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

Reserved on: 17th February, 2023
Decided on: 25th April, 2023

+ BAIL APPLN. 1696/2022

NARESH GARG .....PETITIONER

Through: Mr. Ramesh Gupta, Senior Advocate with Mr. Vikas Arora, Ms. Radhika Arora, Mr. Mohit Dagar, Mr. Siddharth Singh and Mr. Abhay Sachar, Advocates.

V

STATE (GOVT. OF NCT OF DELHI) .....RESPONDENT

Through: Mr. Raghuvinder Varma, APP for State with Insp. Sandeep Kumar, P.S. Vasant Vihar.
Ms. Rebecca John, Senior Advocate with Mr. Kanay Pisal, Ms. Anushka Baruah and Mr. Rudraksh, Advocates for complainants.

+ BAIL APPLN. 1697/2022

NIRMALA AGGARWAL .....PETITIONER

Through: Mr. Ramesh Gupta, Senior Advocate with Mr. Vikas Arora, Ms. Radhika Arora,

Mr. Mohit Dagar, Mr. Siddharth Singh and Mr. Abhay Sachar, Advocates.

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STATE (GOVT. OF NCT OF DELHI)
.....RESPONDENT

Through: Mr. Raghuvinder Varma, APP for State with Insp. Sandeep Kumar, P.S. Vasant Vihar.
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HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present common order shall decide two bail applications bearing no.1696/2022 and 1697/2022 filed by the applicants Naresh Garg and Nirmala Aggarwal respectively under section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as **"the Code"**) for grant of anticipatory bail in FIR bearing no. 445/2020 dated 16.06.2020 registered under sections 420/468/471/34 of the

Indian Penal Code, 1806 (hereinafter referred to as **"IPC"**) at P.S Vasant Vihar.

2. FIR bearing no.445/2020 was got registered on basis of complaint made by Tript Singh (hereinafter referred to as **"the complainant"**) regarding fraudulent transfer of 62,500 equity shares of Genesis Finance Ltd. owned by the complainant on 10.05.2016 in favor of Nirmala Devi by committing forgery and in FIR Genesis Finance Ltd. (hereinafter referred to as **"the accused no. 1"**), Naresh Garg, Managing Director of Genesis Finance Ltd. (the accused no.2/applicant in bail application no.1696/2022 and hereinafter referred as **"the applicant no. 1"**), Gopal Bisht, CFO & Whole Time Director of Genesis Finance Ltd. (the accused no.3), Sangeeta Garg, Whole Time Director of Genesis Finance Ltd.(the accused no.4), Kapil Berera, Ex-Director of Genesis Finance Ltd.(the accused no.5), Umang Sarkar. Director of Genesis Finance Ltd.(the accused no.6), Aashish Ghai, Director of Genesis Finance Ltd.(the accused no.7), Nirmala Devi (the accused no.8/ applicant in bail application no.1697/2022 and hereinafter referred as **"the applicant no.2"**), Sanjay Prasad Jain (the accused no.9), Kavita Bhulani (the accused no.10), Roohi Reshi (the accused no.11), Skyline Financial Services (the accused no.12), Swaroop Narain Agarwal (the accused no.13) and other unknown persons were implicated.

2.1 The complainant alleged that he is owner of 62,500 equity shares of the accused no.1which were transferred on 10.05.2016 in favour of the applicant no.2 who never purchased these shares from the complainant. The complainant further alleged that 50 equity shares alleged to be owned by Sanjay Prasad Jain (the accused no.9) were transferred on 14.10.2017 in his favour which he never purchased from Sanjay Prasad Jain; 100 equity shares stated to be owned by Kavita Bhulani (the accused no.10) were transferred on 30.12.2017 in favour of his wife namely Preet Kaur and his wife never purchased these shares; and 300 shares owned by the complainant were transferred on 30.12.2017 in favour of Roohi Reshi (the accused no.11) who never purchased these shares from the complainant.

2.2 The accused no.1 is a Listed Limited Company registered under the Companies Act 1956, (CIN L65910DL 1990PLC040705) and presently listed on Metropolitan Stock Exchange of India. The accused no.1 on 27.11.2008 had allotted its 62,500 equity shares in favour of the complainant and on 10.05.2016 these equity shares were fraudulently transferred in favour of the applicant no.2 who is a relative of the applicant no.1.

2.2.1 The applicant no.1 (appointed on 10.07.1994), Gopal Bisht (the accused no.3 and appointed on 30.06.2004), Sangeeta Garg (the accused no.4 and appointed on 27.11.1997) and Kapil Berera (appointed on 02.03 1995) were the Directors of the accused no.1 at the time of allotment of 62,500 shares i.e. on 27.11.2008 besides others. The applicant no.1 (appointed on 10.07.1994), Gopal Bisht (the accused no. 3 and appointed on 30.06.2004), Sangeeta Garg (the accused no.4 and appointed on 27.11.1997), Kapil Berera (the accused no.5 and appointed on 02.03.1995), Umang Sarkar (the accused no.6 and appointed on 14.08.2014) and Aashish Ghai (the accused no.7 and appointed on 21.08.2015) were the directors of Genesis Finance Ltd. at the time of fraudulent transfer of 62,500 equity shares in favour of the applicant no.2 on 10.05.2016. The above persons were also directors on 14.10.2017 when Sanjay Prasad Jain i.e. the accused no.9 had transferred 50 equity shares in favour of the complainant; on 30.12 2017 when 300 equity shares were allegedly transferred by the complainant to Roohi Reshi (the accused no.11) and when Kavita Bhulam (the accused no.10) transferred 100 equity shares in favour of wife of the complainant namely Preet Kaur.

2.2.2 Skyline Financial Services (the accused no.12) is registrar and Share Transfer Agent (STA) for under taking physical transfers and acts as Depository Agency on behalf of the accused no.1 and Swaroop Narain Aggarwal (the accused no.13) is the Director of Skyline Financial Services (the accused no.12).

2.3 The accused no.1 to 5 including the applicant no.1 induced the complainant to become a share-holder of the accused no.1 on the pretext that the accused no.1 is in the business of finance and the value of the shares of the accused no.1 would increase multi-fold. The applicant no.1 (the accused no.2) repeated approached the complainant to invest inthe shares of the accused no.1. The complainant was also having other financial transactions with the accused no.1. The applicant no.1 assured the complainant that investment in equity shares at Rs.200 is good option and price of the share would increase multi-fold and thereafter the complainant invested in the equity shares of the accused no.1.

2.3.1 The accused no.1 on 27.11.2008 had allotted 62,500 equity shares having face value of Rs.10 with premium of Rs.190 to the complainant.The complainant after allotment asked for giving of share certificate of allotment of 62,500 equity shares but the applicant no.1 (the accused no.2) informed the complainant that the share certificates are lying in safe custody.The complainant as per Form MGT-7 Annual Return of the accused no.1 filed with the Registrar of Companies for the Financial Year 2015-2016 as on 31.03.2016 was holding 62,500 equity shares of the accused no.1.The complainant however as per Form MGT-7-Annual Return of the accused no.1 filed with the Registrar of Companies for the Financial Year 2016-2017 was not holding 62,500 equity shares of the accused no.1 and stated to be transferred to the applicant no.2. The complainant did not know the applicant no.2 and never sold these shares to her. The complainant never executed any share transfer deed and did not enter into any agreement for transfer of these shares. The complainant also did not receive any consideration from the applicant no.2. The documents pertaining to transfer of 62,500 equity shares are forged and fabricated.

2.3.2 Form MGT-7-Annual Return of the accused no.1 for the Financial Year 2017-2018 showed that on 14.10.2017 Sanjay Prasad Jain (the accused no.9) has transferred 50 Equity share of the accused no. 1 in favour of the complainant. The complainant has never purchased any shares from Sanjay Prasad Jain (the accused no 9). It was also shown that on 30.12.2017 Kavita Bhutani (the accused no.10) has transferred 100 equity share of the accused no.1 to the wife of the complainant namely Preet Kaur who never purchased these shares from Kavita Bhutani (the accused no.10). It was also shown that the complainant on 30.12.2017 had transferred 300 equity share to Roohi Reshi (the accused no.11). The complainant did not know Roohi Reshi (the accused no.11) and never sold any shares to her. The transfer documents are forged and fabricated.

2.4 The complainant also came to know that the accused no.1 in its AGM held on 30.09.2017 allotted bonus of 7 equity shares for each equity share to the complainant and as such 350 equity shares were allotted to the complainant making total number of equity shares to 400.

2.4.1 The accused no.1 with the help of accused no.2 to 13 has cheated the complainant by showing wrong transfer of 62,500 equity shares which after allotment of 437500 bonus equity shares at the rate of 7 equity shares for every equity share having become 500000 shares. The accused no.1 along with other accused has reduced shareholding of the complainant from 500000 equity shares to only 100 equity shares as on 31.03.2018.

2.5 The accused no.1 and its directors have never given any share certificate for the allotment of 62,500 equity shares to the complainant. The complainant has never received notice of any of the AGM or EGM conducted by the accused no.1.

2.6 On basis of the complaint, after enquiry prima facie FIR bearing no.445/22 for offences punishable under sections 420/468/471/34 IPC was got registered and investigation was handed over to SI Pankaj Kumar.

3. The applicants no.1 & 2 have filed bail applications bearing no.734/2022 and 765/2022 which were dismissed by the court of

Additional Sessions Judge-02, Patiala House Courts, New Delhi vide order dated 28.05.2022 and observed as under:-

> **At the very outset, 1 have no hesitation in observing that the facts of the instant case are mired in mendacity, exaggeration and embellishments and unfortunately none of the parties including the complainant is coming upwith the entire truth before the court.**
>
> **Eloquent silence of the complainant in not reporting the non- receipt of the shares purchased by him in the year 2008 till 2020 raises a serious question mark about his claim of non receipt of shares. The doubt further deepens as to why the complainant opted to not seek a set off against the unreceived shares in the settlement agreement dated05.06 2020. However the matter is still under probe, therefore, I am resting the issue here itself.Having said that, itwould be pertinent to observe here that the conduct of the applicants/accused persons is also shrouded in suspicion and if I may say so, it appears to bemuch more tainted and stained as compared to the complainant. The claim of the accused persons regarding there-purchase of the said shares stands thoroughly discredited inthe teeth of the FSL result, wherein it has been reported that the signatures of the complainant on the share Transfer deed was found to be forged. During the course of investigation, not only it was revealed that the shares were transferred in the favour of applicant /accused Nirmala Aggarwal upon thestrengthof forged and fabricated documents, applicants/accused persons have also been found to be constantly changing their stand regarding the consideration for re-purchase of the said shares. It**

is reported by the IO that accused Nirmala Aggarwal in her written reply, prior to receipt of FSL result, mentioned that vide letter dated 30.04.2016, she requested the Genesis Company to pay Rs.6,25,000 /- to the complainant on her behalf towards the payment for the above said 62,500 shares purchased by her. She further mentioned that upon receipt of money, the complainant handed over his duly signed share transfer form. However contrary to the claim of Ms. Nirmala Aggarwal,it was subsequently claimed by co-accused Naresh Garg that the company adjusted the said amount in the loan account of the complainant. The accused persons have failed to provide any request from or intimation for the complainant regarding the adjustment of the said amount in the loan account.

Further, the claim regarding the rebate provided to the complainant and his brother by the accused persons in consideration of the re-purchase of the shares also fails to inspire confidence. The accused persons have failed to provide any request of the complainant regarding his willingness for transfer of his shares or adjustment of the amount in his loan account nor have they provided any intimation to the complainant regarding the adjustment of the consideration amount in the loan account. lt is inexplicable as to why Genesis Company would give a rebate to the complainant and his brother for shares purchased by applicant/accused Nirmala Aggarwal in her individual capacity. In fact such a rebate, if at all given by the company, is in fact a fraud played upon the other share holders, as the loan owed to the company cannot be utilized for creating private assets for themother-in-law of Managing Director Naresh Garg.

Furthermore, in contradiction to the earlier claim, in reply to the notice u/s 91 CrPC dated 07.05.2022, it is informed by the IO that vide Para No. 13, it is claimed that the transaction of sale and purchase of shares by applicant/accused Nirmala Aggarwal and complainant is an independent transaction and has no connection with the waiver given on loan account of the complainant and his brother.

During the course of arguments, it was informed to the court by the prosecution that while applying for loan from Yes Bank and Union of India Bank complainant has claimed his net worth to be about Rs.16 crores and since there was no requirement of separately mentioning the shares of Genesis company held by him, therefore, this fact was not separately mentioned . Therefore, I do not find any merit in the said contention of the accused persons.

Since the share transfer deed, which is a valuable security as per section 30 of the Indian Penal Code has been forged in the matter, therefore, I cannot but disagree with the Ld. Defence counsel that section 467 IPC cannot be validly invoked or that this case is squarely covered by the judgment of Hon'ble Apex Court in the matter of *Arnesh Kumar v. State of Bihar (supra).*

Further, the material available on record suggests that both the accused persons were instrumental in the alleged forgery, therefore, their pleaof false implication fails to inspire confidence.

Considering the totality of circumstances, I concur with the Ld.Addl PP that in order to unearth the conspiracy, the modus operandi of the alleged offence and to ascertain the author of the alleged

forgery, a sustained custodial interrogation of applicants/accused persons is required.

I am conscious of the fact that applicant/accused Nirmala Aggarwal is an aged lady but the fact that if at such an advanced age, she chooses to associate herself with fraudulent transactions, now she cannot shy away from the consequences.

Even the judgments relied upon by the accused persons would not come to their rescue as none of the judgments mandates that the anticipatory bail should be granted as a matter of right lo the accused persons in such circumstances wherein grant of anticipatory bail shall cause an irreparable damage to the pending investigations.

Consequently, I do not find any merits in the applications at hand and the same arc accordingly dismissed.

Before: parting, it would be pertinent to observe that it appears that the company is involved in certain shady transaction with respect to the transfer of shares. Consequently, it is desirable that the IO may bring the matter to the notice of SEBI authorities so as to rule out the possibility of the violation of any of the provisions of SEBI Act.

With these observations, both the anticipatory bail applications are disposed off accordingly.

4. The applicant no.1 in bail application stated that he is an innocent person and has been falsely implicated. The applicant no.1 is a respectable member of the society with clean antecedents and has joined the investigation on several occasions. The applicant no.1

cooperated in the investigation and supplied all the documents and information as sought by the investigating agency. It was informed in 2021 that FSL result has concluded that the signatures of the complainant and his wife on the share transfer forms were not made by them. Thereafter during investigation handwriting/signatures of the applicant no.1 were taken by the Investigating Officerwho also asked the applicant no.1 to settle the matter with the complainant otherwise he would be arrested. The applicant no.1 filed an application for grant of anticipatory bail and was granted interim protection vide order dated 28.04.2022 with the direction to join the investigation. The applicant no.1 joined the investigation. The court of Additional Sessions Judge, Patiala House Courts, vide order dated 28.5.2022 dismissed the bail application.

4.1 The applicant no.1 is the Managing Director of the accused no.1 and the complainant was a regular customer of the accused no. 1. The complainant, his wife and other family members and companies in which the complainant and his family members are Directors/Shareholders/Guarantors happened to be clients/borrowers of the accused no.1 for last 15-20 years.

4.2 The accused no.1 is a public limited company listed as non-deposit taking Non-Banking Finance Company and is reputed for its fair and clean business practices. M/s Skyline Financial Services (the accused no.12) was appointed as Share Transfer Agent (STA) for maintaining and recording share transfer records.

4.3 The complainant in the year 2008 sought allotment of 62,500 shares of the accused no.1 at a total value of Rs.1.25 crores which were duly allotted to him with distinctive nos. 3802501 to 3865000. The complainant duly received share certificate through speed post vide receipt dated 12.12.2008. The Delhi Stock Exchange was close down in 2014 and as a result shares of all companies listed on Delhi Stock Exchange including the shares of the accused no.1 were delisted. The delisting and the resultant lack of liquidity in the accused no.1 led to a drastic fall in the value of the shares of the accused no.1. The accused no.1 was relisted with Metropolitan Stock exchange of India.

4.4 The complainant in the year 2015-16 sold 62,500 shares to the applicant no.2 who was already having a running loan account with the accused no.1and the applicant no.2 requested to the accused no.1

to pay Rs.6,25,000/- to the complainant on her behalf and accordingly Rs.6,25,000/- was credited on 03.05.2016 in the loan account no.LNHOF00l 11-120000179 of the complainant. The complainant handed over duly signed and filled share transfer form to the applicant no.2 along with original share certificate. The complainant signed SH4 form in the presence of Vinod Kumar as a witness. Thereafter share transfer form along with original share certificate was submitted to the Share Transfer Agent i.e. M/s Skyline Financial Services (the accused no.12) on 06.05.2016 for transfer of 62,500 shares.

4.5 The complainant and his brother, namely, Gaganmeet Singh, were having two outstanding loan accounts with the accused no.1 which were in default. The accused no.1 gave rebate of Rs.38,81,547/- to the complainant on 03.05.2016 and Gaganmeet Singh was given rebate of Rs.52,64,408/- and Rs. 6,25,000/- were also credited in the loan account of the complainant. The applicant no.2 submitted share transfer form along with original share certificate for transfer of 62,500 shares and the accused no.1 upon receiving intimation from M/s Skyline Financial Services (the accused no.12) regarding receipt of application approved the share transfer vide its board meeting held on 10th May, 2016.

4.6 The accused no.1 and the complainant along with his family, had settled pending disputes pertaining to business and personal loans vide agreement dated 05.06.2020 and the complainant had agreed to pay Rs.15.30 crores with future interest @18% pa to the accused no.1. The complainant after the settlement dated 05.06.2020 filed complaint on 14.06.2020 which after inquiry was converted into FIR on 25.11.2020. Vinod Kumar and Vinod Tayal also stated that the complainant signed and handed over the original share certificate and signed share transfer form to the applicant no.2 on 03.05.2016.

4.7 The complainant also submitted that share transfer form along with original share certificate with STA for transfer of 50 shares of the accused no.1, which were purchased from Sanjay Prasad Jain. The accused no.1, vide Board Resolution dated 09.10.2017, has approved the said transfer, and accordingly informed STA. The accused no.1 on 30.10.2017 issued 7 bonus shares for 1 share held in the accused no.1 and accordingly the complainant was allotted 350 shares as per his shareholding of 50 shares bearing distinctive numbers 20194447-20194796.

4.7.1 Roohi Reshi submitted share transfer form along with original share certificate to STA for transfer of shares which were purchased from the complainant for Rs.3,000/- in her name and the accused no.1 vide board resolution dated 12.12.2017 approved the said transfer, and accordingly informed STA. Preet Kaur also submitted share transfer form along with original share certificate for transfer of 100 shares of the accused no.1 purchased from Kavita Bhutani for Rs. 1,000/- in her name to STA and the accused no.1vide board resolution dated 12.12.2017 approved the said transfer, and accordingly informed STA.

4.8 The applicant no.2 is sole beneficiary of the share sale purchase transactions in whose account 62,500 shares were credited. The accused no.1 or its directors/officers do not have any role to payand did not receive any benefit from such transactions.

4.9 The court of Additional Sessions Judge-02, Patiala House Courts, New Delhi did not pass order dated 28.05.2022 in accordance with law and has not appreciated facts and law properly. The applicant no.1 also raised other grounds for grant of anticipatory bail and prayed that he be released on anticipatory bail in FIR no.445/2020 registered at P.S Vasant Vihar under sections 420/468/471/34 IPC.

4.10 The applicant no.2 in bail application also mentioned similar facts as stated by the applicant no.1 in his bail application.

5. The respondent/State filed Status Report dated 11.07.2022 under signature of SHO PS Vasant Vihar and another Status Report dated 23.11.2022 under signature of Surender Singh, ACP/District Investigation Unit,South-West District, Delhi in Bail Application bearing no.1696/2022 filed by the applicant no.1.

5.1 The respondent/State in Status Report besides mentioning factual position also gave details of investigation. It is stated that the accused no.1 is engaged in the business of finance and money lending and complainant is the client of the accused no.1 for last 15-20 years. The accused no.1 in reply to notice under section 91 of the Code denied all allegations. The accused no.1 provided a copy of speed post dated 12.12.2008 by which original share certificate was sent to the complainant which could not be verified from postal department as relevant record was stated to be weeded out. The applicant no.1 also claimed that the complainant also received Rs. 6,25,000/- in lieu of the shares sold to the applicant no.2 by crediting said amount in the loan account of the complainant.

5.1.1 The specimen and admitted signatures of the complainant and his wife Preet Kaur were collected during investigation and sent to FSL along with question signatures on all four alleged Original Share Certificates (SH-4) for expert opinion on 04.06.2021. As per FSL result received on 24.10.2021, signatures of the complainant and his wife Preet Kaur on Original Share Certificates do not match with specimen and admitted signatures of the complainant and his wife Preet Kaur.

5.2 The applicants during investigation revealed that the complainant sold shares to the applicant no.2 and on her request Rs.6,25,000/- were credited into his loan account and thereafter handed over duly signed share transfer form to the applicant no.2. The applicant no.1 could not provide proof of such request. In Status Report, details of financial transactions between the complainant and Genesis Finance Ltd (the accused no.1) were also mentioned besides other facts.

6.1 The respondent/State in Status Report dated 23.11.2022 stated that during the investigation, notices under section 91 of the Code dated 12.09.2022 and 04.11.2022 were sent to the applicant no.1 to provide original share certificate no. 30141 in respect of 62,500 shares purchased by the applicant no.2 from the complainant and share certificate no.31269 in respect of 300 shares purchased by Roohi Reshi from the complainant on 12.12.2016 and stated to be submitted to the accused no.1 by the applicant no.2 and Roohi Reshi respectively but the applicant no.1 did not provide the requisite original Share certificates and gave an evasive reply. The applicant no.1 informed that original Share Certificates are not available being destroyed after issuance of Jumbo share certificates which were stated to be issued on 29.01.2018 in lieu of 62,500 shares of the complainant and other purchased shares by the applicant no.2 and stated to be bear the signature of Gushan Jhuranias Director of the accused no.1 who in his statement dated 30.07.2022 stated that he was director of the accused no.1 till December, 2012 and did not sign the share certificate/Jumbo share certificate after 2012.

6.2 The applicant no.1in the reply dated 11.10.2022 stated that Bonus Share Certificates no.31115 issued on 08.12.2017 were dispatched to the complainant. The applicant no.1 has given contradictory reply regarding dispatch of 350 bonus shares which were issued on 08.12.2017 vide certificate no.31115 to the complainant through post but details/proof of the post were not provided. The Bonus Certificate stated to be split into two certificates bearing nos.31268 and 31269 for 50 shares and 300 shares respectively on 13.12.2017. The original share transfer deed between the complainant and Roohi Reshi for transfer of share certificate no.31269 for 300 shares was executed on 12.12.2017 whereas new certificate no.31269 was issued on 13.12.2017.

6.3 As per the copy of Board Resolution dated 12.12.2017 the accused no.1 approved share transfer request of 300 shares bearing certificate no.31269 from the complainant to Roohi Reshi on 12.12.2017 whereas in reply dated 09.11.2022, the accused no.1 stated that the said certificate no.31269 was issued on 13.12.2017.

6.4 The respondent/State opposed bail applications filed by the applicants and prayed for custodial interrogation on grounds that the applicant no.1was Managing Director of the accused no.1 at the time of allotment of 62,500 shares to the complainant and at the time of fraudulent transfer of shares. The applicant no.1 admitted that he was aware that the complainant sold his shares to the applicant no.2 and on request of the complainant, Rs.6,25,000 was credited into his loan account but the applicant no.1 could not provide any such request. The applicant no.2 in whose favour 62,500 shares were fraudulently transferred is mother-in-law of the applicant no.1. The accused no.1 could not establish receiving of the share certificates by the complainant as the speed post receipt dated12.12.2008 could not be verified. The payment of Rs.6,25,000/- qua alleged transfer of 62,500 equity shares was internally adjusted by the accused no.1 by making book entries in their records which reflects that no direct money was transferred by the accused no.1 to the bank account of the complainant. The complainant purchased equity shares in 2008 for Rs.1,25,00,000/- which were allegedly sold to the applicant no.2 for a nominal amount of Rs.6,25,000/- only with the help of forged signatures. The accused no.1 during investigation was not able to give satisfactory reply regarding huge rebate of Rs.38,81,5371- and Rs.52,64,408/- to the complainant and Gaganmeet Singh respectively. Skyline Financial Services (the accused no.12) provided original letter issued by the accused no.1 to it regarding verification of signatures on transfer deed dated 06.05.2016 in respect of transfer of 62,500 shares from the complainant to the applicant no.2 and original letter dated 04.10.2017 issued by the accused no.1 to Skyline Financial Services (the accused no.12) in respect of transfer of 50 shares from Sanjay Prasad Jain to the complainant. The signatures of the complainant and his wife namely Preet Kaur on the alleged SH-4 Forms have been found forged and FSL result has confirmed the forgery.

6.4.1 The applicant no.2 in reply dated 16.01.2021 stated that vide letter dated 30.04.2016 she requested the accused no.1 to pay Rs.6,25,000/- to the complainant towards paymentfor the 62,500 shares and the complainant after receipt of said amount handed over his duly signed share transfer form but the accused no.1 adjusted said amount in the loan account of the complainant. Neither the accused no.1 nor the applicant no.2 provided any request/intimation to the complainant in respect of the alleged adjustment. The applicants have not cooperated in the investigation and concealed material facts. The respondent/Stated prayed for custodial interrogation of the applicants on grounds that they have not provided requisite documents and gave evasive replies during investigation.

7. The facts which are emerging from the record are that the accused no.1 was a listed Limited Company registered under the Companies Act, 1956, (CIN L65910DL 1990PLC040705) and presently the accused no.1 is listed on Metropolitan Stock Exchange of India. The applicant no.1 the accused no.1 is engaged in the business of finance and money lending. M/s Skyline Financial Services (the accused no.12) was appointed as Share Transfer Agent (STA) for maintaining and recording share transfer records. The complainant is having financial transactions with the accused no.1 for last 15-20 years. The applicant no.1 is Managing Director of the accused no.1. The accused no.1 had allotted 62,500 equity shares having face value of Rs.10 with premium of Rs.190 in favour of the complainant on 27.11.2008.

7.1 The complainant primarily alleged that he never received share certificates in respect of 62,500 shares allotted to him and were fraudulently transferred in favour of the applicant no.2 on 10.05.2016 who is mother in law of the applicant no.1.The complainant never sold these shares to the applicant no.2 and never executed any share transfer deed in favour of the applicant no.2. The documents pertaining to alleged transfer of 62,500 equity shares in favour of the applicant no.2 are forged and fabricated.

7.1.1 The complainant also alleged that 50 equity shares stated to be owned Sanjay Prasad Jain (the accused no.9) were transferred in his favour on 14.10.2017 but he never purchased these shares; 100 equity shares stated to be owned by Kavila Bhulani (the accused no.10) were transferred on 30.12.2017 in favour of his wife namely Preet Kaur but his wife never purchased these shares; and 300 shares owned by the complainant were transferred on 30.12 2017 in favour of Roohi Reshi (the accused no.11) which Roohi Reshi never purchased these shares from him. The complainant and his wife namely Preet Kaur never entered into any transaction in respect these shares and alleged transfer documents are forged and fabricated. The accused no.1 with the help of the accused no.2 to 13 has cheated the complainant by fraudulent transfer of 62,500 equity shares which after allotment of 437500 bonus equity shares at the rate of 7 equity shares for every equity share have become 500000 shares. The accused no.1 along with other accused has reduced share holding of the complainant from 500000 equity shares to only 100 equity shares as on 31.03.2018. Thereafter on basis of complaint made by the complainant present FIR bearing no.445/2020 was got registered for offences punishable under sections 420/468/471/34 IPC.

7.2 The bail applications filed by the applicants no.1 & 2 were dismissed by the court of Additional Sessions Judge-02, Patiala House Courts, New Delhi vide order dated 28.05.2022. It was observed that none including the complainant has appeared before the court with truth.The complainant has not reported the non- receipt of the shares purchased by him in the year 2008 till 2020 which raised serious doubt about his claim of non-receipt of shares. The court also observed that conduct of the applicants is also shrouded in suspicion and appears to be much more tainted and stained as compared to the complainant. The court did not accept claim of the applicants regarding re-purchase of these shares due to FSL result by observing that the signatures of the complainant on the share Transfer deed were found to be forged. The court also observed that the applicant no.2 in her written reply submitted to Investigating Officer prior to receipt of FSL result mentioned that vide letter dated 30.04.2016, she requested the accused no.1 to pay Rs.6,25,000 /- to the complainant on her behalf towards the payment for the above said 62,500 shares and the complainant after receipt of money handed over duly signed share transfer form which was contrary to the subsequent claim made by the applicant no.1 that the accused no.1 adjusted the said amount in the loan account of the complainant. The court also made certain other observations.

8. The applicants in bail applications under consideration primarily pleaded that the complainant, his wife and other family members and companies in which the complainant and his family members are Directors/Shareholders/Guarantors are clients/borrowers of the accused no.1 for the last 15-20 years. The complainant in the year 2008 was allotted 62,500 shares of the accused no.1 at a total value of Rs.1.25 crores with distinctive nos.3802501 to 3865000. The complainant had received share certificate through speed post dated 12.12.2008. The complainant in the year 2015-16 sold these shares to the applicant no.2 and the applicant no.2 requested to the accused no.1 to pay Rs.6,25,000/- to the complainant on her behalf and said amount was credited in the loan account of the complainant on

03.05.2016. The complainant also handed over duly signed share transfer form to the applicant no.2 along with original share certificate. The share transfer form along with original share certificate was submitted to the Share Transfer Agent (STA) M/s Skyline Financial Services (the accused no.12) on 06.05.2016 for transfer of 62,500 shares. The applicant no.2 submitted share transfer form along with original share certificate to the accused no.1 and thereafter the accused no.1 approved the share transfer vide its board meeting held on 10.05.2016. The accused no.1 had also settled pending disputes with the complainant and his family vide agreement dated 05.06.2020.

8.1 The complainant also submitted share transfer form along with original share certificate with STA for transfer of 50 shares of the accused no.1 stated to be purchased from Sanjay Prasad Jain. The accused no.1 vide board resolution dated 09.10.2017 has approved said transfer. The accused no.1 on 30.10.2017 also issued 7 bonus shares for 1 share held in the accused no.1 and accordingly, the complainant was allotted 350 shares as per his shareholding of 50 shares bearing distinctive nos.20194447-20194796.

8.2 The respondent/State in Status Report dated 11.07.2022 and Status Report dated 23.11.2022 primarily stated that copy of Speed Post receipt dated 12.12.2008 by which original share certificate was sent to the complainant could not be verified from postal department being weeded out. The signatures of the complainant and his wife Preet Kaur on Original Share Certificates do not match with specimen and admitted signatures of the complainant and his wife Preet Kaur as per FSL result received on 24.10.2021. The applicant no.1 could not provide proof of any request allegedly made by the applicant no.2 for credit of Rs.6,25,000/- in the loan account of the complainant. The applicant no.1 could not provide original share certificate in respect of 62,500 shares purchased by the applicant no.2 from the complainant and 300 shares purchased by Roohi Reshi from the complainant on 12.12.2016 and gave evasive reply. The applicant no.1 also gave contradictory reply regarding dispatch of 350 bonus shares issued on 08.12.2017 to the complainant through post. The respondent/Stated sought custodial interrogation of the applicants on grounds that they have not provided requisite documents and gave evasive replies during investigation.

9. It would be relevant to discuss relevant statutory law and decisions rendered by the Superior Courts before adjudicating applications. The anticipatory bail is not defined in the Code. The anticipatory bail is pre-arrest bail and grant of anticipatory bail is discretionary. The Law Commission of India in its 41st Report pointed out the necessity of introducing a provision in the Code enabling the High Court and the Court of Sessions to grant anticipatory bail which may allow a person to seek bail in anticipation of an arrest on accusation of having committed a non-bailable offence. Section 438 of the Code deals with grant of bail to a person who is apprehending arrest. It reads as under:-

> **438. Direction for grant of bail to person apprehending arrest.**
>
> **(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.**
>
> **(2) When the High Court or the Court of Session makes a direction under sub- section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-**

> **(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;**
>
> **(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;**
>
> **(iii) a condition that the person shall not leave India without the previous permission of the Court;**
>
> **(iv) such other condition as may be imposed under sub- section (3) of section 437, as if the bail were granted under that section.**
>
> **(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, be shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub- section (1).**

9.1 The Supreme Court in **Ms. X V The State of Maharashtra and another,** Criminal Appeals No. 822-823 of 2023 observed that court ought to refrain from undertaking detailed analysis of evidence at time of consideration of bail application. It was observed as under:-

> **11.1. We propose to take a quick look at the considerations that ought to govern grant of anticipatory bail. There are a line of decisions of**

> **this court that have underscored the fact that while deciding an application for bail, the court ought to refrain from undertaking a detailed analysis of the evidence, the focus being on the prima facie issues including consideration of some reasonable grounds that would go to show if the accused has committed the offence or those facts that would reflect on the seriousness of the offence. The self imposed restraint on delving deep into the analysis of the evidence at that stage is for valid reasons, namely, to prevent any prejudice to the case set up by the prosecution or the defence likely to be taken by the accused and to keep all aspects of the matter open till the trial is concluded.**

9.2 The Supreme Court in **Masroor V State of Uttar Pradesh and another,** (2009) 14 SCC 286 observed that courts ought to refrain from mechanically granting bail and absence of relevant considerations will make such an order susceptible to interference. It was observed as under:-

> **13. …Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.**

The Supreme court in **Prasanta Kumar Sarkar V Ashis Chatterjee and another,** (2010) 14 SCC 496 considered the factors which should be examined at time of deciding anticipatory bail application and observed as under:-

> **9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:**
>
> **(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;**
> **(ii) nature and gravity of the accusation;**
> **(iii) severity of the punishment in the event of conviction;**
> **(iv)danger of the accused absconding or fleeing, if released on bail;**
> **(v) character, behaviour, means, position and standing of the accused;**
> **(vi) likelihood of the offence being repeated;**
> **(vii) reasonable apprehension of the witnesses being influenced; and**
> **(viii) danger, of course, of justice being thwarted by grant of bail.**

9.3 The bail applications under section 438 of the Code filed by the applicants were dismissed by the court of Additional Sessions Judge-02, Patiala House Courts , New Delhi vide order dated 28.05.2022.

The Supreme Court in this eventuality in **Kalyan Chandra Sarkar V Rajesh Ranjan alias Pappu Yadav and another,** (2004) 7 SCC 528 observed as under:-

> **12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted.**

9.4 The Supreme Court in **Sushila Aggarwal and Others V State (NCT of Delhi) and another,** (2020) 5 SCC 1 clarified the factors that would be required to be kept in mind while dealing with applications moved under Section 438 of the Code and observed as under:-

> **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…**
> **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.**
>
> **xxxxxxxxxxxxx**
>
> **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.**

9.5 The Supreme Court in **Nathu Singh V State of UP,** (2021) 6 SCC 64, has emphasized on liberal interpretation in relation to grant of anticipatory bail and observed as under:-

> **19. At first blush, while this submission appears to be attractive, we are of the opinion that such an analysis of the provision is incomplete. It is no longer res integra that any interpretation of the provisions of Section 438 CrPC has to take into consideration the fact that the grant or rejection of an application under Section 438 CrPC has a direct bearing on the fundamental right to life and liberty of an individual. The genesis of this**

> **jurisdiction lies in Article 21 of the Constitution, as an effective medium to protect the life and liberty of an individual. The provision therefore needs to be read liberally, and considering its beneficial nature, the courts must not read in limitations or restrictions that the legislature has not explicitly provided for. Any ambiguity in the language must be resolved in favour of the applicant seeking relief.**

10. The learned Senior Counsel for the applicants argued that the applicants have joined investigation as and when directed by the Investigating Officer since 2020 and also submitted replies and documents as available with them. The Investigating Officer has taken the handwriting of the applicants for sending to FSL. The dispute subject matter of present FIR is civil in nature and is wrongly converted into a criminal case and the complainant and the applicant no.1 had lot of financial transactions during the years 2008 to 2018. The sale of 62,500 shares by the complainant was a genuine transaction. The complainant was paid sale consideration of the 62,500 shares which was adjusted in the loan account of the complainant but relevant loan files are not available.

10.1 The learned Senior Counsel further argued that the Investigating Officer has recorded statement of various independent witnesses including Gulshan Jurani, and Kapil Kumar who stated that in the year 2016, the complainant had offered to sell the shares to them and on their refusal sold shares to the applicant no.2. The investigation is relying on alleged contradictions being made by the applicants in their various replies instead of establishing the case on the basis of the complainant. The Status Report filed by the Investigating Officer reflects vindictive nature of the Investigating agency. The Investigating Officer has already collected various documents and statements of independent witnesses. The applicant no.1 has already explained entire facts pertaining to present case to the Investigating Officer.

10.2 The complaint was lodged on 14.06.2020 i.e. 9 days after the settlement agreement dated 05.06.2020 was executed between the Complainant and the accused no.1 whereby the complainant had agreed to pay over Rs.15 crores to the accused no.1. The complainant is under wrong belief that 62,500 shares are worth more than Rs.10 crores. The complainant at time of settlement dated 05.06.2020 was conscious that he had already sold 62,500 shares to the applicant no.2 in the year 2016 itself. The accused no.1 was not under legal obligation to maintain the files of loan accounts which had been closed in the year 2016. The complainant in net worth statement which he had submitted in the year 2018 to a bank for securing loan facility, did not disclose that he owned 62,500 shares of the accused no.1 which established that the complainant had sold shares in the year 2016.

10.3 The learned Senior Counsel further argued that Rs.6,25,000/- was adjusted in the loan account of the complainant on 03.05.2016. The complainant and his brother Mr. Gaganmeet Singh were given discount of about Rs.92 lacs and thereafter their loan accounts were closed which indicated that Rs.6,25,000/- was adjusted in loan account of the complainant.

10.4 The applicant no.2 is not required for custodial interrogation. The original share certificate no.30141 in respect of 62,500 shares was converted into Jumbo shares along with various other shares belonging to the applicant no.2 and as such the original share certificate has been destroyed. The Jumbo certificates were submitted to share depository. There is no possibility of availability of the original share certificates pertaining to 62,500 shares.

10.5 The complainant also did not participate and cooperated in investigation properly. The accused no.1 used old share certificate containing printed signatures of its Director Gulshan Jurani even after his demitting office. The accused no.1 sent the Bonus Share to the complainant through ordinary post which does not reflect *mala fide* on the part of the accused no.1. The complainant did not explain that why he preferred to remain silent till 2020 when he has not received share certificate stated to be issued in year 2008 and despite having made the payment of Rs.1.25 crores.

10.6 The allegation that the signatures on the share transfer deed are forged is absolutely incorrect. As per FSL Report the signatures upon the share transfer deed are not matching with the signatures of the complainant and his wife. It does not mean that the signatures are forged as the complainant was in habit of changing his signatures. The actual value of 5 Lac shares can be assessed at Rs.1.75 crores only and the applicants have already deposited Rs.5 crores, without prejudice to show their *bona fide*. The value of the shares in 2016 was only Rs.10 for each share.

10.7 The applicants have cooperated in the investigation and never misused interim protection granted by this Court. The applicants never gave evasive and contradictory replies. The entire case is based upon the documentary evidence which has already been collected by the Investigating Officer. The investigation is already completed. The applicants have already joined investigation and relevant documents. The investigation is pending since the year 2020. The dispute is purely a civil dispute which pertains to allotment of shares issued by the accused no.1 which were sold by the complainant to the applicant no.2. There is no flight risk, likelihood of tampering evidence, and likelihood of influencing witnesses. The leaned Senior Counsel for the applicants argued that the applicants be allowed and also relied on certain decisions rendered by the Superior Courts.

11. The Additional Public Prosecutor for the respondent/State argued on basis of averments made in Status Reports. He argued that the custodial interrogation of the applicants is required to recover relevant documents and information from the applicants.

12. The learned Senior Counsel who assisted the Additional Public Prosecutor advanced oral arguments and also submitted written arguments. The learned Senior Counsel argued that the applicants in conspiracy with each other have committed the grave economic offence in a cool, calculated and systematic manner and have already tampered with evidence and destroyed evidence. The applicants have taken repeated false and varying stances and custodial interrogation of the applicants is required to bring out the actual facts as well as recover forged documents. The accused who are implicated in FIR are closely related or directly associated with each other. The applicants are habitual offenders.

12.1 The learned Senior Counsel for the complainant partitioned offences alleged to have been committed by the applicants in five different transactions which are pertaining to the 62,500 equity shares, 50 equity shares, consequent 350 bonus shares, 300 shares and 100 equity shares.

12.2 The learned Senior Counsel for the complainant during arguments brought out list of forged and fabricated documents pertaining to different transactions. It was argued that share certificate regarding 62,500 shares is containing endorsement 'paid-up' whereas the actual amount was paid much later. FSL Report confirmed forgery in Share Transfer deed dated 03.05.2016 (SH4 Form) as signature on share transfer deed does not found to be of the complainant. The ledgers of loan accounts maintained by the accused no.1 are also found to be forged. The applicants and other accused have forged the share transfer register (MGT7). It is argued regarding transfer of 50 shares that as per FSL report, signatures of the complainant on share transfer deed dated 02.10.2017 were found to be forged. The fabricated PAN number of Sanjay Prasad Jain was also created. The Board resolution dated 09.10.2017 was held prior to the accused no.1 receiving request for share transfer from STA skyline (the accused no.12). The complainant in written arguments also pointed discrepancies and contradictions in 350 bonus shares, 100 shares, jumbo share certificates.

12.3 It is also argued and mentioned in written arguments that the applicants have also created fabricated documents such as share certificate certificates, loan ledgers, Jumbo Certificate during the course of investigation. The learned Senior Counsel for the complainant argued that the complainant in the year 2008 had purchased and was allotted 62,500 equity shares at the rate of Rs.200

per share (Rs.10 as the face value and Rs.190 the premium) for a consideration of Rs.1.25 crore and the applicants have fabricated share certificate dated 27.11.2008. The applicants in the year 2016 illegally grabbed 62,500 equity shares of the Complainant by fraudulent transfer in favour of the applicant no.2 by forged and fabricated documents and no money was ever paid into the bank account of the complainant in lieu of alleged transfer of shares. The jumbo shares certificate despite being issued on 29.01.2018 carries signature of Gulshan Jhurani who resigned from the accused no.1 in December 2012. Sanjay Prasad Jain who allegedly transferred 50 shares to the complainant is a non-existent person. The applicant no.1 alleged that 7 bonus shares for each share were given on 30.10.2017 on the 50 shares allegedly held the complainant and the applicant no.1 issued and sent the said bonus share certificate on 08.12.2017 by post but no proof of the same is given.The complainant never transferred 300 shares Roohi Reshi and said transfer is fraudulent. The signature of the complainant on SH4 is forged as stated in FSL Report. Preet Kaur, wife of the complainant never purchased 100 shares from Kavita Bhutani and alleged transfer of 100 shares is fraudulent.

12.4 The learned Senior Counsel for the applicant cited **Centrum Financial Services Limited V State of NCT of Delhi,** 2022 SCC OnLine SC100 wherein grant of anticipatory Bail was cancelled considering the *modus operandi* followed by the accused as disclosed by the State in Status Report, by observing that said bail was granted by considering that it was a commercial transaction, but not considering the nature of accusation and material collected during course of investigation. The learned Senior Counsel also referred **Sadhna Chaudhary V State of Rajasthan,** 2022 SCCOnLine SC 869.

12.5 The learned Senior Counsel regarding requirement of custodial Interrogation in cases of serious offences, such as forgery, etc. cited **Maruti Nivrutti Navale V State of Maharashtra,** (2012) 9 SCC 235 wherein it was observed that custodial interrogation is essential in order to bring out material information and documents and to ascertain the genuineness of the document alleged to be forged.The learned Senior Counsel to support arguments that anticipatory Bail should not to be granted on the basis of generalized grounds but should be granted only on the facts of the case cited **Sanjay Kumar Gupta V State of U.P.,** 2021 SCC OnLine SC 596. The learned Senior Counsel in support of prime argument that custodial Interrogation is required to recover the money/property/documents cited **Jangya Narayan Mishra V State (Delhi),** 2015 (4) JCC 2334. The learned Senior Counsel in support of other arguments cited **Prakash Gupta V State of Delhi,** 2017 SCC OnLine Del 9265; **State Rep. by CBI V Anil Sharma (1997),** 7 SCC 187; **Urmila Gupta V The State (Govt. of NCT of Delhi),** 2016 SCC OnLine Del 553, **State of T.N. V R. Vasanthi Stanley,** (2016) 1 SCC 376, etc.

13. The Code extensively deals with powers of the investigating agency to carry out investigation in a cognizable offence. The interrogation of the accused is exclusively lie within domain of the investigating agency whose powers are unfettered so long as the investigating officer exercises investigating powers within the legal boundaries as per provisions of the law. The court can interfere and issue appropriate direction to the investigating agency only in the eventuality when investigating officer exercised powers *mala fide* or where there is abuse of power and non-compliance of the provisions of Code . However court can interfere with the investigation only in rare cases where there is abuse of process or non-compliance of the provisions of the Code. It was held in **King-Emperor V Khwaja Nazir Ahmad,** AIR 1945 PC 18 that it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry.The decision in **Khwaja Nazir Ahmad** has been quoted with approval by the Supreme Court in **Abhinandan Jha and others V Dinesh Mishra,** AIR 1968 SC 117, **State of Bihar and another V J.A.C. Saldanha and others,** (1980) 1 SCC 554 and subsequent decisions. The Supreme Court in **Dukhishyam Benupani, Assistant Director, Enforcement Directorate (FERA) V Arun Kumar Bajoria,** (1998) 1 SCC 52, held that it is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual.

13.1 Custody means formal arrest or the deprivation of freedom to an extent associated with formal arrest. Interrogation means explicit questioning or actions that are reasonably likely to elicit an incriminating response. The Supreme Court in **State rep. by the CBI V Anil Sharma,** (1997) 7 SCC 187 observed that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with favourable order under section 438 of Code. It was further observed that effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The Supreme Court in **Muraleedharan V State of Kerala,** AIR 2001 SC 1699 held that custodial interrogation of accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy.

13.2 The Supreme Court in relation to power to grant anticipatory bail and power of investigating agency to investigate in **P. Chidambaram V Directorate of Enforcement,** Criminal Appeal No. 1340 2019 decided on 05.09.2019, observed as under:-

> **Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.**

13.3 The Supreme Court in this case also discussed grant of anticipatory bail with Article 21 of the Constitution and referred **State of M.P. and another V Ram Kishna Balothia and another,** (1995) 3 SCC 221 wherein the Supreme Court held that the right of anticipatory bail is not a part of Article 21 of the Constitution of India and observed that anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. The Supreme Court in **P. Chidambaram** further observed as under:-

> **We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C. is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.**

> **Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information.**

13.4 The Supreme Court in **P. Chidambaram** also referred **Siddharam Satlingappa Mhetre V State of Maharashtra and Others,** (2011) 1 SCC 694 wherein the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail and held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.The Supreme Court in **P. Chidambaram** also referred also referred **Jai Prakash Singh V**

State of Bihar and another, (2012) 4 SCC 379 wherein the Supreme Court held as under:-

> **19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enrobed in the crime and would not misuse his liberty.**

14. The line of dispute which is subject matter of present FIR is alleged transfer of 62,500 equity shares of the accused no.1 on 10.05.2016 having face value of Rs.10 with premium of Rs.190 which were stated to be allotted to the complainant on 27.11.2008 for consideration of Rs.1.25 crores in favour of the applicant no.2 by the complainant for sale consideration of Rs.6,25,000/-; alleged transfer of 50 equity shares stated to be owned by Sanjay Prasad Jain (the accused no.9) on 14.10.2017 in favour of the complainant**;** alleged transfer of 100 equity shares stated to be owned by Kavita Bhulani (the accused no.10) on 30.12.2017 in favour of Preet Kaur, wife of the complainant**;** and alleged transfer of 300 shares stated to be owned by the complainant on 30.12 2017 in favour of Roohi Reshi (the accused no.11). The accused no.1 in its AGM held on

30.09.2017 also stated to be allotted bonus of 7 equity shares for each equity share to the complainant and as such 350 equity shares were allotted to the complainant making total number of equity shares to 400. As per the investigating agency above mentioned transactions pertaining to transfer of shares are forged and alleged share certificates and share transfer forms are fabricated documents.The complainant also alleged that he never sold these shares to the applicant no.2 and never executed any share transfer deed in favour of the applicant no.2. The documents pertaining to alleged transfer of 62,500 equity shares in favour of the applicant no.2 are forged and fabricated. As per FSL result received on 24.10.2021, signatures of the complainant and his wife Preet Kaur on original share certificates do not match with their specimen and admitted signatures and as such are forged and fabricated documents.

14.1 The applicant no.1 as per Status Reports did not provide the requisite original Share certificates and also gave evasive replies during investigation. It is also appearing as surfaced during investigation that the applicant no.1 who is managing director of the accused no.1 could not produce any proof regarding request of the applicant no.2 made to the accused no.1 for payment of Rs.6,25,000/- to the complainant on her behalf and said amount was actually credited in the loan account of the complainant. The applicant no.1 also could not produce Jumbo share certificates which were stated to be issued on 29.1.2018 in lieu of 62,500 shares of the complainant and stated to be bearing the signature of Gulshan Jhurani as Director of the accused no.1. Gulshan Jhurani in his statement dated 30.07.2022 also stated that he did not sign the share certificate/Jumbo share certificate after 2012. It also came into investigation that original share transfer deed between the complainant and Roohi Reshi for transfer of share certificate no.31269 for 300 shares was executed on 12.12.2017 whereas new certificate no.31269 was issued on 13.12.2017.

14.2 The respondent/State prayed for custodial interrogation of the applicants on grounds that they have not provided requisite documents and gave evasive replies during investigation. It is also alleged that there are contradictions in replies given by the applicants as mentioned in Status Reports and also argued by the Additional Public Prosecutor and the learned Senior Counsel for the complainant. The issue which needs judicial assessment and consideration is that whether the applicants can be subjected to custodial interrogation merely the applicants as per investigating agency did not produce documents as sought by the investigating officer and gave evasive and contradictory replies during investigation. It was also surfaced during investigation that the complainant is having financial transactions with the accused no.1 for the last 15-20 years.

14.3 The perusal of the Status Reports submitted by the respondent/State reflects that investigating agency has already conducted large part of investigation and the applicants have participated in the investigation although contrary is alleged by the Additional Public Prosecutor and the learned Senior Counsel for the complainant. The applicants cannot be subjected to custodial investigation merely due to reasons that the applicants failed to produce requisite documentsand also gave evasive and contradictory replies during investigation as detailed in Status Reports and written arguments submitted on behalf of the complainant. FSL Report pertaining to genuineness of the complainant and his wife Preet Kaur on share transfer forms has already been received by the investigating agency.

14.4 The bail applications filed by the applicants were dismissed by the court of Additional Sessions Judge-02, Patiala House Courts, New Delhi, vide order dated 28.05.2022 wherein it was observed that none including the complainant has appeared before the court with truth and conduct of the applicants is also shrouded in suspicion and appears to be much more tainted and stained as compared to the complainant. The court of Additional Sessions Judge-02, Patiala House Courts, New Delhi, in order dated 28.05.2022 also noticed under contradictions in stand taken by the applicants during investigation. The concerned court was not justified in dismissing bail applications of the applicants on basis of alleged more tainted and stained conduct of the applicants. It appears that the concerned court minutely examined material collected during investigation in manner as deciding case on merits after conclusion of trial which was not warranted at time of consideration of bail applications.

14.5 There is no much force in arguments advanced by the learned Senior Counsel who assisted the Additional Public Prosecutor the applicants that custodial interrogation of the applicants is required to recover forged documents as alleged forged and fabricated documents pertaining to different transactions as mentioned in written documents are within knowledge of the Investigating Officer. FSL Report which is stated to be confirming forgery in all share transfer certificates is already received.The alleged discrepancies and contradictions in 350 bonus shares, 100 shares, jumbo share certificates etc. are also within knowledge of the complainant and investigating officer. The arguments advanced by the learned Senior Counsel for the complainant and case law relied on and referred by the learned Senior Counsel do not provide much help to the investigation. The learned Senior Counsel also relied on **Maruti Nivrutti Navale V State of Maharashtra,** (2012) 9 SCC 235 wherein laid down that custodial interrogation is essential in order to bring out material information and documents and to ascertain the genuineness of the document alleged to be forged. In the present case the relevant facts have already been surfaced during investigation and as per Status Report, FSL Report is already received.

14.6 The Supreme Court in relation to power to grant anticipatory bail and power of investigating agency to investigate in **P. Chidambaram** also observed that the judicial discretion to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. The custodial interrogation of the applicants is not warranted under given facts and circumstances of the present case and after evaluation of the available material against the applicants and particularly only to recover certain documents pertaining to the share transfer and contradictions in the replies given by the applicants during investigation. There is no direct and apparent apprehension that the applicants may flee or avoid further investigation. The applicants cannot be remanded to custodial interrogation in the absence of convincing material which warrants that certain documents and evidence pertaining to present FIR cannot be recovered without custodial interrogation of the applicants.

14.7 The applicants vide order 31.05.2022 were granted interim protection from arrest subject to the deposition of Rs.5 crores in the form of FDR in the name of Registrar General. After considering all facts, the bail applications bearing no.1696/2022 and 1697/2022 filed by the applicants Naresh Garg and Nirmala Aggarwal respectively are allowed. The applicants in case of arrest shall be release on bail on furnishing personal bond in sum of Rs.50,000/- with one surety of like amount to the satisfaction of concerned SHO/IO/Duty Officer subject to following conditions:-

> **i) The applicants shall join the investigation as and when directed by the concerned Investigating Officer and shall extend full cooperation in investigation.**
> **ii) The applicants shall not leave country without prior permission of the concerned trial court.**
> **iii) The applicants shall not temper with the evidence and shall not influence the witnesses in any manner.**

14.8 The applicants were granted interim protection from arrest vide order 31.05.2022 subject to the deposition of Rs.5 crores in the form of FDR in the name of Registrar General. It was held by the Supreme Court in **Guddan @ Roop Narain V State of Rajasthan,** 2023 Live Law (SC) 45, observed excessive conditions imposed on the appellant (convict) in practical manifestation acted as a refusal to the grant of bail. The present litigation is not for recovery of damages.

The trial to be initiated out of present FIR may take time as investigation is still pending. It would not be appropriate to keep amount of Rs.5 crores on record and accordingly, FDR of Rs. 5 crores is ordered to be released to the applicant no.1 immediately from the office of the Registrar General.

15. Nothing in this order shall be taken as an opinion on merits of the case.

SUDHIR KUMAR JAIN
(JUDGE)

April 25, 2023
N/SD