NEUTRAL CITATION NO: 2022/DHC/003558

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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **<u>BAIL APPLN. 2394/2022</u>**

Between:-

SHRI MUKESH BHANWARLAL BHANDARI,
S/O SHRI BHANWARLAL BHANDARI
R/O BHANDARI FARMHOUSE,
NEAR AMBLI BRTS,
AMBLI 380058, GUJARAT

........PETITIONER

(Through: Mr. Kailash Vasdev, Senior Advocate alongwith Mr. Shrey Kapoor & Mr. Sitesh Narayan Singh, Advocates).

AND

GOVT. OF NCT OF DELHI .... RESPONDENT

(Mr. Utkarsh, APP for State
Mr. Saurabh Soni & Mr. Sanjeet Kumar Thakur,
Advocates for Complainant)

\+ **<u>BAIL APPLN. 2396/2022</u>**

Between:-

SHRI SIDHHARTH MUKESH BHANDARI,
S/O SHRI MUKESH BHANWARLAL BHANDARI
R/O BHANDARI FARMHOUSE, NEAR AMBLI BRTS,
AMBLI 380058, GUJARAT

........PETITIONER

(Through: Mr. Harshit Tolia & Mr. Sitesh Narayan Singh, Advocates).

AND

GOVT. OF NCT OF DELHI .... RESPONDENT

(Mr. Utkarsh, APP for State
Mr. Saurabh Soni & Mr. Sanjeet Kumar Thakur, Advocates for Complainant)

% Pronounced on : 08.09.2022

JUDGMENT

PURUSHAINDRA KUMAR KAURAV, J.

1. This order would dispose of two applications filed by the respective applicants in connection with same crime, however, for the sake of clarity facts would be referred from BAIL APPLN. 2394/2022 as and when required.

2. The applicants apprehend their arrest in connection with FIR No. 93/2022 registered at PS Lodhi Colony, District South-East, for offences punishable under Sections 420/468/471/120-B of the IPC.

3. The learned senior counsel appearing on behalf of the applicants submit that the applicants are innocent and they have been falsely implicated in the instant case. According to him, no offence, as alleged in the FIR, is made out. The allegation that the signature of some of the shareholders is forged is incorrect. According to him, at best, the alleged act would fall under Section 171 and/or 181 of the IPC and, therefore, the

offences punishable under Sections 171 and 181 of the IPC are covered within the sweep of Section 195 of the Cr.P.C., according to which, the complaint in writing can only be given by the officer of the court. He, therefore, submitted that as per Section 195(1)(b)(i) of the Cr.P.C., the FIR is not maintainable and instead, complaint in writing could only be given to the concerned Magistrate. He further stated that out of 151 shareholders who had signed the original Power of Attorney-cum-consent letter dated 18.09.2021, more than 130 shareholders have already sent their written communications to the Investigating Officer in reply to the questions put forth, accepting their signatures on the said Power of Attorney. As per the mandate of Section 244 of the Companies Act, 2013, to file an appropriate application before the NCLT, Ahmedabad, under Sections 241 and 242 of the Companies Act, more than 100 shareholders are required. It is, therefore, submitted that there was no reason for the applicants to forge any document or signature of any shareholder inasmuch, as more than 130 shareholders had admittedly signed the concerned Power of Attorney, and they have specifically informed the Investigating Officer. It is also submitted that the impugned FIR suffers from malice and vexatious prosecution. Identical FIR/complaint was given by the complainant/Managing Director/*Shailesh Bhanwarlal Bhandari* before Santej Police Station Gandhi Nagar, Gujarat and enquiry was carried out by the officials of the said police station in detail. The statements of the applicants were recorded. All the documents were given to the police authority. The complainant realized that since no offence was made out, therefore, before the formal conclusion of the said enquiry at Gujarat, the complainant filed the present FIR with identical set of allegations at

Police Station Lodhi Colony, New Delhi. The act of the complainant speaks volumes about his *mala fide* intent. It is also submitted that the complainant has also filed applications under Section 340 of the Cr.P.C., before the NCLAT, New Delhi and NCLT, Ahmedabad, on the basis of identical set of allegations. The applications so filed under Section 340 of the Cr.P.C. are still pending. The police machinery is sought to be misused by filing the untenable, false and fraudulent FIR, so that the applicants can be put to physical and mental torture and ultimately pressure is built to succumb to legal proceedings pending before the various courts of law. He also submitted that predominantly the act or omission alleged in the impugned FIR, are of civil nature. The applicants have a long-standing dispute with *Shailesh Bhanwarlal Bhandari*. He further submits that the applicants, namely, *Mukesh Bhanwarlal Bhandari,* is aged about 70 years and is a permanent resident of Ambli BRTS, Gujarat having his movable and immovable properties, and there is no possibility of his absconding or not joining the investigation as and when required. He specifically submitted that during the pendency of the bail application before the learned ASJ, as per the directions of the learned court, the applicants in both the cases appeared on 22.06.2022 and 30.06.2022 before the Investigating Officer, and they were thoroughly interrogated. The learned senior counsel, therefore, submitted that the applicants are entitled for grant of anticipatory bail.

4. Learned senior counsel has placed reliance on various decisions of the Hon'ble Supreme Court in the cases of ***Mohammed Ibrahim and Ors. v. State of Bihar and Anr.***[1], ***Safiya Khan Alias Shakuntala***

[1] 2009 3 SCC 751

Prajapati v. State of U.P. and Anr. [2]***, Rekha Jain v. State of Karnataka and Anr.*** [3]***, Gurukanwarpal Kirpal Singh v. Surya Prakasam and Ors.***[4]***, Shriniwas Pandit Dharamadhikari v. State of Maharashtra***[5]***, Govind Prasad Kejriwal v. State of Bihar & Anr.***[6]***, Sardar Ali Khan v. State of Uttar Pradesh*** [7]***, Vikas v. State of Rajasthan***[8]***, M.Suresh & Ors. v. State of Andhra Pradesh & Anr.***[9]***, Commissioner of Police & Ors. v. Devender Anand***[10]***, Babu Venkatesh and Ors. v. State of Karnataka & Anr.***[11]***, Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai***[12]***, Vijay Kumar Ghai & Ors. v. State of West Bengal & Ors.***[13]***, Randheer Singh v. State of U.P. & Ors.***[14]***, Mitesh Kumar J. Sha. v. State of Karnataka***[15]***, Arnab Manoranjan Goswami v. State of Maharastra and Others***[16]***, P. Chidambaram v. Directorate of Enforcement***[17]***, Bandekar Brothers Private Limited v. Prasad Vassudev Keni and Others***[18]***, Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.***[19] & ***Satendra Kumar Antil v. Central Bureau of Investigation and Anr.***[20]***, MOH,*** decision of the High Court of Bombay in the case of ***Dr. Swapna Patker***

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[2] 2022 4 SCC 549
[3] 2022 SCC OnLine SC 585
[4] Special Leave to Appeal (Crl.) No.5485/2021
[5] 1980 4 SCC 551
[6] 2020 16 SCC 714
[7] 2020 12 SCC 51
[8] 2014 3 SCC 321
[9] 2018 15 SCC 273
[10] 2019 SCC OnLine SC 996
[11] 2022 5 SCC 639
[12] 2022 SCC OnLine SC 258
[13] 2022 SCC OnLine SC 344
[14] 2021 SCC OnLine SC 942
[15] 2021 SCC OnLine SC 976
[16] (2021) 2 SCC 427
[17] (2020) 13 SCC 791
[18] (2020) 20 SCC 1
[19] (2011) 1 SCC 694
[20] 2022 SCC OnLine SC 825

v. State of Maharashtra and Ors.[21]**,** and decision of this court in the case of ***Jamshed Adil Khan & Anr. v. Union Territory of J&K***[22]**.**

5. The prayer is vehemently opposed by learned APP for the State assisted by Shri Saurabh Soni, learned counsel for the complainant. Learned APP, while referring to the status report, submits that the perusal of the FIR shows that the allegations against the applicants are serious. According to him, out of 151 persons, who claimed to have signed the Power of Attorney, it was found that only 77 had signed the same. He submitted that the applicants have filed forged and fabricated Power of Attorney in order to get relief from the NCLT, Ahmedabad, as well as from NCLAT, Delhi, therefore, they are not entitled to any protection. He further submitted that notwithstanding the pendency of application under Section 340 of the Cr.P.C. before NCLT and NCLAT, the police station in Delhi has jurisdiction to investigate the case. He further submitted that a specific statement has been made by one *Mr. Sameer Odhabai Degamadiya* that he did not sign the Power of Attorney and had not given his consent to the applicants to pursue application under Section 241 of the Companies Act, before the NCLT Ahmadabad. He further submitted that the custodial interrogation of the applicants is required for the purpose of knowing how 77 non-shareholders had signed the Power of Attorney. Their signatures, identification and credentials are yet to be examined. Signatures of the applicants and hand-writing have to be taken, the conspiracy of fake shareholders has to be unearthed and the Original Power of Attorney is to be recovered. He also submits that the applicants are not disclosing correct information to Investigating Officer and are giving vague answers. He specifically pointed out that on

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[21] Writ Petition No.2281 of 2021

[22] W.P.(CRL.) No.976 of 2022

22.06.2022, accused No. 2/*Siddharth Mukesh Bhandari* gave a statement that the accused are in possession of Original Power of Attorney and would produce the same before the Investigation Officer as and when the same is required. However, on 16.08.2022, when he appeared before the Investigation Officer, he stated that the Original Affidavit and Power of Attorney were stolen from his office and, therefore, it can be seen that the accused are not cooperating with the investigation. Under the aforesaid circumstances, he, therefore, prayed that the applicants are not entitled for grant of anticipatory bail.

6. I have heard the learned counsel appearing on behalf of the parties and perused the record.

7. The Hon'ble Supreme Court, in paragraph No.112 in the matter of ***Siddharam Satlingappa Mhetre (supra),*** has laid down some of the factors to be considered in the matter of anticipatory bail. The same is reproduced as under:-

> *"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*
>
> *i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
>
> *ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
>
> *iii. The possibility of the applicant to flee from justice;*
>
> *iv. The possibility of the accused's likelihood to repeat similar or the other offences.*

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail".

8. In the aforesaid judgment of ***Siddharam Satlingappa Mhetre (supra)*** in paragraph No.113, the Hon'ble Supreme Court has further held that the arrest should be the last option and it should be restricted to

those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. It has further been held that the court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused, and these allegations are corroborated by other material and circumstances on record. In paragraph No.114, it has been explained that there are some factors which should be taken into consideration while deciding the anticipatory bail applications. Those factors are not exhaustive, but they are only illustrative in nature. The position of law, as explained in the case of ***Siddharam Satlingappa Mhetre (supra),*** has further been considered by the Hon'ble Supreme Court in its recent pronouncement in the case of ***Satendra Kumar Antil (supra).***

9. If the facts of the present case are seen, the same would demonstrate that the applicant *Mukesh Bhanwarilal Bhandari* is the founder Director of *Electrotherm India Ltd*., which is a company established in the year 1994 under the Companies Act. The brother of the applicant-*Shailesh Bhanwarlal Bhandari*, is the complainant in the present case. The said company is registered with the Bombay Stock Exchange and National Stock Exchange and has 6,500 shareholders. The applicant was the Chairman of the company from its date of incorporation till the year 2020. The applicant was removed in the year 2020. In the year 2007, certain bifurcation of work in the company was made, and in 2010, it is stated that the company, on account of certain financial crunch, had to obtain certain loans, advances and credit facilities. There were certain irregularities in availing of the loans, and certain financial losses allegedly occurred to the concerned Bank and, therefore, that led to the filing of an FIR in the year 2014 by the Bank

before the CBI, Mumbai, for the offences punishable under Section 120-B read with Section 420 of IPC with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. The said case, at the instance of CBI, is pending before the CBI Court at Ahmadabad against the Directors of the Company and certain Bank officials. Another accused in the present FIR, who is an applicant in the connected case, namely, *Siddharth Mukesh Bhandari* stated to have taken charge as a Director of the company in the year 2017. He, having found that he was cheated by *Shailesh Bhanwarlal Bhandari* by siphoning of the funds through Shell companies and fictitious transactions, filed a criminal complaint being criminal inquiry No. 1483/2019 before the Chief Metropolitan Magistrate, Ahmedabad for the offences punishable under Sections 465/467/468/471/120-B/114 of the IPC. *Shailesh B. Bhandari* and others are the accused in the said case. The learned Magistrate exercised its power under Section 156(3) of the Cr.P.C., and directed for registration of the FIR. Accordingly, FIR being M. case No. 1/2019 is registered and pending with CID, Crime and Railways, Gandhi Nagar. *Siddharth Mukesh Bhandari*, accused No.2 in the present FIR, had also filed two other complaints being, Criminal Inquiry Case Nos. 1484/2019& 1485/2019 before the Chief Metropolitan Magistrate, and therefore, in all, there are three FIRs registered against *Shailesh Bhandari and others*. It is also seen that in the year 2019 *Shailesh Bhanwarlal Bhandari* preferred a petition under Section 482 of the Cr.P.C. before Hon’ble Gujarat High Court challenging aforesaid FIRs. The Hon’ble Gujarat High Court, *vide* order dated 10.10.2019 directed that there shall be no coercive steps against him. The Hon’ble Supreme Court stayed the order passed by the Gujarat High Court and finally vide order dated 19.12.2021, the Hon'ble Supreme Court has set aside the said interim order passed by the Hon'ble Gujarat High Court. It is thereafter, the Hon'ble Gujarat High Court had taken up the petitions for final hearing and vide order dated 14.02.2022, stayed the investigation arising out of M. Case No.2 & 3 of 2019, as stated above. The applicant *Mukesh Bhanwarlal Bhandari* in Bail Application No. 2394/2022, assailed the aforesaid order dated 14.02.2022 again before the Hon'ble Supreme Court. The Hon'ble Supreme Court issued the notices on 25.04.2022 and directed the Investigating Officer to file a report as to the investigation carried out therein. The Hon'ble Supreme Court finally *vide* order dated 02.08.2022, allowed the petition.

10. It is seen that besides the aforesaid criminal proceedings in the year 2017, the accused No.2 in the present FIR *Mukesh Bhanwarlal Bhandari,* filed Company Petition No.93/2018 & 94/2017 before NCLT Ahmedabad, challenging various illegal appointments of independent Directors to the Board of the company, which is pending for its adjudication. On 08.04.2021, accused No.2/*Mukesh Bhandari* filed an application under Section 241 & 242 of the Companies Act before NCLT, Ahmedabad, seeking various prayers against the concerned Managing Director, including his removal etc. The said applicant had filed an IA No. 499/2019 in the above company petition for waiver of the mandate of the minimum requirement of 10% of shareholders. The said IA was dismissed by NCLT, Ahmedabad vide order dated 08.04.2021. The accused No. 2 in the present FIR/*Mukesh Bhanwarlal Bhandari* assailed the said order before NCLAT *vide* Company Appeal No. 86/2021, and according to him, in the meantime, around 150 persons came forward and represented to him that they were the shareholders of

the company and want to initiate/join the proceedings under Section 241 & 242 of the Companies Act, 2013. It is seen that a Power of Attorney was prepared stating the details of DEMAT accounts of around 150 persons in favour of the accused No. 2/ *Mukesh Bhanwarlal Bhandari* and accordingly, the application was withdrawn in Company Appeal No. 86/2021 as, according to them, they were made to understand that they have the mandate of the required number of shareholders to initiate the proceedings under Section 241 & 242 of Companies Act. It is seen that the aforesaid Power of Attorney was allegedly forged by the accused in the present FIR. The same has been produced before the NCLAT, Delhi, for the purposes of withdrawal of the IA. It is also to be noted that on 22.10.2021, one application I.A. No. 12/2021 was filed stating therein that the Power of Attorney was forged and the persons mentioned at Serial Nos.1 to 74 are the only shareholders of the company, and the rest of the persons mentioned therein are not the shareholders of the company as on 17.09.2021. Accordingly, a prayer was made to initiate action under Section 340 read with Section 195 of the Cr.P.C. and further to direct the Registrar, NCLAT, to register the FIR against the present accused persons. On 26.10.2021, in the identical manner, the complainant filed another application before NCLT, Ahmedabad, to initiate the same proceedings. It is seen that between 25.12.2021 to 21.03.2022, the accused received a mandate of total 205 shareholders of the company. The applicant, therefore, preferred fresh Company Petition No. 5/2022 before NCLT Ahmedabad, which is pending for its adjudication. It is thus seen that fresh proceedings under Section 241 & 242 of the Companies Act, 2013 are pending at the instance of the applicant.

11. The facts of the case further show that at the instance of *Shailesh Bhanwarlal Bhandari/* complainant, Special Civil Suit No. 553/2009 is pending seeking prayer to restrain the defendants therein from entering into the company's premises. An application under Order 31 Rules 1 & 2 of the Cr.P.C. was rejected on 15.11.2021. Another Company Appeal (AT) No. 54, 55, 56 & 57/2021 are also pending at the instance of the complainant before the NCLAT.

12. The learned APP contented that non-production of Original Power of Attorney is a serious issue. According to him, once it was accepted by the applicants in their statements that they are in possession of the Original Power of Attorney at a later stage, they cannot take a different stand to say that the same has been stolen. On the other hand, the applicants have stated that there is no reason to hide the Original Power of Attorney from the Investigating Officer, and if at all, there has been any intention not to produce the same in the first statement itself, it could have been informed that the same was stolen from them. The applicants, therefore, stated that they have already lodged a complaint with respect to stealing of the Original Power of Attorney dated 19.09.2021 and inquiry with respect to the aforesaid fact is going on. According to them, the photocopy of the said Power of Attorney is already a part of the record before this court as well as before the NCLT Ahmedabad and NCLAT Delhi. A certified copy of the same can always be obtained and can be used as secondary evidence, as per Section 65 of the Indian Evidence Act, 1872. In any case, it is submitted that on account of non-production of the Original Power of Attorney, the applicants should not be denied the protection of anticipatory bail.

13. Under the facts of the present case, this court is of the opinion that

non-availability of Original Power of Attorney alone would not call for any custodial interrogation. It can be seen that applicant *Mukesh Bhanwarlal Bhandari*, who is a senior citizen has appeared before the Investigating Officer on 09.06.2022, 26.06.2022, 16.08.2022, 23.08.2022. The applicant *Siddharth Mukesh Bhandari* also appeared on 09.06.2022, 22.06.2022, 14.08.2022, 16.08.2022 and 23.08.2022 before the Investigating Officer. The offences alleged against the applicants are under Sections 420/468/471/120-B of the IPC. The maximum punishment is up to seven years with a fine. The offences in question are triable by Magistrate. There is no reasonable apprehension of the accused persons to tamper with the evidence or to influence the witnesses. They being permanent residents of the State of Gujarat, having their movable and immovable property therein, cannot be expected to flee from justice. There are no criminal antecedences except a few litigations between the parties. There is no significant interest of the public or of the State involved in the matter. The dispute predominantly relates to dominance on a company. There is a long-standing dispute between both the groups. The photocopies and certified copies of the Original Power of Attorney are still available. The interrogation of the signatories or their statement can still be recorded by the Investigating Officer. The accused have undertaken that at any stage of the investigation if they are able to get the Original Power of Attorney, they would produce it before the Investigating Officer. It is thus seen that merely on the ground that the Original Power of Attorney is not available with the Investigating Officer, the accused cannot be denied the benefit of anticipatory bail when it is found that they have been able to prove all other factors in their favour.

14. It is also seen that the allegations in the FIR relate to forgery of signatures of 77 persons in the Power of Attorney. With respect to the same allegations, two separate applications have been filed by the complainant before the NCLT and NCLAT, as stated in the preceding paragraphs. The complainant apparently approached Police Station at Gujarat, where the enquiry was conducted. The complainant thereafter made a representation. It was noted by the said police station that nothing is required to be done with respect to his application. The entire allegation relates to the documentary proof. The applicant No. 1 is aged about 70 years and the applicant No. 2 is his son. The applicant No. 1 is the brother of the complainant and the applicant No. 2 is his nephew.

15. Having considered the nature of the allegations and the overall facts and circumstances of the case, as noted above, this Court finds it appropriate to grant anticipatory bail to both the applicants. Accordingly, it is directed that in the event of arrest, the applicants be released on anticipatory bail subject to their furnishing personal bonds in the sum of ₹50,000/- each with one surety each in the like amount to the satisfaction of the Arresting Officer/Investigating Officer/SHO of the concerned Police Station and also subject to the further following conditions:-

(i) The applicants shall join the investigation as and when they are directed to do so.

(ii) The applicants shall not directly or indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.

(iii) In case of change of residential addresses/contact details, the applicants shall promptly inform the same to the concerned Investigating Officer/SHO.

(iv) The applicants shall regularly appear before the Trial Court as and when the charge sheet is filed against them.

(v) The applicants shall not leave India without previous permission of this Court. They would surrender their passport forthwith.

(vi) The applicants would render all assistance in securing the Original Power of Attorney and in case, at any stage of the investigation, if they are able to locate it, the same would be produce before the Investigating Officer without any delay.

(vii) The complainant/State would be at liberty to file an appropriate application in case, it is found that the applicants are in contravention of any of the terms and conditions imposed by this court.

16. The bail applications are disposed of in the above terms.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 08, 2022
p'ma/priya