

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

Judgment reserved on : 16.08.2022

Date of decision: 25.11.2022

+ CrI.M.C. No. 298/2022 CrI.M.A.1192/2022

M/S PEE EMPRO EXPORTS P. LTD. Petitioner

Through: Mr.Maninder Singh,
Sr.Advocate With Ms. Smriti
Asmita, Mr.Harsh Vashisht and
Ms.Anshika Batra, Advocates

Versus

STATE & ORS. Respondents

Through: Mr.Shoaib Haider, APP for
State with Inspector Akhilesh
Mr.Rakesh Kumar, Mr.Ravi
Ranjan and Mr.Harsh Ojha,
Advocates

+ CrI.M.C. No. 2842/2022 CrI.M.A.11874/2022

M/S PEE EMPRO EXPORTS P. LTD. Petitioner

Through: Mr.Maninder Singh,
Sr.Advocate With Ms. Smriti
Asmita, Mr.Harsh Vashisht and
Ms.Anshika Batra, Advocates

Versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr.Shoaib Haider, APP for
State with Inspector Akhilesh
Mr.Rakesh Kumar, Mr.Ravi
Ranjan and Mr.Harsh Ojha,
Advocates

+ CrI.M.C. No. 2848/2022 CrI.M.A.11746/2022

M/S PEE EMPRO EXPORTS P. LTD. Petitioner

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25.11.2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

Through: Mr.Maninder Singh,
Sr.Advocate With Ms. Smriti
Asmita, Mr.Harsh Vashisht and
Ms.Anshika Batra, Advocates

Versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr.Shoaib Haider, APP for
State with Inspector Akhilesh
Mr.Rakesh Kumar, Mr.Ravi
Ranjan and Mr.Harsh Ojha,
Advocates

+ Crl.M.C. No. 3241/2021 and Crl.M.A.19938/2021

M/S PEE EMPRO EXPORTS P. LTD. Petitioner
Through: Mr.Maninder Singh,
Sr.Advocate With Ms. Smriti
Asmita, Mr.Harsh Vashisht and
Ms.Anshika Batra, Advocates

Versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr.Shoaib Haider, APP for
State with Inspector Akhilesh
Mr.Rakesh Kumar, Mr.Ravi
Ranjan and Mr.Harsh Ojha,
Advocates

+ Crl.M.C. No. 3348/2022 Crl.M.A.14072-14073/2022

M/S PEE EMPRO EXPORTS P. LTD. Petitioner
Through: Mr.Maninder Singh,
Sr.Advocate With Ms. Smriti
Asmita, Mr.Harsh Vashisht and
Ms.Anshika Batra, Advocates

Versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr.Shoaib Haider, APP for

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

State with Inspector Akhilesh
Mr.Rakesh Kumar, Mr.Ravi
Ranjan and Mr.Harsh Ojha,
Advocates

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT
ANU MALHOTRA, J.

1. The petitioner, vide the Crl.M.C. No.298/2022 assails the impugned order dated 8.7.2021 of the Court of the Additional Sessions Judge, in FIR No. 218/2020 Police Station EOW registered under Sections 406/420/120B of the Indian Penal Code, 1860 vide which the order on anticipatory bail application filed by the respondent No.2 S.Venkatakrishanan was disposed of with directions to the Investigating Agency that in case if during the course of investigation the arrest of the applicant was found imminent, the applicant be served with advance seven working days notice so that he can avail the legal remedies available to him.

2. Vide Crl.M.C. No. 2842/2022 , the very same petitioner M/s Pee Empro Exports Pvt. Ltd. assails the impugned order dated 17.5.2022 of the learned Additional Sessions Judge in relation to FIR No. 218/2020 Police Station EOW registered under Sections 406/420/120B of the Indian Penal Code, 1860 vide which order qua the anticipatory bail applications filed in Bail matters bearing Nos. 388/2022 of the accused person P.K. Ramesh there were observations in relation to the previous

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25.11.2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

anticipatory bail application having been withdrawn on 8.7.2021 (apparently the reference to S.Venkatakrishanan the respondent No.2 in CrI.M.C. No.298/2022) with observations that the investigation was at a nascent stage and seven (7) working days notice was thus directed to be given before any arrest was made. Further vide the impugned order dated 17.5.2022 it was observed by the learned Additional Sessions Judge as the Investigating Officer had not even seen the investigation carried out by the Chennai police it was deemed fit that the direction for issuance of five (5) working days prior notice be reiterated and it was directed that the accused would whole heartedly cooperate with the investigation and join the same in order to assist the IO in deciphering the documents which had been handed over in a heap and explain the transactions to the Investigating Officer properly in response to his queries, subject to the constitutional right available to the accused and that the Investigating Officer would on reaching a conclusion regarding siphoning of money, or misappropriation or in case of non cooperation by the accused take a decision regarding requirement of arrest of the accused and act accordingly. It was further observed by the learned Additional Sessions Judge-04, New Delhi that needless to say that the provision for anticipatory bail has to be applied judiciously, as granting such as relief at initial stages of investigation, where the material is in possession of an accused was not adequately available with the Investigating Officer may prejudice the case

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25.11.2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

of the prosecution and victims and on the other hand denying such relief also at that stage may interfere with individual liberty and it was thus observed that the accused as well as the Investigating Agency must both act rationally so that any unfortunate haste in the matter is avoided.

3. Vide CrI.M.C. No. 2848/2022, the very same order assailed in CrI M.C. No. 2842/2022, i.e., the order dated 17.5.2022 of the learned Additional Sessions Judge, was assailed in as much as it is a common order in relation to the bail applications of Mr. P.K.Ramesh (Bail Appln. No. 388/2022), Maria Ramesh (Bail Appln. No. 389/2022) and S.Venkatakrishanan (Bail Appln. No. 259/2022) accused arrayed in FIR No. 218/2020 Police Station EOW registered under Sections 406/420/120B of the Indian Penal Code, 1860, i.e. the respondent No.2 S.Venkatakrishanan in CrIM.C. No. 298/2022 and CrI.M.C. No. 3348/2022, P.K.Ramesh arrayed as respondent No.2 in CrI.M.C. No. 2842/2022 and as respondent No.3 in CrI.M.C. No. 3241/2021 and Ms.Maria Ramesh arrayed as respondent No.2 CrI.M.C. No. 2848/2022 and CrI.M.C. No. 3421/2021 filed by the very same petitioner. The order dated 14.6.2021 of the Court of the learned Additional Sessions Judge in the very same FIR No. 218/2020 Police Station EOW registered under Sections 406/420/120B of the Indian Penal Code, 1860 vide which the accused persons P.K.Ramesh and Ms. Maria Ramesh on applications under Section 438 of the Cr.P.C., 1973, filed seeking the grant of anticipatory bail, the

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25.11.2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

applications were disposed of as withdrawn in view of it having been argued by the prosecution that the matter was at the nascent stage and required a detailed investigation with the defence counsel having submitted that in order to be fair to the Investigating Agency they were inclined to withdraw the bail applications subject to the conditions that in case if during the course of investigation, *the Investigating Agency found the arrest of the applicants to be imminent and unavoidable, then, advance seven working days notice would be served upon them whereby they could exercise the legal remedies available to them to which the learned Additional Public Prosecutor for the State conceded* and the said applications were disposed of as withdrawn with directions to the investigating agency that in case during the course of investigation the arrest of the applicants was found imminent, the applicants be served with the advance seven working days notice so that they could avail the legal remedies available.

4. Vide CrI.M.C. No. 3348/2022, the very same petitioner assails the impugned order dated 17.5.2022 of the learned Additional Sessions Judge-04, New Delhi in relation to the respondent No.2 arrayed to this petition being S.Venkatakrishnan whereby on an application filed seeking the anticipatory bail by the said accused directions for issuance of 5 working days prior notice were reiterated with it having been directed to the effect:

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25.11.2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

“

that the direction for issuing 5 working days prior notice is directed that the accused shall whole heartedly cooperate with the investigation and join the same in order to assist the IO in deciphering the documents which have been handed over in a heap and explain the transactions to the IO properly in response to his queries, subject to the constitutional right available to the accused. The IO shall, on reaching a conclusion regarding siphoning of money, or misappropriation or in case of non cooperation by accused, take a decision regarding requirement of arrest of the accused and act accordingly. Needless to say that the provision for anticipatory bail has to be applied judiciously, as granting such as relief at initial stages of investigation, where the material is in possession of an accused and not adequately available with the IO, may prejudice the case of the prosecution and victims and on the other hand, denying such relief also at such a stage may interfere with individual liberty.”,

the said order is the same as assailed in CrI.M.C. No. 2848/2022 and CrI.M.C. No. 2842/2022.

5. The grievance of the petitioner in each of these cases is common, i.e., the grant of a pre arrest notice directed to be given by the Investigating Agency to the accused in the event of arrest submitting to the effect that the same is in violation of the orders of the Hon'ble Supreme Court in

“Union of India V. Padam Narain Aggarwal Etc.; (2008) 13 SCC 305

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

State of Telangana V. Habib Abdulla Jeelani; (2017) 2 SCC 779

Enforcement Directorate V. Tilak Raj Arora; 2019 SCC OnLine Del 11711

State of Maharashtra V. Mohd. Rashid; (2005) 7 SCC 56

D.K.Ganesh Basu V. P.T. Manokaran; 2007(2) RCR (Criminal) 161; 2007 Cri LJ 1827

Bharat Inder Singh Chahal V. State of Punjab And Ors. 2007 SCC OnLine P & H 691”,

and that there could have been no directions given by the learned ASJ and furthermore, nor qua the investigation to be conducted which is the prerogative of the Investigating Agency in as much as the learned Additional Sessions Judge vide the order dated 17.5.2022 had observed to the effect:

“.....

The Investigating Officer pointed out that he had submitted several questionnaires but he did not get any satisfactory explanation for the same. He pointed out through his replies that accused/applicant gave vague answers to his queries and sought few days time to supply supporting documents, which documents were never supplied to him by the accused. He has claimed want of cooperation and inadequate explanation of various financial transactions being investigated by him.

Ld. Senior Counsel for the applicants/accused persons pointed out

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25.11.2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

that the father of some of the complainants, before this court, had filed a complaint, initially, which was transferred by EOW, New Delhi to Chennai, Tamil Nadu. The Chennai police has since filed a closure report and the present complaint by his children and other family members is an extension of the same complaint and has to be viewed as a complaint by investors and not by home buyers. The father of some of the complainants had been an investor in the project and even his complaint was motivated by the dispute between the investors. He has further submitted that the jurisdiction of this court was created on the basis of a programme at ITC Maurya Sheraton even though, the entire transaction took place at Tamil Nadu. He has stated that even Serious Fraud Investigation Unit had been approached by the father of the complainants and a clean chit was given to the accused persons. He submits that the amount loaned to CAPL, Australia has firstly, been returned and secondly, the same was not extended from the amount received by the companies towards completion of project. Counsel has alleged that Delhi police was acting under the influence of the complainants. Further, qua accused S. Venkata Krishnan, it has been submitted that he was only an Auditor of the company and he never acted as CFO or in any other capacity on behalf of the company.

At this stage, I was constrained to ask the Investigating Officer whether he

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

had approached the Chennai police and tried to go through the closure report and material collected by the Chennai police to reach the said conclusion.

I was also constrained to ask the counsel for accused whether the accused persons have supplied the requisite documents in support of the short reply and charts that were admitted to have been supplied to the IO and whether all material in terms of the questionnaire put by the IO and pointed out in his replies stands supplied to the IO.

At this stage, some controversy was being raised, inasmuch as, IO and counsel for accused were not in agreement regarding the compliance made by the accused. To cut short any controversy, a heap of documents was supplied to the IO in court and counsel for accused persons has undertaken to ensure supply of all documents that may not be part of the said heap but required by the IO, as per his questionnaires pointed out by IO in his replies to these applications within 15 days.

At this juncture, it was fairly conceded by the IO that he has not interacted with Chennai police viz a viz the investigation carried out by them, although, he claimed that the scope of both complaints was different. I fail to understand that if investigation was

Signature
Not Verified


Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

carried out qua the said project by Chennai police, why the Delhi police is not interested in even looking at the same, even though it is possible that the claims of any siphoning of money would have been investigated. In case, the transactions pertaining to loans have been explained, with documents, in the closure report, the same may be used in investigation and if they have not been explained then the claim of the complainant may have additional support.

At this stage, counsel for the complainants also alleged that the accused have been favoured in Chennai in the other FIR.

With both sides not trusting the police in the other city, they may consider approaching the Hon'ble Supreme Court for transfer of investigation to a neutral agency, but I cannot look at this aspect at this stage. However, considering the submissions made by the IO that the documents forming part of closure report have not been seen by him and that additional documents have been supplied today, the investigating agency still has some task to perform and to conclude whether or not there was any diversion of fund or siphoning of money by the accused persons through the network of companies.

I have perused the record and found that earlier also an anticipatory

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

bail application was moved, which was withdrawn on 08.07.2021 on the submission that the investigation was at a nascent stage and 7 working days notice was directed to be given before any arrest was made.

It seems that a notice was issued for arresting the accused persons on the premiss that they were not cooperating with the investigation and not supplying the necessary documents. However, since the IO had not even seen the investigation carried out by Chennai police, in my view, his decision was a bit in haste. Therefore, considering the aforesaid submissions, it is deemed fit that the direction for issuing 5 working days prior notice is reiterated and it is directed that the accused shall whole heartedly cooperate with the investigation and join the same in order to assist the IO in deciphering the documents which have been handed over in a heap and explain the transactions to the IO properly in response to his queries, subject to the constitutional right available to the accused. The IO shall, on reaching a conclusion regarding siphoning of money, or misappropriation or in case of non cooperation by accused, take a decision regarding requirement of arrest of the accused and act accordingly. Needless to say that the provision for anticipatory bail has to be applied judiciously, as granting such as relief at initial stages of investigation, where the material is in possession of an accused and not

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 25.11.2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

adequately available with the IO, may prejudice the case of the prosecution and victims and on the other hand, denying such relief also at such a stage may interfere with individual liberty.

Therefore, the accused as well as the investigating agencies must both act rationally so that any unfortunate haste in this regard can be avoided.

With these observations, the present bail applications are disposed off.”

6. On behalf of the respondent/accused it was inter alia submitted that there was no blanket order that had been passed vide the impugned order and no blanket direction had been granted.

7. The learned APP for the State did not refute the status of law as laid down by the Hon’ble Supreme Court on the verdicts relied upon on behalf of the petitioner.

8. The learned counsel for the respondent/accused placed reliance on the order dated 9.12.2021 of this Court in Bail Application No. 3718/2021 titled ***Raghav Bansal Alias Sahil V. The State (Govt. of NCT of Delhi)***.

9. FIR No. 218/2020 Police Station EOW registered under Sections 406/420/120B of the Indian Penal Code, 1860, was registered at New Delhi on the complaint of Sh. Hans Sachdev against Maria Ramesh, P.K.Ramesh, Ramesh Praveen Kumar, S. Ravindranathan, R. Mahalakshmi, Vijayalakshmi Gopi, S.Venkatakrishnan wherein there are allegations to the effect

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

that these accused persons had jointly and independently in connivance and conspiracy with one another and various other persons failed to hand over the plots in the Ushera project in connivance and conspiracy with senior officials of LIC Housing Finance Ltd. indulged in profile funding and double sale of the flats and received money in cash in regard to sale of flats in the Ushera project to utilize for themselves and that there had been a misappropriation of the money/properties of the complainant; that there had been falsification of accounts and merchants/traders have breached the trust of the complainants; also indulged in money laundering, i.e., siphoning of money from the Call Express Group companies i.e., (a) Call Express Engineering Private Limited, (b) Call Express Construction (Indian) Pvt. Ltd. , (c) CALLEX Creations Private Limited with their registered offices at No.20, Poes Road, First Street, Teynampet, Chennai, Tamil Nadu-600018 to its counterparts/sister concern Callex Australia Pty Ltd. Australia as well as with offences committed under the Prevention of Corruption Act.

10. It was alleged through the said FIR that P.K.Ramesh, S.Ravindranathan and Maria Ramesh approached Hans Sachdev and Prit Mohinder Singh Uppal of M/s Pee Empro Exports Pvt. Ltd. for purchase of their flats in the USHERA project and that P.K.Ramesh accompanied with the marketing team organized an event at the Hotel Maurya Sheraton, Delhi where Hans Sachdev and Prit Mohinder Singh Uppal of M/s Pee Empro

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

Exports Pvt. Ltd. were invited at the Hotel Maurya Sheraton on the promotion of the USHERA project were informed that the Call Express Construction (Indian) Pvt. Ltd was coming up with the USHERA project on the prime property at Village and Taluka sholinganallur, Distt. Kancheepuram, Tamil Nadu, and it was informed that the price of the land value had increased 100 folds in the past 10 years and that the price of their flats would double by the time they get possession of their flats and that during the promotion and during various conversations and thereafter P.K.Ramesh and S.Ravindranathan introduced Maria Ramesh, Director of Call Express Construction (Indian) Pvt. Ltd., R.Mahalakshmi, Vice President,- Marketing, Call Express Construction (Indian) Pvt. Ltd, and Vijayalakshmi Gopi, Vice President, Call Express Construction (Indian) Pvt. Ltd, and they jointly induced the complainants to believe that the project was well funded and that the flats would be ready before time even if all the flats were not sold and further submissions were made in the FIR qua inducements made and thus the complainants Hans Sachdev and Prit Mohinder Singh Uppal of M/s Pee Empro Exports Pvt. Ltd. booked flats No. C-7 and D-14 respectively in the USHERA project and Hans Sachdev entered into a deed of Agreement of Sale on 9.6.2015 for a consideration of Rs.51,89,940/- and Prit Mohinder Singh Uppal on behalf of M/s Pee Empro Exports Pvt. Ltd. entered into a deed of Agreement for Sale on 5.6.2015 for a consideration of Rs.50,04,668/- and thereafter also Prit Mohinder Singh Uppal

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

on behalf of M/s Pee Empro Exports Pvt. Ltd. also entered into a Construction Agreement for Sale on 5.6.2015 for a consideration of Rs.2,72,82,793/- and Hans Sachdev entered into the Construction Agreement for Sale on 16.11.2015 for a consideration of Rs.3,80,30,695/- .

11. It was alleged inter alia through the FIR that the construction had stopped from 2017 and that the accused person had siphoned almost 100 Crores of rupees to their foreign bank accounts and diverted the money for their own use contrary to the contract with the complainant.

12. Vide order dated 8.2.2021 in W.P.No. 2688/2021 and W.M.P. No. 3019/2021 of the Hon'ble High Court of Madras whilst issuance of notice of the petition of which the State was in receipt of notice and was represented,- a stay of further investigation in Crime No. 218/2020 Police Station EOW dated 16.12.2020 i.e., the FIR in question was granted pending disposal of the said writ petition.

13. Vide order dated 9.4.2021 of the Hon'ble Supreme Court in SLP (CrI.) 2806/2021, with submissions having been made therein that the FIR had been registered in Delhi and not at Madras with notice of the said petition having been issued the operation of the impugned order was directed to remain stayed. Vide order dated 4.10.2021 in SLP(CrI.) No. 2806/2021 the Hon'ble Supreme Court set aside the *ad interim ex parte* stay order passed by the High Court of Madras dated 8.2.2021 and the submissions made on behalf of the petitioners of the petition

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 25.11.2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

i.e., Hans Sachdev and Prit Mohinder Singh Uppal, the complainants of the FIR 218/2020 Police Station EOW to the effect that the High Court of Madras, Chennai had no territorial jurisdiction to entertain the petition for quashing of the FIR 218/2020 Police Station EOW qua offences under Sections 420/406/120B of the Indian Penal Code, 1860 and rival contentions on behalf of the respondent Nos. 3 and 4 that the High Court of Madras had territorial jurisdiction in terms of the Article 226(2) of the Constitution were observed in the order dated 4.10.2021, with it having been observed further by the Hon'ble Supreme Court to the effect that:

“Since the matter is pending before the High Court of Madras at Chennai, we refrain to express opinion on this aspect to the matter and leave it for the parties to raise objections including territorial jurisdiction before the High Court and if such objection is being raised, it is expected from the High Court to decide the preliminary objection of territorial jurisdiction in the first place.

With the observations afore-stated, the Special Leave Petition is, accordingly, dismissed.”

14. The written submissions of the petitioner submitted in CrI.M.C. No. 2848/2022 indicate to the effect that one FIR No. 253/2019 was filed at CCB Chennai by one of the Investors of the project in which FIR, the closure report was filed and that closure report is under challenge and the protest petition has been filed before the CMM, Egmore Court, Chennai. The

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 25.11.2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

petitioners seek to submit that vide order dated 17.5.2022 which is impugned in three petitions i.e., CrI.M.C. No. 2842/2022, 2848/22 and 3348/2022, the learned Additional Sessions Judge had observed to the effect:

“ At this stage, I was constrained to ask the Investigating Officer whether he had approached the Chennai police and tried to go through the closure report and material collected by the Chennai police to reach the said conclusion.

I was also constrained to ask the counsel for accused whether the accused persons have supplied the requisite documents in support of the short reply and charts that were admitted to have been supplied to the IO and whether all material in terms of the questionnaire put by the IO and pointed out in his replies stands supplied to the IO.

At this stage, some controversy was being raised, inasmuch – as, IO and counsel for accused were not in agreement regarding the compliance made by the accused. To cut short any controversy, a heap of documents was supplied to the IO in court and counsel for accused persons has undertaken to ensure supply of all documents that may not be part of the said heap but required by the IO, as per his questionnaires pointed out by IO in his replies to these applications within 15 days.

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 25.11.2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

At this juncture, it was fairly conceded by the IO that he has not interacted with Chennai police vizaviz the investigation carried out by them, although, he claimed that the scope of both complaints was different. I fail to understand that if investigation was carried out qua the said project by Chennai police, why the Delhi police is not interested in even looking at the same, even though it is possible that the claims of any siphoning of money would have been investigated. In case, the transactions pertaining to loans have been explained, with documents, in the closure report, the same may be used in investigation and if they have not been explained then the claim of the complainant may have additional support.

At this stage, counsel for the complainants also alleged that the accused have been favoured in Chennai in the other FIR.

With both sides not trusting the police in the other city, they may consider approaching the Hon'ble Supreme Court for transfer of investigation to a neutral agency, but I cannot look at this aspect at this stage. However, considering the submissions made by the IO that the documents forming part of closure report have not been seen by him and that additional documents have been supplied today, the

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

investigating agency still has some task to perform and to conclude whether or not there was any diversion of fund or siphoning of money by the accused persons through the network of companies.”,

and it has thus been submitted by the petitioners that the said observation and directions of the learned Additional Sessions Judge were beyond law and the learned Additional Sessions Judge could not have directed the Investigating Officer to investigate the matter in a particular manner.

15. On behalf of the respondents it was inter alia sought to be submitted that the petitions have become infructuous as the respondents/accused have already been granted bail vide order dated 6.8.2022 of the learned Additional Sessions Judge, Patiala House Courts, New Delhi and the respondents submit that the only issue pending is the aspect of a pre-arrest notice by the Investigating Officer being illegal and contrary to law as laid down by the Hon’ble Supreme Court. The respondent/accused submits that the said orders are not blanket orders and that a blanket order in **SHRI GURBAKSH SINGH SIBBIA AND OTHERS V. STATE OF PUNJAB: (1980) 2 Supreme Court Cases 565** wherein it is observed to the effect:

“That is why, normally, a direction should not issue under Section 438(1) to the effect that the applicant shall be released on bail “whenever arrested for which ever offence whatsoever”. That is what is meant by a ‘blanket order’ of anticipatory bail, an order which serves as a blanket to

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had.”

16. It has thus been submitted by the respondent that the orders impugned are not the blanket orders as they pertain to a specific FIR in relation to specific offences and that the order dated 14.6.2021 was a consent order on the consent given by the learned APP for the State and it was only because of the consent that the applicants had withdrawn their anticipatory bail applications and as regards the order dated 17.5.2022 the learned Additional Sessions Judge had observed to the effect that the Investigating Officer was in a bit haste in issuing the arrest notice and the accused had participated in the investigation and have attended the inquiry several times and have furnished thousand of documents thereby cooperating with the investigation and thus the learned Additional Sessions Judge deemed it fit to direct the issuance of a five (5) days pre-arrest notice and directed the Respondents/Accused to cooperate with the investigation with it thus having submitted by the respondent that the said order is also not a blanket order as alleged by the Petitioner.

17. Inter alia reliance is placed on behalf of the respondent on the observations of the Supreme Court in **SHRI GURBAKSH SINGH SIBBIA AND OTHERS V. STATE OF PUNJAB** (supra) vide paragraph No. 13 which reads to the effect:

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25.11.2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

“.....The High Court and 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. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on Considerations similar to those mentioned in Section 437 or which are generally considered to be relevant under Section 439 of the Code...”

18. It has thus been submitted on behalf of the respondents that the Hon’ble Supreme Court has time and again held that where matters of discretion are concerned, a straightjacket formula cannot be applied by generalization and the distinguishable facts and circumstances of each case have to borne in mind while adjudicating upon them.

19. Inter alia, it has been submitted on behalf of the respondent that the reliance placed by the petitioner on the verdicts relied upon are misplaced submitting to the effect that:

*“7. It is submitted that the reliance placed by the Complainant on the judgments filed by him before this Hon’ble Court are misplaced inasmuch as the judgments namely- **Union of India vs Padam Narain Aggarwal Etc.(2008) 13 SCC 305** and **State of Maharashtra vs Mod. Rashid (2005) 7 SCC 56** are clearly distinguishable from the facts of this case as the same were passed in context of “blanket orders”*

Signature
Not Verified

Digitally Signed
By: SUMIT GHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

of the High Court which sought to grant protection to the respondents in respect of “any non-bailable offence” which is definitely not the case in the impugned orders.

*8. With regard to **State of Telangana vs Habib Abdullah Jeelani and Others (2017) 2 SCC 799**, relied upon by the complainant, it is submitted that the said case is totally distinguishable both on facts as well as law since the matter in issue was whether the High Court can issue directions not to arrest in a petition u/s 482 for quashing of FIR and not with regard to the powers vested in the High Court and Court of Sessions u/s 438 of the CrPC.*

*9. Similarly **D.K.Ganesh Babu vs P.T. Manokaran 2007 (2) RCR (Criminal) 161: 2007 Cri LJ 1827**, relied upon by the complainant is also clearly distinguishable as it deals with whether direction restraining arrest may be passed in an application U/s 438 of the code.”*

20. Inter alia the respondent has placed reliance on the verdicts of the Hon’ble Supreme Court in:

- **Shri Gurbaksh Singh Sibbia And Others V. State of Punjab; 1980 2 SCC 565;**
- **Sushila Aggarwal and Others v. State (NCT OF DELHI) and Another ; (2020) 5 Supreme Court Cases 1, a verdict dated 29.1.2020.;**
- **Raghav Bansal Alias Sahil V. State (Govt. of NCT of Delhi); Bail Appln. No. 3718/2021 a verdict dated 9.12.2021.;**
- **Central Bureau of Investigation V. Chandraswami Alias Nemi Chand Jain; (1997) 3 SCC 214 and ;**
- **Subhash v. The State (NCT of Delhi); Bail Appln. No. 2812/2014 a verdict dated 13.1.2015.**

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

21. On a consideration of submissions made on behalf of either side and the record taking into account the submissions made on behalf of the respondents that the respondents have already been granted bail vide order dated 6.8.2022 of the learned Additional Sessions Judge, Patiala House Courts, New Delhi, the issue involved in the present petition is academic.

22. However, the factum that in terms of the verdict of the Hon'ble Supreme Court in *Union of India V. Padam Narain Aggarwal Etc.(2008) 13 SCC 305* the order of grant of notice prior to arrest is not warranted as also laid down in *SUSHILA AGGARWAL AND OTHERS v. STATE (NCT OF DELHI) AND ANOTHER* (supra) in view of the final conclusions in the said verdict in paragraphs 91 to 93 thereof which read to the effect:

“91. In view of the concurring judgments of M.R. Shah, J. and of S. Ravindra Bhat, J. with Arun Mishra, Indira Banerjee and Vineet Saran, JJ. agreeing with them, the following answers to the reference are set out:

91.1. Regarding Question 1, this Court holds that the protection granted to a person under Section 438 CrPC should not invariably be limited to a fixed period; it should enure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

(including fixed nature of relief, or its being tied to an event), etc.

91.2. As regards the second question referred to this Court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.

92. This Court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438 CrPC:

92.1. Consistent with the judgment in Gurbaksh Singh Sibbia v. State of Punjab , when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear

Signature
Not Verified

 Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

and there is reasonable basis for apprehending arrest.

92.2. It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the Public Prosecutor and obtain facts, even while granting limited interim anticipatory bail.

92.3. Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such

Signature
Not Verified

 Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

limiting conditions may not be invariably imposed.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

92.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial.

92.6. An order of anticipatory bail should not be “blanket” in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

92.7. An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

92.8. The observations in Sibbia regarding “limited custody” or “deemed custody” to facilitate the requirements of the investigative

Signature
Not Verified

 Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia had observed that :-

“19. ... if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v. Deoman Upadhyaya.

92.9. It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.

92.10. The court referred to in para 92.9 above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

92.11. The correctness of an order granting bail, can be considered by the appellate or

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

superior court at the behest of the State or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See Prakash Kadam v. Ramprasad Vishwanath Gupta ; Jai Prakash Singh ; State of U.P. v. Amarmani Tripathi .) This does not amount to “cancellation” in terms of Section 439(2) CrPC.

92.12. The observations in Siddharam Satlingappa Mhetre v. State of Maharashtra (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin Abdulsamad Shaikh v. State of Maharashtra and subsequent decisions (including K.L. Verma v. State , Sunita Devi v. State of Bihar , Adri Dharan Das v. State of W.B. , Nirmal Jeet Kaur v. State of M.P. , HDFC Bank Ltd. v. J.J. Mannan , Satpal Singh v. State of Punjab and Naresh Kumar Yadav v. Ravindra Kumar) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

93. The reference is hereby answered in the above terms.”

23. Though it is advisable for the Court as directed thereby vide conclusions in paragraphs 92.2 on a Court being approached with an application under Section 438 of the

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

Cr.P.C., 1973 depending on the seriousness of threat of arrest to issue notice to the Public Prosecutor and obtain facts even whilst granting even interim anticipatory bail and thus for the period to which the Court renotifies the matter on calling for a response from the Public Prosecutor after issuance of notice, it would be open to the Court seized of an application under Section 438 of the Cr.P.C., 1973 in terms of the conclusion in para 92.2 in **SUSHILA AGGARWAL AND OTHERS v. STATE (NCT OF DELHI) AND ANOTHER** (Supra) to grant limited interim anticipatory till the said date which is the appropriate course of action in terms of the verdict **SUSHILA AGGARWAL AND OTHERS v. STATE (NCT OF DELHI) AND ANOTHER** (supra) rather than of directions being issued to the Investigating Officer to issue notice prior to arrest, even if they be limited to the FIR and the offences in question qua which the application has been filed.

24. As regards the submissions made on behalf of the petitioner that it was not appropriate for the learned Additional Sessions Judge concerned vide order dated 17.5.2022 to make observations in relation to the mode of investigation, it is essential to observe that vide the impugned order, the learned Additional Sessions Judge has not in any manner interfered with the investigation of the case in relation to the FIR No. 218/2020 Police Station EOW and has only brought forth on record the aspect of a closure report in relation to the complaint made by the father of some of the very same complainants having been

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

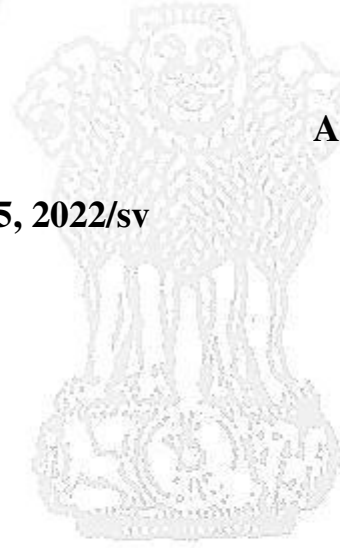
submitted by the Chennai police so that there is a fairness in the investigation to be conducted.

25. The petitions call for no further action and are disposed of accordingly and the accompanying applications are disposed of.

Nothing stated herein above shall however amount to any expression on the merits or demerits of any proceedings in relation to the FIR No. 218/2020 Police Station EOW.

ANU MALHOTRA, J.

NOVEMBER 25, 2022/sv



सत्यमेव जयते

Signature
Not Verified

Digitally Signed
By: SUMIT CHAI
Signing
Date: 25/11/2022
11:42:31
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.