2024:PHHC:167473

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

203 **CRM-M-34245-2024 (O&M)**
DECIDED ON: 14.11.2024

JASWINDER SINGH WALIA

... PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

****

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. J.S. Rattu, DAG, Punjab.

Mr. Bhrigu Dutt Sharma, Advocate
for the complainant.

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<u>SANDEEP MOUDGIL, J</u>

1. <u>Relief Sought</u>

The jurisdiction of this Court under Section 438 Cr.P.C. has been invoked seeking pre-arrest bail to the petitioner in case FIR No. 106, dated 11.11.2021, under Section 420,408, 465, 467, 468, 471 and 120-B of the Indian Penal Code 1860 (hereinafter referred to as 'IPC') registered at Police Station Lambran, District Jalandhar.

2. <u>Facts</u>:-

"To, The Senior Superintendent of Police Rural, Jalandhar. Sub: Complaint Mr. Jaswinder Singh Walia son of Mr. Pritam Singh, 2. Mrs. Satinder Kaur wife of Mr. Jaswinder Singh Walia, 3. Mr. Jaspreet Singh

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son of Mr. Jaswinder Singh Walia, 4.Mr. Saranjit Singh son of Mr. Jaswinder Singh Walla, 5.Mr. Hari Om son of Mr. Satish Kumar, all residents of Shalimar Avenue, near Harnam Sankirtan Mandir, Kapurthala Application for registration of criminal case under Sections 420,408,465,467,468,471,120-B IPC for cheating and fraud and forging false documents. Respected Sir, it is respectfully submitted as under: 1. That the Mr. Ram Kumar Yadav s/o Sh. Ram Sahai Yadav r/o VPO. Lambra, Distt. Jalandhar is the duly authorized person of the firms/companies namely M/s Shadi Ram & Sons Private Limited, M/s SRS Exports PVT.Ltd., M/s Shadi Ram Mohan Cold Storage, M/s SRS Agri Products Pvt Ltd.. situated at village Lambra, Tehsil and District Jalandhar and also running branches at Mumbai, (Maharashtra)and Tuticorin (Tamil Nadu). All the above mentioned concerns are sister concerns and are dealing in the important and export of food grain items and also running a cold storage at Lambra. M/s Shadi Ram & Sons Private Limited was previously run as a partnership concern till it was converted in to a Private Limited Company on 08-08-2016 with Mr. Jiwan Kumar Mohan,Mr. Sandeep Kumar Mohan, Mr. Rishi Kumar Mohan, Mr. Ravi Kumar Mohan, Mrs. Shivani Mohan, Mrs. Meenal Mohan and Mrs. Sumanbala Mohan as share holders the first four share holders and one mr.varinder upadhayay constituded the board of directors of company similarly, M/s SRS Exports Pvt. Ltd., VPO Lambra Jalandhar was incorporated in the year 1995, in which Mr.sandeep Kumar Mohan, Mr. Rishi Kumar Mohan, Mr. Ravi Kumar Mohan and Mrs. Shivani Mohan are the Directors in the firm M/s Shadi Ram Mohan Cold Storage, situated at village Lambra, Mr. Jiwan Kumar Mohan and Mr. Sandeep Kumar Mohan are partners, M/s SRS Agri Products Pvt. Lltd., Lambra is also a Private Limited company with Mr. Jiwan Kumar Mohan as Managing Director and Mrs. Shivani Mohan as other director. Copy of the resolutions and authority letters in the name of the Mr. Ram Kumar Yadav s/o Sh. Ram Sahai Yadav r/o VPO Lambra, Distt. Jalandhar from above mentioned companies/firm and Individuals are enclosed. The above said persons hold accounts in the names of the companies/ firm as well as in their personal name with different bank at Jalandhar. All the above said persons are residing in Australia for the last above 30 years. The above mentioned companies/firm and Individuals form a group which is popularly known as Shadi Ram Group, 2. That the accused Mr. Jaswinder Singh Walia was appointed as Chief Accountant about 25 years back by the Shadi Ram Group, firstly in the firm Shadi Ram &

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Sons. That after Incorporation of other above mentioned firm/companies, he was also entrusted with the similar work for those entities. In the beginning the accused Mr. Jaswinder Singh walla did his job honestly and diligently and won the confidence of the owners of the firm and companies. The owner were totally dependent on the advice of said Mr. Jaswinder Singh walia and had been acting as per his advice. It may be mentioned here that till the year 2008, the father of Mr Jiwan Kumar Mohan and Mr. Sandeep Kumar Mohan were looking after the business of the group in India and after his demise in may 2008, the owners were left with no option but to hand over the business charge with the said Mr. Jaswinder Singh walia who after some time started making plans to grab the valuable assets and bank balance of the companies and the personal saving accounts of the above said persons. In order to execute his illegal designs, the said Mr. Jaswinder Singh Walia also included his wife and two sons namely Mrs. Satinder Kaur, Mr.Jaspreet Singh and Mr.Saranjit Singh in the conspiracy along with his servant Hari Om who was also residing in the house of Mr. Jaswinder Singh Walia. All the accused acted in a preplanned conspiracy to accomplish their illegal designs. The said Mr.Jaswinder Singh Walia also opened some fake bank account raised some fake invoice/documents to grab the proceeds lying in various bank accounts belonging to the companies/firm/Individuals. 3. It is pertinent to mention here that Mr Jaswinder Singh Walia was employed at a monthly salary Rs.8,000.00 which was ultimately increased to Rs. 1,00,000.00. At the of detection of fraud, the accused would manipulate the accounts for satisfying the owners on their short visit to India and they could never doubt the integrity of said Mr. Jaswinder Singh Walia as their visit to India was also for very short durations and the accused had the knack of making them busy in other activities 4. That the whole suspicion of the wrong doings of Mr. Jaswinder Singh Walia started with the death of one of the relative, Mr. Varinder Kumar Mohan, the cousin of Mr. Jiwan Kumar Mohan who died in Australia in Mmarch 2021. Mr. Jaswinder Singh Walia was also looking after the banking transactions of the deceased Mr. Varinder Kumar Mohan and when Mr. Jiwan Kumar Mohan demanded bank statement relating to the account of Mr. Varinder Kumar Mohan in March, 2021 the accused was initially reluctant to send the bank statement of the deceased with Punjab National Bank, Lambra Jalandhar. After repeated requests and demands, he after manipulating the bank statements sent the same to Mr .Jiwan Kumar Mohan. On

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suspicion, the matter was verified from bank and different sources and it came to notice that the bank statement sent by Mr. Jaswinder Singh Walia was fake and did not show the correct entries of transfer of money from the account of deceased to his Individual account. On suspicion, when Mr. Jiwan Kumar Mohan contacted the accused Mr. Jaswinder Singh Walia, he did not give proper reply. Consequent enquiry was made by the complainants, it got revealed that the said Mr. Jaswinder Singh Walia in connivance with his family members and other prepared forged and fabricated documents and transferred huge money to their individual accounts in order to cheat and defraud the companies and personal rights of the complaints. 5.(a) that M/s Shadi Ram & Sons Private Limited has its accounts with different banks which are as given below: Annexure Attached FIR.P1(B) that M/s SRS Exports Private Limited its accounts with bank which are as given below :1.bank name Punjab National Bank, Lambra Account No. 2999002100001823 (b) that M/s shadi Ram Mohan Cold Storage has its accounts with different banks which are as given below; 1 bank name Punjab National Bank, Lambra account 073002100007386 6. (a) that Mr Jiwan Kumar has his personal saving/loan account with different banks. The details for the same are give below: 1 bank name Bank of India, Sutluj Market, Jalandhar 640432110000108 2. bank name Bank of India, Sutluj Market, Jalandhar 640410110001548 3.Punjab National Bank, Lambra 0753000101845802 (b) that Mr. Sandeep Kumar has his personal saving/loan account with different banks the detail for the same are as given below :1. bank name Bank of India, Sutluj Market, Jalandhar account 640432110000105. 2. bank name Bank of India, Sutluj Market, Jalandhar account 640410110001551, 3. HDFC Bank Ltd., Lambra 22381000005998,4, Punjab National Bank, Lambra account no. 0753000100043726 (c) that Mr. ravi Kumar has his personal saving/loan account with different banks the details for the same are as given below: 1. Bank of India, Sutluj Market, Jalandhar 640432110000106, 2. Bank of India, Sutluj Market, Jalandhar 640410110001550, (d) that Mr. Rishi Kumar Mohan has his personal saving/loan account with different banks the details for the same are as given below: 1. Bank of India, Sutluj Market, Jalandhar account no. 340432110000107, 2. Bank of India, Sutiuj Market, Jalandhar account no. 640410110001549 (e) that Mrs. Sumanbala Mohan has his personal saving/loan account with different banks the detail for the same are as given below 1. Orientail Bank of Commerce (now Punjab National Bank) Lambra 05642151018500. It is

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worthwhile and Important to mention of one fictitious account (detail given below), which was opened by Mr. Jaswinder Singh Walia on 13.10.2016 in the name of mr.sandeep Kumar mohan to use the same for defrauding the complaints by transfer the money to his account. The said account was opened by Mr. Jaswinder Singh Walia without consent, knowledge of Mr. Sandeep Kumar Mohan or without any authority 1. bank name Axis Bank Ltd., Lambra 916010060044074. All the ATMs, Credit Cards of the aforesaid accounts are with Mr. Jaswinder Singh Walia and he had been operating the said accounts. All the matters relating to the companies and firms were independently operated by the said Mr. Jaswinder Singh Walia to Mr. Jiwan Kumar Mohan in Australia in March, 2021. It transpired that some of the entries in the account statement were forged and fabricated. On detailed enquiries, it came to the knowledge that Mr. Jaswinder Singh Walia in connivance with his wife sons and servant and others with common intention and conspiracy with each other had been preparing forged and fabricated documents and transferred crores of rupees to his family members and associates accounts to cause undue loss to the firms/companies and Individuals. A large sum of money was also repatriated/transferred by the accused Mr. Jaswinder Singh Walia in the bank accounts of family members in Canada. Some of the entries of fraud committed by Mr.Jaswinder Singh Walia and others are as under: (a) from the bank account of M/s Shadi Ram and Sons Pvt. Ltd. (1)Punjab National Bank, Lambra account no.2999002100002576 attached with FIR. On behalf of the above said persons in order to achieve his goal the accused used to transfer amount in Axis Account from different account maintained by SRS Group and their owner and then use the funds so transferred in Axis Bank to his own or associated accounts/ATM cash withdrawals/direct Payment to third parties/Expenditure/shopping by him. Total amount of Rs. 16,94,804.57 has been transacted in this account by Mr.Jaswinder Singh Walia for his benefit and for his own purpose. Copy of statement is enclosed here with. Main transactions are as given below: (b) Jaswinder Singh Walia also operated locker of Mr. Shadi Ram Mohan after his death by using security keys, which was in his possession and removed the jewellery from the locker held with Punjab National Bank, Lambra (V) that from the above said facts it is clear that being an employee of the firms/companies also acting on behalf of complainants Individually, he was entrusted with valuable securities and documents like ATM, cheque

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books etc., the accused with the malafide intention and in order to cheat and defraud the companies/firms and Individuals, in connivance with his family members/associates detailed above and guilty associates prepared forged and fabricated documents with common intention and conspiracy with each other. He submitted fake documents for transaction on behalf of the above mentioned persons. He duped and looted the companies/firms and complainants for sum of crores of rupees. After committing such a heinous offence, he has left the job without Intimation and is known to have fled to Canada along with his family. (VI) That the act of the accused criminal offence, for which he and his associates are liable to be punished and prosecuted. It is therefore respectfully prayed that a case may be ordered to be registered against all the accused under the law in order to impart justice to the complainants and to banner of law and order. Thanking you, yours faithfully, Ram Kumar Yadav authorized person for 1. Jiwan Kumar Mohan 2. Sumanbala 3. Sandeep Kumar Mohan 4. Rishi Kumar Mohan 5. Ravi Kumar Mohan. That the application was marked to SSP (Investigation Jalandhar) who after carrying out the investigation have written in their report that bank statements of Jaswinder Singh Walia and Hari Om were obtained which shows that the bank statements of all the firms of the applicant Shadi Ram Mohan are identical to each other. Upon investigation it is found that the sons of Jaswinder Singh Walia namely sharanjit Singh, Jaspreet Singh and the neighbor of Jaswinder Singh Walia, Hari Om are found to be innocent. They have no role in the fraud committed by Jaswinder Singh Walia upon the complainants. Upon considering all the factors as discussed above it is found that Jaswinder Singh Walia along with his wife have created false receipts and forged the signatures of the complainants by copy pasting from the computer and have usurped about RS. 66,00,000 from the accounts of Shadi Ram and sons and have transferred the same to their accounts and the accounts of their sons Sharanjit Singh, Jaspreet Singh. They have forged the signatures of the complainant Sandeep Kumar Mohan and have opened fake accounts in HDFC Bank Lambra and Axis Bank Lambra. From the fake account in the name of Sandeep Kumar Mohan in HDFC Bank Lambra, an amount of Rs. 1,06,53,000 has been transferred in the bank account of the wife Satinder Kaur having Account Number 1381000184124, HDFC Bank Kapurthala. An amount of Rs. 16,46,000 has been withdrawn by Jaswinder Singh Walia via ATM as cash and another 46,00,000 has been withdrawn by Jaswinder Singh Walia for his

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personal expenses. Jaswinder Singh Walia has also got transferred Rs.13,00,000 by cheating from the account of Darshan Lal and Company and have obtained personal home Items from that money and have also prepared fake statements of the complainant's Punjab National Bank Account Number 0753008800000270. Hence it can be concluded that Jaswinder Singh Walla along with his wife Satwinder Kaur have committed a fraud amounting to Rs. 3 croes. Hence it is requested to register a case against Jaswinder Singh Walia son of Pritam Singh Walia and wife Satwinder Kaur, r/o Shalimar Avenue, near Harnam Sant Kirtan Mandir Kapurthala u/s 408,420,465,467,468,471,120-B IPC Report is submitted. Sd/- Ranjit Singh (PPM), SSP, Detective, District Jalandhar, dated 21.08.2021 on which SSP has asked DA Legal for opinion for which DA legal has submitted as under: Subject: Application No. 1551 PTM dated 10.07.2021 report regarding Jeewan Kumar Mohan, Suman Bala etc. Inquiry: SSP, Detective, District Jalandhar. That I have carefully gone through the documents as submitted by the complainant and the report as submitted by SSP, Detective, District Jalandhar, it has been found by the Investigating officers that the complainants are owners of M/s Shadi Ram and sons, M/s SRS Exports Private Limited, M/s Shadi Ram Mohan Cold Storage, M/s SRS Agri Products Pvt. Ltd.. These firms have their bank accounts in different banks in Lambra and most of their dealings are with Punjab National Bank Lambra. That Jaswinder Singh Walla son of Pritam Singh Walla was working as a chief account at their firms in Lambra from the last 25 years who use to get a salary of Rs. 50,000 per month earlier who from year 2018 use get Rs. 1,00,000. When Jaswinder Singh Walia had to transfer any money to any person from the Shadi Ram and sons or any other firm of the company, then Jaswinder Singh Walia use to make a letter M in the name of that person and the same was sent via e-mail to the complainant and the complainant on receiving the email use to sign that email and send it back to Jaswinder Singh Walia and he use to take a printout of that letter and then give it to the bank and get the money transferred to the concerned persons. In regards to which a report has been obtained fom PNB bank which tell that M/s Shadi Ram and sons had the following accounts with our branch, M/s Shadi Ram and Sons Private Limited AC No.0753002100007386, M/s Shadi Ram Mohan Cold Storage AC No. 2999002100002576, M/s SRS Agri Products Pvt Ltd AC No. 0753002100008543 party operates these accounts by sending

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mandates given the party, Jaswinder Singh walla has transferred Rs. 66,00,000 in the account of his son Jaspreet Singh and Rs. 9,50,000 in the account of Hari Om. Jaswinder Singh Walia has got the money transferred from the bank by copy pasting the signatures of the complainant from the computer and creating false letters. The complainant had mentioned that he was fully dependent upon Jaswinder Singh Walia as their whole family was living in Australia hence whever they use to come to india they use to give some blank signed cheques to Jaswinder Singh Walia. So Jaswinder Singh Walia has misused the blank signed cheques as given by Sandeep Kumar and by doing forged signatures of Sandeep Kumar Mohan have got an account opened in HDFC Bank Lambra Ac No. 22381000005998 and in this account Jaswinder Singh walla has given his own mobile no. and email id. He has got around Rs. 1,06,53,000 transferred from this account to the account of his wife Satwinder Kaur who has account in HDFC Bank Kapurthala having account number 1381000184124 from the year 2014 to the year 2020 and another 16,46,000 has been withdrawn by Jaswinder Singh Walla for his personal expenses and around 46,00,000 has been spent by him for his personal expenses. He has used international banking and ATM to commit this fraud. Jaswinder Singh Walia has credited an amount of Rs. 1,81,38,218 from the account by creating false letters from the accounts of the firms of the complainant company and by copying the signatures of the complainant company. Jaswinder Singh Walia has mentioned in its statement that he has not given his phone number or email id for any of the accounts of the complainant whereas in the account of HDFC bank Ac No. 22381000005998 which has been opened up by Jaswinder Singh Walla has the phone number 98159-38633 which belongs to Jaswinder Singh Walia and the email id: sWalia63@gmail.com also belongs to Jaswinder Singh Walia and that Jaswinder Singh Walla has committed a fraud of Rs. 1,81,00,000 through net banking and ATM. Apart from this even the Account at AXIS Bank Lambra having AC No. 916010060044074 also has the mobile number 98159-38633. It has also been found by the investigating officers that the bank statements as submitted by the complainant Shadi Ram Mohan are not identical to each other. Upon investigation it is found that the sons of Jaswinder Singh Walia namely sharanjit Singh, Jaspreet Singh and the neighbor of Jaswinder Singh Walla, Hari Om are found to be innocent and they have no role in the above said fraud as committed by Jaswinder Singh Walla. Upon

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considering all the factors as discussed above it is found that Jaswinder Singh Walla along with his wife have created false receipts and forged the signatures of the complainants by copy pasting from the computer and have usurped about RS. 66,00,000 from the accounts of Shadi Ram and sons and have transferred the same to their accounts and the accounts of their sons Sharanjit Singh, Jaspreet Singh. Jaswinder Singh Walla has done fake signatures of Sandeep Kumar Mohan and got fake accounts opened in HDFC Bank and Axis Bank Lambra and got around Rs. 1,6,53,000 transferred from this account to the account of his wife Satwinder Kaur who has a account in HDFC Bank Kapurthala having account number 1381000184124 and another 16,46,000 has been withdrawn by Jaswinder Singh Walla for his personal expenses through ATM and around 46,00,000 has been spent by him for his personal expenses. Jaswinder Singh Walla has also got transferred Rs.13,00,000 by cheating from the account of Darshan Lal and Company and have obtained personal home Items from that money and have also prepared fake statements of the account of the complainant. Hence it can be concluded that Jaswinder Singh Walia along with his wife Satwinder Kaur have committed a fraud amounting to Rs.3 crores. Based on which the investigating officers have requested to register a case against Jaswinder Singh Walia and his wife u/s 408,420,465,467,468,471,120-B IPC Upon the accusations put up by the complainant it has been found that a criminal offence has been committed and it has been held by the Hon'ble Supreme court in Lalita Kumari vs State of UP that if the offences are made out upon an application by the complainant then a case needs to be registered u/s 154 CrPc. All the above factors are investigated by a gazette officer and hence according to me, based on the complaint and the report as submitted an offence u/s 408,420,465,467,468,471,120-B IPC is made out against Jaswinder Singh Walia and his wife. If any offence is made out against any other person or their involvement in the above fraud is detected during the investigation then the further Investigation can be done accordingly and the matter can be Investigated in the close supervision of a gazeted officer. If required then the necessary orders can be passed by you. Sd/- Dinesh Kumar dated 11.10.2021, District Attorny Legal Jalandhar has written it to SSP Jalandhar over which SSP Jalandhar has written and asked SHO Lambra to register the case and investigated as per law and facts. SD/- Satinder Singh IPS dated 10.11.0221 Sr. Supdt. Of. Police. Jalandhar(rural). Today station: The Inquiry report along with the opinion

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of DA Legal has been received and based on the FIR a case is registered under the above said sections and the FIR along with the inquiry report and the opinion of DA Legal is being sent to ASI Jagtaar Singh 42. Officer Bala has been informed the same through mobile phone and an intimation is sent to control room through wireless. Report No.33 dated 11.11.2021".

2. Submissions

On behalf of the petitioner:

The petitioner in this case has raised several critical points regarding the allegations against him, primarily arguing that he is a scapegoat in a dispute involving the owners and directors of the companies mentioned in the FIR. The petitioner asserts that there is no forensic or expert opinion substantiating claims of forgery or fake signatures. This absence of evidence undermines the credibility of the allegations made against him. It has been highlighted that the petitioner was not authorized to operate the bank accounts implicated in the FIR. The banks involved have confirmed that the letters of mandate for transactions were sent by the owners/directors, suggesting that any financial irregularities may not involve the petitioner directly. Regarding claims about jewelry being removed from a locker, the petitioner contends these accusations are unfounded, as only individuals with proper authorization can access such lockers. The petitioner has worked for over 25 years with these companies without any prior complaints, suggesting a history of trust and reliability that counters the allegations against him. The petitioner believes that Ram Kumar Yadav, who was authorized to act on behalf of the companies, orchestrated the FIR to divert attention from his own misconduct. This claim indicates potential internal conflicts among company directors which may be pivotal in understanding the motives behind the FIR. It is noted that civil suits have been filed against the petitioner by the companies, which will address their

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liability and could impact the criminal proceedings. The existence of these civil suits suggests that the issues at hand may be more appropriately resolved through civil litigation rather than criminal prosecution. Counsel further argues that since he is cooperating with the investigation and there is no risk of him absconding, custodial interrogation is unnecessary.

On behalf of respondent-State and the complainant

On the other hand, learned State Counsel assisted by the counsel for the complainant would argue that the petitioner has filed the present petition seeking anticipatory bail after a delay of more than 2 years of lodging of the FIR. Moreover, after dismissal of first petition for grant of pre-arrest bail to the petitioner by the trial Court a period of more than one year and nine months had passed, which suggest that the petitioner in spite of knowing fully well about the pendency of the present proceedings in the present FIR has been evading the process of law and has been staying in Canada. Morever, the co-accused of the petitioner namely Satinder Kaur, who happens to be the wife of the petitioner, has violated the conditions as envisaged under Section 438 (2) Cr.P.C. by travelling abroad without permission of the Court and keeping in view the conduct of Satinder Kaur, vide order dated 31.10.2023, this Court had vacated the interim protection granted to her.

Further contention is that the petitioner in connivance with his wife had siphoned off more than Rs. 3 Crores from the complainant-firms/companies. An amount of Rs.1,06,53,494/- stands transferred in the account of the wife of the petitioner. The petitioner in conspiracy with his wife, had forged bank statements, opened fictitious accounts by forging the signatures of various directors/partners of the

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complainant companies and had even stolen jewelry from the locker of the one of the said directors/partners. However, there was no such evidence of the money received being paid to a school/college either in India or abroad. Merely because the petitioner had joined investigation did not entitle her to the grant of anticipatory bail once the offence was *prima facie* established against her from the evidence available on record

Heard learned counsel for the respective parties.

4. ***Analysis :***

On perusal of case file, it is evident that the petitioner allegedly transferred large amounts from the Shadi Ram Group's accounts to those of his family members, despite them having no legitimate connection to the operations of the company. The total amount siphoned off is claimed to be around Rs. 3 Crore, with expectations that this figure could increase as investigations proceed. The petitioner, in collusion with his wife and sons, forged and fabricated documents to facilitate these transfers. This includes creating false bank advices and cheques to misappropriate funds belonging to the company. The wife of the petitioner has claimed that he took a loan from Shadi Ram and Sons for educational purposes, which he is supposedly repaying in installments. However, this claim has been denied by investigators, who argue that such a large loan would typically require formal documentation, which appears to be absent in this case The petitioner and his family are reportedly evading legal processes by leaving the country, which raises concerns about their accountability and the potential for evidence tampering. Moreover any civil suits filed by the complainant regarding recovery of

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misappropriated funds do not affect the criminal case against the petitioner, highlighting the distinct nature of civil and criminal liabilities.

The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

> "*It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.*
> *Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.*
> *We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should*

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> *consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be*
> *looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."*

It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in ***"State vs. Anil Sharma"; (1997) 7 SCC 187,*** held as under:-

> *"We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material 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 argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."*

5. Conclusion:-

The allegations against the petitioner are severe, involving significant financial misconduct and potential forgery. The preliminary findings suggest a well-coordinated effort to defraud the Shadi Ram Group, necessitating further investigation and likely custodial interrogation to fully understand the scope of these activities and recover any misappropriated funds, this Court does

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not find any merit in the present petition, hence the same stands dismissed with no order as to costs.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the Trial Court is free to adjudicate upon the matter in accordance with law.

Pending criminal misc. application, if any, shall also stands disposed off.

(SANDEEP MOUDGIL)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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