided on its own merits.

C. HARI SHANKAR, J.

NOVEMBER 03, 2020
HJ