



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

Date of decision: 07th MARCH, 2022

IN THE MATTER OF:

+ **BAIL APPLN. 806/2019 & CRL.M.As. 6730/2019, 4378/2021
18301/2021**

KAPIL KUMAR Petitioner
Through Mr. Manu Bansal and Mr. Janender
Kr. Chumbak, Advocates
versus

STATE Respondent
Through Ms. Meenakshi Chauhan, APP with
SI Anand Prakash, PS EOW
Mr. Anil Nag, Mr. Arun Singh and
Mr. Anmol Nag, Advocates for
intervenor
Mr. Rajiv Sardana, Intervenor
Mr. Karan Suneja, Advocate for
Intervenor Gautam Mullick and Mrs.
Aruna Mullick
Siddharth Banthia, Advocate for
Home Buyer Association.
Mr. Joginder Tuli and Ms. Joshini
Tuli, Advocate for the
intervenor/complainant.

+ **BAIL APPLN. 975/2019, CRL.M.(BAIL) 709/2019, CRL.M.As.
10593/2019, 4278/2021**

ASHISH GUPTA Petitioner
Through Mr. Vikas Pahwa, Senior Advocate
with Mr. Sumer Singh Boparai and
Mr. Sidhant Saraswat, Advocates.
versus
STATE Respondent
Through Ms. Meenakshi Chauhan, APP with



SI Anand Prakash, PS EOW
 Mr. Anil Nag, Mr. Arun Singh and
 Mr. Anmol Nag, Advocates for
 intervenors
 Mr. Rajiv Sardana, Intervenor
 Mr. Karan Suneja, Advocate for
 Intervenors Gautam Mullick and Mrs.
 Aruna Mullick
 Siddharth Banthia, Advocate for the
 complainant.
 Mr. Joginder Tuli and Ms. Joshini
 Tuli, Advocate for the
 intervenor/complainant.

+ **CRL.M.C 1153/2019 & CRL.M.As. 4483/2019, 576/2021, 577/2021**

KAPIL KUMAR		Petitioner
Through	Mr. Manu Bansal and Mr. Janender	
	Kr. Chumbak, Advocates	
versus		
STATE		Respondent
Through	Ms. Meenakshi Chauhan, APP with	
	SI Anand Prakash, PS EOW	
	Mr. Anil Nag, Mr. Arun Singh and	
	Mr. Anmol Nag, Advocates for	
	intervenors	
	Mr. Rajiv Sardana, Intervenor	
	Mr. Karan Suneja, Advocate for	
	Intervenors Gautam Mullick and Mrs.	
	Aruna Mullick	
	Siddharth Banthia, Advocate for the	
	complainant.	

+ **CRL.M.C.2053/2019**

ASHISH GUPTA		Petitioner
Through	Mr. Vikas Pahwa, Senior Advocate	



with Mr. Sumer Singh Boparai and
Mr. Sidhant Saraswat, Advocates.

STATE versus Respondent
Through Ms. Meenakshi Chauhan, APP with
SI Anand Prakash, PS EOW
Mr. Anil Nag, Mr. Arun Singh and
Mr. Anmol Nag, Advocates for
intervenors
Mr. Rajiv Sardana, Intervenor
Mr. Karan Suneja, Advocate for
Intervenors Gautam Mullick and Mrs.
Aruna Mullick
Siddharth Banthia, Advocate for
Home Buyer Association

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. CRL.M.C.1153/2019 and CRL.M.C.2053/2019 have been filed under Section 482 Cr.P.C. challenging Orders dated 16.03.2018 and 15.11.2017 passed by the Ld. C.M.M., (Central) Tis Hazari Courts, Delhi passed in State v. Ram Chander Soni arising out of FIR No. 173/2015 dated 17.12.2015 registered at Police Station EOW for offences under Sections 409/420/120B of the Indian Penal Code, 1860 (*hereinafter*, "IPC").
2. BAIL APPLN. 806/2019 and BAIL APPLN. 975/2019 have been filed by Petitioner in CRL.M.C. 1153/2019 and Petitioner in CRL.M.C. 2053/2019, respectively, seeking anticipatory bail under Section 438 Cr.P.C. in FIR No. 173/2015 dated 17.12.2015 registered at Police Station EOW for offences under Section 409/420/120B IPC.
3. The facts, in brief, leading up to the filing of both the petitions are as



follows:

- a) It is stated that on 31.07.2006, M/s R.C. Info Systems gave the development rights of a project named Kessel I Valley on a land admeasuring 100857 square meters to M/s AMR Infrastructures Ltd. *vide* an MoU. On 04.10.2006, father (Krishan Kumar) of the Petitioner in CRL.M.C.1153/2019 became one of the Directors of M/s AMR and a 12.5% shareholder of the Company. It is stated that owing to his ill health, the Petitioner in CRL.M.C.1153/2019 was made one of the Directors of M/s AMR on 11.12.2010 and he resigned from the directorship of M/s AMR on 23.03.2015.
- b) It is stated that the project remained incomplete and soon complaints started pouring in. One of the basis of one complaint dated 08.05.2015, FIR No. 173/2015 dated 17.12.2015 was registered at P.S. EOW which named M/s R.C. Info, M/s AMR, Ram Chander Soni, Krishan Kumar, Manoj Gupta, Ashish Gupta, Arun Kumar Soni, Prashant Soni, Naveen Soni, and Brij Mohan Gupta. The FIR states that M/s AMR and its Directors deliberately hatched a plan to lure investors in order to make them invest money that they eventually used to satisfy personal financial objectives. It states that the project did not witness any progress and till mid-2009, Rs. 93,12,000/- was already paid by the investors. It states that when the Complainant cross-checked with M/s AMR about the total amount paid, it was found that there was a discrepancy of Rs. 4,37,000/-. On approaching the new directors, it was said that the assured return could not be



given to the investors, and on asking for a refund of money, it was said that the refund could only be done after 10% deduction from the total paid amount. Subsequently, assured returns were only given from mid-2012 and stopped in August-September 2014. Further, no possession or assured lease was provided to the investors till 2015.

- c) It is stated that notice was issued to the Petitioner in CRL.M.C. 1153/2019 on 08.11.2016 wherein he was called to join the investigation, which he did, and that on 08.11.2016, he was directed to furnish certain documents to the I.O., which were done on 08.12.2016
- d) It is stated that Ram Chander Soni and Krishan Kumar were arrested on 03.08.2017, and Ankit Gupta, another Director of M/s AMR was arrested on 24.10.2017. Chargesheet in FIR No. 173/2015 was filed on 27.10.2017 against Ram Chander Soni and Krishan Kumar. Supplementary chargesheet was filed against Ankit Gupta on 17.01.2018.
- e) It is stated that during these events, on 15.11.2017, a Non-Bailable Warrant was issued against the Petitioners. On 15.12.2017, as the NBWs remained unexecuted, process under Section 82 CrPC was initiated against the Petitioners and on 16.03.2018, the Petitioners were declared Proclaimed Offenders. Aggrieved by these Orders, the Petitioners have approached this Court, impugning the same.

4. Arguments have been advanced by Mr. Vikas Pahwa, learned Senior Counsel for Petitioner in CRL.M.C. 2053/2019, and Mr. Janender Kr.



Chumbak for Petitioner in CRL.M.C. 1153/2019.

5. Mr. Chumbak submits that the Petitioner in CRL.M.C. 1153/2019 was made an accused only by way of the second supplementary chargesheet and the fact that the Petitioner had been declared Proclaimed Offender had come as a shock to the Petitioner as, Mr. Chumbak submits, the Petitioner had always been present pursuant to notice being issued. The learned Counsel appearing for Petitioner in CRL.M.C 1153/2019 submits that the Petitioner was not named in FIR No. 173/2015 and that no role in particular has been attributed to him. He submits that the Petitioner has joined the investigation on three separate occasions, i.e. 08.11.2016, 08.12.2016 and 15.12.2016. He states that the Petitioner did not join further investigation as he was not called for the same.

6. Mr. Chumbak takes this Court through Section 82 Cr.P.C. to state that declaration of Proclaimed Offender can only be done under Section 82(4) Cr.P.C. which stipulates that the person must be accused of offences punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 IPC. The learned Counsel submits that the FIR against the Petitioner in CRL.M.C. 1153/2019 does not fall under any of the aforementioned Sections. He further states that it was incumbent upon the Ld. Magistrate to satisfy himself regarding the aspect of the Petitioner absconding before declaring him PO and that the condition precedent to a proclamation being issued is that a warrant must have been issued, which is a step that has been skipped in the instant matter. He states that the procedure as has been laid down under Section 82(1) Cr.P.C. has not been followed. He submits that, therefore, the impugned Order declaring PO is bad in law and is liable to be set aside.



7. The learned Counsel for the Petitioner in CRL.M.C. 1153/2019 submits that the Petitioner was only a Director of M/s AMR for a short period of four years, i.e. from 2010-2011 to 2014-2015, and that he was not a signatory for any of the bank accounts of M/s AMR and that he had no power or authority to execute any document on behalf of the Company. Furthermore, apart from the monthly salary that was due to him by way of his occupation as a Director of M/s AMR, the Petitioner did not receive any other sum from the Company during his entire tenure of directorship. He states that during the Petitioner's tenure, assured returns were given to all the investors.

8. Mr. Chumbak further brings to the attention of this Court that though the Petitioner was not a part of M/s AMR at the inception of the project, however, the project was only delayed on account of unforeseen circumstances and not due to any form of fraud played upon by the Company. He submits that a perusal of the statement of accounts reveals that the money had been transferred from M/s AMR to other companies prior to the appointment of the Petitioner and no money had been misappropriated by the Petitioner. He further submits that father of the Petitioner, co-accused Krishan Kumar, has been granted bail by this Court, along with Ram Chander Soni and Ankit Gupta. He also submits that three other accused persons, namely Arun Kumar Soni, Prashant Soni and Naveen Soni were never arrested despite being named in the chargesheet.

9. Mr. Vikas Pahwa, learned Senior Counsel for the Petitioner in CRL.M.C. 2053/2019, submits the impugned Order declaring the Petitioner as a Proclaimed Offender is bad in law as the offences against the Petitioner do not fall under the IPC Sections stipulated under Section 82(4) Cr.P.C. He



submits that there is a stark difference between declaring an individual as a Proclaimed Person under Section 82(1) Cr.P.C. and declaring one as a Proclaimed Offender under Section 82(4) Cr.P.C. as different consequences to the same are enumerated in Section 174A IPC. To substantiate this argument, Mr. Pahwa has relied upon Rishabh Sethi v. State of Rajasthan and Ors., (**Petition No. 5767/2017**) and Sanjay Bhandari v. State (NCT of Delhi), (**2018 SCC OnLine Del 10203**). He submits that Section 174A IPC states that non-appearance with regard to a proclamation under Section 82(1) Cr.P.C. entails imprisonment for a term which may extend to three years or with fine or with both, and non-appearance with regard to a proclamation under Section 82(4) Cr.P.C. entails imprisonment for a term which may extend to seven years as well as a fine.

10. The learned Senior Counsel submits that the I.O. in the instant case has failed to note that the Petitioner had appeared in pursuance of the notices issued to him as well as joined the investigation, and that, therefore, issuance of NBW as well as getting the Petitioner declared as PO was bad in law. He states that as per the Apex Court's observations in Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors., (**2007**) **12 SCC 1**, an NBW could only be issued as a last resort measure after being satisfied that the person was indeed absconding as issuance of an NBW entails interference with personal liberty. Mr. Pahwa relies upon the judgments of this Court in Arun Kumar Parihar v. State (Govt. NCTD), (**Crl. M.C. No. 863/2021**) & Rohit Kumar @ Raju v. State of NCT Delhi through The Standing Counsel & Ors., **2007 (98) DRJ 714**, to buttress his submission that there should be proper application of mind and exercise of discretion in a judicial manner by the Ld. Magistrate before a non-bailable warrant can be issued, and that as



there was no compliance of the procedure established under law, the personal liberty of the Petitioner could not be curtailed.

11. Mr. Pahwa submits that there is a glaring irregularity in the impugned Orders of the Ld. Magistrate due to non-application of mind and that this Court must exercise its authority under Section 482 Cr.P.C. to rectify this error which prejudices the rights of the Petitioner by clarifying that the Petitioner is not a P.O. He states that the illegality stems from the request of the I.O. seeking declaration of the Petitioner as P.O. which had been hastily accepted by the Ld. Magistrate. He further submits to this Court that the Petitioner had not been named as an accused in the chargesheet dated 27.10.2017 or in the supplementary chargesheet dated 17.01.2018, and that it was only by way of the second supplementary chargesheet dated 30.08.2018 that the Petitioner was made aware of his status as a PO.

12. The learned Senior Counsel argues that the co-accused of the Petitioner have been granted bail, and that there are other persons who have been named with the Petitioner, but are yet to be arrested. He states that on these grounds, not only should the impugned Orders of the Ld. Magistrate be set aside, but anticipatory bail under Section 438 Cr.P.C. should be granted to the Petitioner.

13. *Per contra*, Ms. Meenakshi Chauhan, learned APP for the State, and the learned Counsel for the Intervenors, Mr. Karan Suneja, submit that the instant case pertains to a fraud of Rs. 543 crores, with 3203 investors and 645 initial complaints. She submits that the discovery of the extent of the fraud is a continuing process and the gravity of the offence committed by the Petitioners must be borne in mind. Ms. Chauhan takes this Court painstakingly through the steps that have been taken with regard to the



investigation and notices issued to both the Petitioners as well as their response to the said notices. She submits that NBW was only issued pursuant to multiple raids that had been conducted as well as after the I.O. was unable to trace either of the Petitioners. She states that it was only after a search was conducted at the Petitioners' residences on 17.11.2017 and then again on 13.12.2017 that the I.O. requested for proclamation proceedings to be initiated under Section 82 Cr.P.C.

14. The learned APP relies upon the order dated 07.07.2021 titled as Smt. Kantabai v. The State of Madhya Pradesh, (MCRC No. 4730/2021) to submit that the procedure followed for initiating proceedings under Section 82(1) and Section 82(4) Cr.P.C. is the same, and that the only difference between the two are the penal consequences for the same as provided under Section 174A IPC. She submits that for the purposes of anticipatory bail, a proclaimed offender includes an offender or a proclaimed person under Section 82(1) Cr.P.C., and, therefore, the Petitioners are not entitled to anticipatory bail.

15. Ms. Chauhan further argues that the Petitioners have played a central role in the diversion of funds from the commercial project that was sought to be instituted and have actively duped the investors of their hard-earned money, with cash receipts worth Rs. 60 crores yet to be investigated. She submits that Petitioner in CRL.M.C. 1153/2019 was a Director of M/s AMR and a 12.5% shareholder. Furthermore, many of the investors have stated that the Petitioner was instrumental in luring them into investing in the said project in the first place. With regard to the Petitioner in CRL.M.C. 2053/2019, Ms. Chauhan submits that a certain amount was diverted and his custody may be required for the purpose of discovering the said diversions.



Additionally, the Petitioner in CRL.M.C. 2053/2019 was the signatory in all the bank accounts of M/s AMR. The learned APP further submits that the Forensic Audit Report names the companies involved and when information was sought from the Insolvency Resolution Professional (IRP), neither of the Petitioners came forward to volunteer the same.

16. Ms. Chauhan relies upon a judgement of this Court in Sidharth Chauhan v. State (Govt. of NCT of Delhi) Through SHO, BAIL APPLN.2722/2021 & BAIL APPLN.2746/2021 to showcase that anticipatory bail was denied to the promoter therein who was evading arrest in a case with similar facts. She submits that Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors. (supra) cannot be applicable in the instant matter as the procedure therein arose in a complaint case and not a police case. She further submits that Section 73 Cr.P.C. states that the Magistrate can direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest. She refers to State through C.B.I. v. Dawood Ibrahim Kaskar and Ors., (2000) 10 SCC 438 to substantiate this power conferred upon the Magistrate under Section 73 Cr.P.C. to issue a warrant. She states that the procedure does not state that satisfaction of the Ld. Magistrate is required and that warrant may be issued upon report of the I.O.

17. In Rejoinder, Mr. Vikas Pahwa, learned Senior Counsel for Petitioner in CRL.M.C. 2053/2019, submits that guidelines pertaining to initiating proclamation proceedings under Section 82 Cr.P.C. are inherent in the provision itself and can be discerned from a bare reading of the same. He submits that for an NBW to be issued, one cannot simply state that the



accused was missing from their residence, and that a certain procedure must be followed before resorting to issuance of an NBW. Referring to Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors. (supra), Mr. Pahwa states that the impugned Orders of the Ld. M.M. suffer from procedural irregularity as they have foregone the steps pertaining to issuance of summons at the first instance, and then issuance of bailable warrants, before arriving at the issuance of NBW.

18. The learned Senior Counsel submits that not only has there been non-application of mind on behalf of the Ld. Magistrate, but the I.O. has also failed in its duty by requesting declaration of P.O. and not giving any notice under Section 41A Cr.P.C. Mr. Pahwa states that by omitting to issue notice under Section 41A Cr.P.C., a duty that falls upon the I.O. and not the Court, the I.O. has flouted the law laid down in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273. Mr. Pahwa submits that the case of State through C.B.I. v. Dawood Ibrahim Kaskar and Ors. (supra) goes against the submissions of the State as the matter is at the stage of investigation and not at the stage of trial, and an NBW cannot be issued during investigation. He concludes his submissions on the note that the two words in Section 82 Cr.P.C. – “absconding” and “concealing” must be established before the declaration is made by the Ld. Magistrate.

19. Heard Mr. Vikas Pahwa, learned Senior Counsel for Petitioner in CRL.M.C. 2053/2019, Mr. Janender Kr. Chumbak for Petitioner in CRL.M.C. 1153/2019, Ms. Meenakshi Chauhan, learned APP for the State, Mr. Karan Suneja, learned Counsel for the Intervenors, and perused the material on record.

20. The short question that arises before this Court is whether declaration



of the Petitioners as P.O. by the Ld. Magistrate falls foul of the requirements under Section 82 Cr.P.C. and the law laid down by the Supreme Court. In order to delve into this question, it would be pertinent to reproduce Section 82 Cr.P.C. hereunder:-

“Section 82 in The Code Of Criminal Procedure, 1973

82. Proclamation for person absconding.

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i)

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court- house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.



(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1)."

21. The entirety of Section 82 Cr.P.C. stipulates when a proclamation can be issued when a person is absconding as well as the manner in which the said proclamation can be issued. Section 82(1) Cr.P.C. states that if any Court has a *reason to believe* that a person against whom a warrant has been issued is absconding or has concealed himself so as to ensure that the warrant may not be executed, then the Court may publish a written proclamation requiring the person to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation. Section 82(2) and Section 82(3) Cr.P.C. stipulate the manner



in which such proclamation must be published.

22. By way of Code of Criminal Procedure (Amendment) Act, 2005, Sections 82(4) and 82(5) were inserted, with Section 82(4) stating that if a proclamation is issued against a person who is accused of offences punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 IPC and the person fails to appear, then the Court may declare such a person a proclaimed offender, after making such inquiry as it thinks fit. Section 82(5) states that the procedure under Sections 82(2) and 82(3) Cr.P.C. are also applicable to a proclamation under Section 82(4). Therefore, it can be stated that the declaration of proclaimed person under Section 82(1) and proclaimed offender under Section 82(4) differ on the following aspects:

- i. Declaration of proclaimed offender can only be done with respect to the specific offences stipulated under Section 82(4) Cr.P.C., i.e. Section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 400, 402, 436, 449, 459 or 460 IPC.
- ii. Penal consequences for non-appearance in response to a proclamation issued under Section 82 Cr.P.C. are stipulated under Section 174A IPC. While the punishment for failing to appear in response to a proclamation under Section 82(1) Cr.P.C. is imprisonment for a term which may extend to three years or with fine or with both, the punishment for failing to appear in response to a proclamation under Section 82(4) Cr.P.C. is imprisonment for a term which may extend to seven years and shall also be liable to a fine.

23. At this juncture, it would be pertinent to ascertain whether the due



procedure had been followed in the instant case before process under Section 82 Cr.P.C. was initiated. With respect to Petitioner in CRL.M.C. 1153/2019, it is to be noted that the Petitioner joined investigation on 08.11.2016 and 08.12.2016. The presence of the Petitioner was further required, however, he failed to show up and consequently, search was conducted at the residence of the Petitioner on 14.09.2017, 27.09.2017, 06.10.2017 and 03.11.2017, however, the Petitioner was not found at his residence. With respect to Petitioner in CRL.M.C. 2053/2019, he joined investigation at 02.11.2016, 22.12.2016 and 23.12.2016. However, pursuant to notice issued for joining investigation on 28.06.2017, the Petitioner did not show up. Consequently, search was conducted at the residences of the Petitioner in Rajasthan, Ahmedabad and Delhi on 07.08.2017, 24.08.2017, 26.08.2017, 07.09.2017, 03.10.2017 and 03.11.2017, however, the Petitioner was not to be found.

24. Accordingly, on 15.11.2017, the I.O. requested for an NBW to be issued against the Petitioners, and the same was done by the Ld. Magistrate, returnable on 15.12.2017. Yet again, search was conducted at the residences of the Petitioners on 13.11.2017 and 13.12.2017. However, the Petitioners could not be found and NBWs issued against the Petitioners remained unexecuted. Therefore, process was issued under Section 82 Cr.P.C against the Petitioners *vide* impugned Order dated 15.12.2017. Consequently, the process was executed by HC Ram Kesh who attempted to trace the Petitioners at their addresses on 30.01.2018, with publication being made in two newspapers, Navbharat Times in Hindi and Hindustan Times in English. Resultantly, the Petitioners were declared P.O. *vide* impugned Order dated 16.03.2018.



25. It is evident that the manner in which a proclamation must be made under Section 82(1) or even 82(4) Cr.P.C. has been duly followed. NBWs were issued after taking into account the report and the request of the I.O., and the same remained unexecuted. It is only then that the process under Section 82 Cr.P.C. was initiated with a statutory gap of 30 days. The process was also published in two local newspapers that were circulated in the locality of the Petitioners. In this regard, the submission of the learned Senior Counsel for the Petitioner that the Ld. Magistrate had erred in directly issuing NBWs without issuing summons and aailable warrant at first as per Inder Mohan Goswami and Ors. v State of Uttaranchal and Anr. (supra) cannot be countenanced as the observation therein of the Supreme Court solely pertains to complaint cases and not police cases, and that the said observations are merely directory in nature. Furthermore, the Ld. Magistrate inhabits the power to issue warrant of arrest under Section 73 Cr.P.C., as long as the person is accused of a non-bailable offence and is evading arrest. In view of State through C.B.I. v. Dawood Ibrahim Kaskar and Ors. (supra) it cannot be said that there is any infirmity in the procedure adopted by the Ld. Magistrate while issuing NBWs against the Petitioners before initiating process under Section 82 Cr.P.C. and then declaring the Petitioners as P.O. This Court is of the opinion that both the I.O. and the Ld. Magistrate had duly applied their mind before arriving at the decision to declare the Petitioners as P.O. and had also followed the procedure stipulated under Section 82 Cr.P.C.

26. Furthermore, the contention on behalf of the Petitioners that the Ld. Magistrate could only declare the Petitioners as Proclaimed Persons and not Proclaimed Offenders as the offences against them did not fall within the



contours of the specific offences mentioned under Section 82(4) Cr.P.C. also does not hold any water. At best, it can be stated that the usage of the term “Proclaimed Offender” by the I.O. and the Ld. Magistrate is a misnomer. Procedural law is touted as the hand maiden of justice and this Court does not deem it fit to exercise its jurisdiction under Section 482 Cr.P.C. in the instant case to set aside the impugned Orders dated 15.12.2017 and 16.03.2018 as the same would amount to allowing a slight technicality to defeat the substantive matter at hand. Therefore, the reference to the judgment of this Court in Sanjay Bhandari v. State (NCT of Delhi) is not relevant in the matter before this Court as the distinction between a proclamation under Section 82(1) Cr.P.C. and Section 82(4) Cr.P.C. is not in dispute before this Court. As the procedure itself has been followed by the I.O. as well as the Ld. Magistrate under Section 82 Cr.P.C., this Court does not find any procedural irregularity that may substantiate the submissions of the learned Counsels appearing for the Petitioners, thereby necessitating the setting aside of the impugned Orders.

27. With regard to BAIL APPLN. 806/2019 and BAIL APPLN. 975/2019, this Court deems it appropriate to state that the contemplation of these anticipatory bail applications flows from the observation of this Court in CRL.M.C. 1153/2019 and CRL.M.C. 2053/2019 that the impugned Orders dated 15.12.2017 and 16.03.2018 are not bad in law.

28. The power under Section 438 Cr.P.C. is extraordinary in character and can only be exercised in exceptional cases where it appears that the person has been falsely implicated or if there are reasonable grounds for believing that the accused person is not likely to misuse his liberty. Any person who has a “reason to believe” that they may be arrested in a non-



bailable offence may approach the Court seeking anticipatory bail. However, the ultimate decision to grant bail is reliant upon the discretion of the Court and no straitjacket formula can be employed while considering an application for grant of anticipatory bail.

29. The Supreme Court has time and again considered the scope of granting relief under Section 438 Cr.P.C. vis-à-vis a person who has been declared as an absconder or proclaimed offender in terms of Section 82 Cr.P.C. In Lavesh v. State (NCT of Delhi), **(2012) 8 SCC 730**, the Supreme Court had held that if a person is “absconding” and has been declared as a “proclaimed offender”, then he would not be entitled to anticipatory bail. The relevant portion of the judgement is as follows:

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

(emphasis supplied)

30. Relying upon Lavesh v. State (NCT of Delhi), the Supreme Court had reaffirmed in State of Madhya Pradesh v. Pradeep Sharma, **(2014) 2 SCC 171** that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 Cr.P.C., then he is not entitled to the relief of anticipatory bail. In this context, the judgement of Smt. Kantabai v. The State of Madhya



Pradesh rendered by High Court of Madhya Pradesh and cited by the learned APP for the State before this Court has some weight as it states that for the purposes of anticipatory bail, a proclaimed offender includes an offender or a proclaimed person under Section 82(1) Cr.P.C. This Court is in agreement with this judgment.

31. The second Supplementary Charge-sheet reveals that the Petitioner in CRL.M.C. 1153/2019 was one of the main Directors of M/s AMR and a 12.5% shareholder, and he was also the authorized signatory of the company's account. It further reveals that the Petitioner in CRL.M.C. 2053/2019 was a Director in the company and was actively involved in the day-to-day affairs of the company. The interim audit report provided by the CA has confirmed misappropriation of the invested amount in other companies such as MRG Promoters Pvt. Ltd. and AMR Infra Solutions Pvt. Ltd. Investigation has further revealed that M/s AMR has siphoned an amount of approximately Rs. 52 crores, purchased many luxury vehicles as well as lands worth crores of rupees at various locations.

32. Investigation has also revealed that the allotment of the project made by M/s AMR to the general public is against the terms of the Lease Deed executed between M/s RC Info System and the Greater Noida Industrial Development Authority (GNIDA) which states that M/s RC Info System can only sub-lease the allotment of the project to people from the IT Sector and not to the general public. The second Supplementary Charge-sheet goes on to state that complaints are continuously being received by the EOW and that a huge amount of money had been received from the general public without having proper sanction from GNIDA. Furthermore, it is also stated that the Petitioners herein were associated with the company and had



consented to the siphoning of the funds of the investors instead of utilising it for completion of the projection.

33. The instant case relates to a fraud of Rs. 543 crores, with 3203 investors and 645 initial complaints. The role of the Petitioners herein indicates that they had been instrumental in the execution of the fraud and their custody may be necessary to discern the actual amount of money that has been siphoned off as well as to recover the same. Power to grant anticipatory bail in economic offences, specially of this magnitude and extent, must be exercised sparingly as these offences stand on a different footing due to their effect on the economic fabric of society [Refer P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24]. Moreover, as has been discussed above, the Petitioners were declared Proclaimed Offender *vide* Order dated 16.03.2018, and as per the settled law of the land, they are not entitled to anticipatory bail.

34. In light of the above, this Court does not deem it fit to grant anticipatory bail to the Petitioners herein in FIR No. 173/2015 dated 17.12.2015 registered at Police Station EOW for offences under Section 409/420/120B IPC

35. With the above observations, the instant petitions are dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

MARCH 07, 2022

Rahul