



2025:DHC:714



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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***RESERVED ON – 16.12.2024
PRONOUNCED ON – 06.02.2025***

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BAIL APPLN. 3631/2022, CRL.M.(BAIL) 1478/2022**DR. AADHAR KHERA****.....Petitioner**

Through: Mr. Vikas Pahwa, Sr. Adv. with
Mr.Sajay Abbot and Ms.Sanjana
Mihsra, Advts.

versus**STATE (GOVT. OF NCT OF DELHI****.....Respondent**

Through: Mr.Mukesh Kumar, APP for the
State.
Insp.Awadhesh Kr., EOW, New
Delhi
Mr.Akhil Sibhal, Sr.Adv. with
Mr.Mudit Jain, Mr.Adit S.Pujari,
Ms.Garima Singh, Mr.Zeeshan
Thomas, Mr.Satya Jha, Ms.Adya Jha,
Ms.Kanishka Bhati, Ms.Ridhi,
Ms.Vanya Chhabra and Mr.K.Bapat,
Advts. for complainant.

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**BAIL APPLN. 196/2024, CRL.M.A. 1527/2024, CRL.M.(BAIL)
89/2024****CHARU KHERA****.....Petitioner**

Through: Mr. Manu Sharma, Senior Advocate
with Mr. Abhir Datt, Mr. Debayan
Gangopadhyay, Mr. Kartik Khanna,
Mr. Abhyuday Sharma, Mr. Shahbaz
Singh, Mr. Anant Gupta and Mr.



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Chaitanya Hegde, Advs

versus

STATE (NCT OF DELHI)

.....Respondent

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Mr.Akhil Sibhal, Sr.Adv. with
Mr.Mudit Jain, Mr.Adit S.Pujari,
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Thomas, Mr.Satya Jha, Ms.Adya Jha,
Ms.Kanishka Bhati, Ms.Ridhi,
Ms.Vanya Chhabra and Mr.K.Bapat,
Advts. for complainant.

CORAM:**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA,J :****PREFACE**

1. The present applications have been filed behalf of the Applicants namely Aadhar Khera and Charu Khera seeking anticipatory bail in case FIR No.14/2022 dated 27.01.2022 registered at PS: EOW, under Sections 408/420/467/468/471/120B IPC.
2. The anticipatory bail application filed by the Applicant - Aadhar Khera was dismissed by the learned Sessions Court on 10.11.2022 while the application of the Applicant - Charu Khera was dismissed on 15.01.2024. Since both bail applications arise out of the same FIR and



there is similitude of facts as well as the legal issues raised by the parties, both applications are decided by this common order.

FACTUAL MATRIX

3. Briefly stated the factual matrix of the case as per the status report is as follows:-
- a. The instant FIR was registered on the complaint of the Director of M/s Seagull Maritime Agencies Pvt. Ltd. ('Seagull'), wherein it was alleged that the accused persons, namely Ajay Khera and Siddharth Khera, in connivance with certain employees of Seagull, engaged in fraudulent activities to siphon off business and funds from Seagull to their newly incorporated entities— Azure Freight & Logistics LLP and Azure International LLC.
 - b. Seagull is a company engaged in the freight forwarding business and it opened a US branch in 2010. Mr. Ajay Khera was working with the company at that time as a legal consultant and requested the ex-promoters of Seagull to employ his son, Siddharth Khera, to look after the USA branch of Seagull. Accordingly, Siddharth Khera was appointed as Business Development Manager at the USA branch. The business Seagull had been operating smoothly until a steady decline in revenue was noticed in 2018, culminating in severe financial losses by July 2021.
 - c. Upon enquiry, it was revealed that during his tenure, Siddharth Khera, along with Ajay Khera, systematically misrepresented Azure Freight & Logistics LLP and Azure International LLC, as



a part of the Seagull group and fraudulently diverted Seagull's clients. It was alleged that the accused persons also manipulated financial transactions to channel payments intended for Seagull into Azure's accounts by forging the Bills of Lading, invoices, and other documents, as well as altering the shipper names in transactions and misusing Seagull's online credentials to conduct business under false pretences.

- d. Upon resigning, the accused persons also allegedly replaced the hard drives of their official computers to erase critical data. The complainant estimated a wrongful loss of approximately INR 30 crores due to these fraudulent acts.
- e. Upon registration of the FIR, an investigation was carried out, which revealed that Seagull's business relations with M/s EMR group had been sharply diverted to Azure International LLC from January 2021, resulting in losses to Seagull amounting to millions of USD.
- f. During investigation a response was received from M/s Export Global Metals, which confirmed that payments for consignments booked through Seagull were made into the accounts of Azure International LLC. The total amount siphoned off by the accused persons has been estimated to be around USD 52,413.
- g. The complainant had also alleged that several ex-employees of Seagull, including Heera Malhotra, Zingrem Kaping, Rajesh Jha, Ajay Tiwari, Arpit Baweja, and Guru Prakash Singh Bagga,



actively participated in the conspiracy. As per the status report, the evidence collected, including email communications, indicated that these individuals continued using Seagull's credentials even after their resignations to access confidential shipping documents and place fraudulent orders.

- h. Further, it has been stated in the status report that during the investigation, the statement of Sh. Siddharth Charan Jena, Ex-Director of Seagull was recorded, which revealed that since 2015, Siddharth Khera had been involved in illicit money transfers from Seagull's USA operations to Dubai-based entities, Golden Coast and World Vision. These funds were subsequently converted into cash and collected in India by Ajay Khera and the Applicant - Adhar Khera, with the amount estimated to be between INR 18-19 crores.
- i. Based on the evidence collected thus far, the accused, Ajay Khera, was arrested on 22.09.2022 and a charge sheet was filed against him before the competent court. Further, it has been stated that in compliance of Standing Order No. 05/2022 dated 08.02.2022, the names of accused persons namely Siddharth Khera, Shruti Arora, Kristey Coley, Rachel Groogan, Zingrem Kaping, Hira Malhotra, Rajesh Jha, Ajay Tewari, Arpit Baweja, Gurprakash Singh Bagga and the Applicants namely Chauru Khera and Aadhar Khera were kept in column No. 12 of the charge sheet as investigation qua these accused/alleged persons was continuing. However, the learned Trial Court has taken



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cognizance against all the accused persons except Kristey Coley and Rachel Groogan and the process u/s 82 Cr.P.C. has been issued against accused Siddharth Khera.

SUBMISSIONS ON BEHALF OF THE APPLICANT - AADHAR KHERA

4. Mr. Vikas Pahwa, learned Senior Counsel for the Applicant - Aadhar Khera, has submitted that the Applicant - Aadhar Khera has been falsely implicated in this case, with no direct role or overt act attributed to him in the FIR or charge sheet, except for baseless and wild allegations of alleged hawala transactions. It has been submitted that he has been roped in merely to exert pressure on his brother, Siddharth Khera. The Applicant - Aadhar Khera is presently serving as an Assistant Professor (Urology) and a Practicing Super Specialist Surgeon at MMIMSR, Mullana (Ambala, Haryana) since 01.01.2024, after completing his three-year M.Ch. (Urology) program (01.01.2021 - 31.12.2023).
5. Learned Senior Counsel submitted that Applicant - Aadhar Khera has fully cooperated with the investigating agency and has diligently appeared before the learned Trial Court on 17 occasions (16.02.2023, 17.03.2023, 17.04.2023, 15.05.2023, 17.07.2023, 10.08.2023, 23.09.2023, 27.10.2023, 28.11.2023, 04.12.2023, 16.01.2024, 20.01.2024, 08.02.2024, 05.03.2024, 06.04.2024, 08.07.2024, and 29.08.2024) without fail. It has been submitted that Applicant - Aadhar Khera was first issued a notice of inquiry on 03.01.2022 while he was in the USA and, to establish his bona fide, he voluntarily preponed his



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return and arrived in India on 06.01.2022 to participate in the investigation. Furthermore, it has been submitted that the Applicant - Aadhar Khera has complied with Section 41A notices as well as the directions of this Court and the learned Trial Court and appeared on four occasions: 17.09.2022, 12.08.2023, 10.11.2023, and 12.04.2024. Reliance has been placed on *Pankaj Bansal v. Union of India & Ors.*, 2023 SCC OnLine SC 1244 and *Santosh v. State of Maharashtra* (2017) 9 SCC 714, to submit that cooperation with the investigation does not amount to confession or self-incrimination.

6. Learned Senior Counsel submitted that on 19.12.2022, the charge sheet was filed, wherein only Ajay Khera was kept in Column 11, while all other accused, including Applicant - Aadhar Khera, were kept in Column 12, indicating that the investigation was still pending. Despite this, the learned Trial Court, after perusing the charge sheet and documents, took cognizance of the matter and summoned Applicant - Aadhar Khera indicating that sufficient material was already available. Learned Senior Counsel submitted that the rejection of bail at this stage, especially when cognizance has already been taken by the learned Trial Court, would impinge upon the personal liberty of Applicant - Aadhar Khera. Reliance has been placed upon *Manish Sisodia (II) v. Directorate of Enforcement*, Criminal Appeal No. 3295 of 2024, *Arvind Kejriwal v. ED*, Criminal Appeal No. 2493 of 2024, and *Arvind Kejriwal v. CBI* 2024 INSC 687.
7. Learned Senior Counsel submitted that the IO has not taken permission from the learned Trial Court to conduct further investigation, and thus,



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no further investigation can be carried out in view of the judgment of the Supreme Court in *Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762.

8. Learned Senior Counsel submitted that the entire case of the prosecution primarily pertains to transactions between foreign entities in the USA. However, no independent investigation has been conducted in any foreign jurisdiction, and the charge sheet is entirely based on the complainant's representations, with no corroborative material evidence.
9. Learned Senior Counsel submitted that Applicant - Aadhar Khera was only a formal and sleeping partner in Azure Freight & Logistics LLP and had no role in managing its operations. Mere signing of documents for compliance matters does not impose criminal liability on him.
10. Learned Senior Counsel submitted that the sole piece of evidence against Applicant - Aadhar Khera is the statement of Shikha Dhingra, a former employee of Seagull USA/Canada, wherein she claimed that when she met Khera family in February 2020, she heard a conversation between Applicant - Aadhar Khera and his mother. However, it has been submitted that the mother, Charu Khera was not even in India at that time, and Applicant himself was in the USA from 24.01.2020 to 19.02.2020. Learned Senior Counsel submitted that the said statement is false, unverified, and appears to be tutored.
11. Learned Senior Counsel submitted that the prosecution has erroneously alleged that Applicant - Aadhar Khera was involved in acts of evidence destruction and witness tampering. However, it has been submitted that



the only allegation of destruction of evidence is against Ajay Khera, which has already been debunked by this Court while granting him bail vide Order dated 20.04.2023. Furthermore, there is no allegation in the FIR or charge sheet that against the Applicant - Aadhar Khera that he was influencing any witness except for a reference made by Mr. Amit Goyal, who is a highly unreliable witness.

12. Learned Senior Counsel submitted that there is no merit in the claim that Applicant - Aadhar Khera is a flight risk, as he travelled to the USA on 19.12.2021 and voluntarily preponed his return to India on 06.01.2022 to join the inquiry. Furthermore, Applicant - Aadhar Khera has appeared before the Trial Court on every date through VC.
13. Learned Senior Counsel submitted that all the evidence against Applicant - Aadhar Khera is documentary in nature, and custodial interrogation is not required at this stage, as he has already cooperated and provided all relevant materials. Furthermore, Applicant - Aadhar Khera has already been on interim bail for 21 months, which has not been misused.
14. Learned Senior Counsel submitted that in view of ***Gauri Shankar Poddar v. State of Haryana***, (2015) 3 SCC 770, Applicant - Aadhar Khera is liable to be admitted to anticipatory bail on the grounds of parity with co-accused who have been granted bail. The main accused, Ajay Khera, has already been granted bail by this Court on 20.04.2023, and co-accused Rajesh Jha and Ajay Tiwari have been granted.



15. Learned Senior Counsel submitted that it is a matter of record that the proceeds of the crime are yet to be recovered and it is a settled position of law that the police do not have the power and authority to recover money or act as a civil court for the recovery of money. Therefore, to recover the POC is beyond the scope and power of the IO. Reliance has been placed on *Lalit Chaturvedi and Others v. State of Uttar Pradesh & Anr.*, 2024 SCC OnLine SC 171.

SUBMISSIONS ON BEHALF OF THE APPLICANT CHARU KHERA

16. Mr. Manu Sharma, learned senior counsel for the Applicant - Charu Khera submitted that Applicant - Charu Khera has been falsely implicated in this case and unnecessarily drawn into the proceedings based on unsubstantiated and speculative allegations. It has been submitted that Charu Khera is a 68-year-old housewife suffering from serious ailments such as Achalasia Cardia (complications related to esophageal motility and difficulty in swallowing) and Osteoporosis (bone-related issues) and due to these medical conditions, she has been hospitalized multiple times in the past year. It has been submitted that, in light of her advanced age and severe health conditions, she is entitled to protection under Section 437 Cr.P.C. Reliance has been placed on *Kalvakuntla Kavitha v. Directorate of Enforcement*, 2024 INSC 632.
17. Learned Senior Counsel submitted that Applicant - Charu Khera has shown full cooperation with the investigating agency and has complied with all notices under Section 41A Cr.P.C. It has been submitted that the first notice under Section 41A Cr.P.C. was issued to the Applicant



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on 17.11.2022, and in compliance, she submitted a written reply on 25.11.2022, stating her inability to appear due to hospitalization. It has further been submitted that the charge sheet was filed on 19.12.2022, and the Applicant was placed in Column No. 12, indicating that investigation is still pending and no substantial incriminating evidence has been found against her.

18. Learned Senior Counsel submitted that the learned Trial Court has already taken cognizance of the matter on 17.01.2023 and summoned Applicant - Charu Khera along with other accused persons. It has been submitted that the Applicant duly appeared before the learned Trial Court on 16.02.2023 in compliance with the summons. Subsequently, on 04.12.2023, the learned Trial Court directed all accused persons to file formal bail applications, thereby creating an apprehension of arrest.
19. Learned Senior Counsel submitted that this Court granted interim protection to Applicant - Charu Khera and directed her to join the investigation. Pursuant to the said directions, it has been submitted that she has joined the investigation on 06.03.2024 and 11.03.2024 and has fully cooperated with the investigating agency. It has been submitted that the interim protection is still continuing and has not been misused by her.
20. Learned Senior Counsel submitted that the prosecution's case is based entirely on documentary evidence. Notices under Section 91 Cr.P.C. were issued on 06.03.2024 and 30.04.2024, seeking production of documents, to which the Applicant duly responded on 11.03.2024, 26.03.2024, 24.04.2024, and 17.05.2024, providing all necessary



documents. Furthermore, the Applicant - Charu Khera was never arrested during the course of the investigation, and she has not been accused of non-cooperation. It has been submitted that, as per *Satender Kumar Antil v. CBI*, 2022 SCC OnLine SC 825, a person who has not been arrested during the investigation and has fully cooperated must not be taken into custody. Furthermore, reliance has also been placed on *Ashok Kumar v. State (UT of Chandigarh)*, 2024 SCC OnLine SC 274 and *Anand v. State of Maharashtra*, 2024 SCC OnLine SC 606, to submit that custodial interrogation is neither necessary nor justified in the present case.

21. Learned Senior Counsel submitted that there is no allegation that Applicant - Charu Khera was involved in siphoning funds or manipulating accounts, nor is there any evidence to suggest that she had any active role in the business operations of Azure LLP. It has been submitted that the prosecution's case primarily revolves around alleged siphoning of funds through Azure International LLC, a completely separate entity, and does not implicate Azure LLP, where Applicant - Charu Khera was merely a director/partner.
22. Learned Senior Counsel submitted that in regard to conspiracy, similar to the co-applicant- Aadhar Khera, the only evidence against the Applicant is the statement of Shikha Dhingra. However, as submitted by the learned Senior Counsel of the co-applicant- Aadhar Khera, the Applicants were not even in India during February 2020.
23. Learned Senior Counsel submitted that the allegation of evidence destruction and witness tampering against the Applicant is also



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completely baseless as the only allegation of destruction of evidence is against Ajay Khara, which as already submitted was rejected by this Court while granting him bail on 20.04.2023.

24. Learned Senior Counsel submitted that there is no merit in the claim that Applicant - Charu Khara is a flight risk. The Applicant left for the USA on 07.10.2021, well before the complaint was filed, and voluntarily returned to India on 18.08.2022. She has been appearing regularly before the learned Trial Court and has even attended proceedings physically despite her severe medical conditions.
25. Learned Senior Counsel submitted that the prosecution has failed to quantify any alleged financial loss to Seagull, and there is no clear evidence to show that Applicant - Charu Khara has been benefited from any alleged misappropriation. It is further submitted that Azure LLP itself has not been made an accused, and therefore, the Applicant cannot be charged for alleged offences committed by the LLP.
26. Learned Senior Counsel has submitted that the right to liberty is paramount in view of the settled position of law, and reliance has been placed on *Arvind Kejriwal v. Directorate of Enforcement*, 2024 SCC OnLine SC 1703, which emphasizes that the power to arrest must be exercised cautiously and cannot be used arbitrarily.
27. Learned Senior Counsel submitted that the proceedings in the present case are protracted, with over 3400 pages of documents and 12 witnesses and in such circumstances, in light of the principles laid down in *Manish Sisodia v. Enforcement Directorate*, 2024 SCC



OnLine SC 1920, denying bail to the Applicant would violate her fundamental right to a speedy trial.

28. Learned Senior Counsel submitted that Applicant - Charu Khera satisfies the 'triple test' for bail, as laid down in ***P. Chidambaram v. Directorate of Enforcement***, (2020) 13 SCC 791, (i) Deep roots in society and is not a flight risk, (ii) Evidence is entirely documentary, making witness tampering unlikely (iii) Cooperated fully with the investigation.

SUBMISSION ON BEHALF OF THE STATE

29. Learned APP for the State submitted that while the Applicants have joined the investigation under the protection of the interim orders granted by this Court, they have failed to cooperate with the investigation. It has been submitted that during interrogation, the Applicants withheld crucial information and provided evasive and incorrect replies regarding the business operations of Azure Freight and Logistics LLP. Despite repeated opportunities, they have failed to provide substantive information, thereby obstructing the investigation and failing to assist in unearthing the truth.
30. Learned APP for the State submits that during interrogation, the Applicants have consistently distanced themselves from the business operations of Azure Freight and Logistics LLP, despite being designated partners in the company. It has been submitted that their statements indicate a deliberate attempt to mislead the investigating authorities. Learned APP for the State submitted that when questioned



about their role and responsibilities within the LLP, both Applicants denied any knowledge despite their official position as partners, and stated that they merely shared OTPs and signed documents, while attributing all decision-making to co-accused Siddharth Khera, who resides in the USA.

31. Learned APP for the State further submits that the Applicants' responses regarding financial transactions, employee details, and business operations were also vague, contradictory, and strategically designed to deflect liability onto co-accused Siddharth Khera. It has been submitted that their evasive replies are an attempt to derail the investigation which is corroborated by the statement of prosecution witness Amit Goyal recorded under Section 161 Cr.P.C. on 08.01.2022, wherein he categorically stated that after the arrest of his father, Applicant - Aadhar Khera contacted him and instructed him to mislead the authorities by placing the entire blame on co-accused Siddharth Khera in the USA. This premeditated effort to fabricate a defense further demonstrates a clear intent to evade responsibility.
32. Learned APP for the State has drawn the attention of this Court to the Partnership Deed, which designates the Applicants as partners of Azure Freight and Logistics LLP. It has been submitted that under the LLP agreement, all signatories are held to be equally responsible for the acts and deeds of the company. However, during interrogation, both Applicants have attempted to absolve themselves of any liability and to shift the entire burden onto co-accused Siddharth Khera, who has not visited India since December 2020.



33. Learned APP for the State submits that the continued non-cooperation of the Applicants, despite enjoying the protection of interim relief, is obstructing the investigation and their refusal to disclose material facts and concerted attempt to mislead the investigation amount to a clear case of obstruction of justice.
34. Learned APP for the State submits that, given the serious nature of the allegations, the investigating agency must be permitted to conduct an effective and meaningful interrogation.

SUBMISSION ON BEHALF OF THE COMPLAINANT

35. Mr. Akhil Sibal, learned senior counsel for the complainant has also vehemently opposed the anticipatory bail application of the Applicants. He has submitted that the offences in the present matter have been committed over multiple jurisdictions, through cross-border transactions, resulting in economic offences amounting to approximately Rs. 400 crores against the complainant. It has been submitted the applicants had a central and significant role in the commission of these offences, making their custodial interrogation crucial. Learned senior counsel submitted that the Applicants continued to hamper the investigation by making false statements and adopting contradictory positions.
36. Learned Senior Counsel for the complainant has submitted that the present case does not attract the principles laid down in *Satender Antil* (supra) as the investigation against the accused is still pending. It is a settled principle that when an investigation is pending, despite the



filing of a charge-sheet and taking of cognizance, the police retain the power to arrest, particularly when the accused fails to cooperate. In this regard, reliance has been placed on *Bhagwan Singh v. Dilip Kumar* 2023 INSC 761, *Somraj @ Dhami v. State of NCT of Delhi*, CrI. MC 2180/2022, DHC.

37. Learned Senior Counsel for the complainant submitted that in the present case, the charge-sheet was filed solely against Ajay Khera (who was in judicial custody at the time), while explicitly stating that investigation was still pending against other co-accused, including the present Applicants who were placed in Column 12.
38. Learned Senior Counsel for the complainant submitted that the Applicants are misrepresenting that the investigation was completed and a charge-sheet was filed. In reality, the Applicants were placed in Column 12 of the charge-sheet due to an EOW Circular, which mandates further investigation before taking any final action against them.
39. Learned Senior Counsel for the complainant submitted that the complainant company is engaged in freight forwarding and has a branch in the United States of America. The co-accused, Siddharth Khera (currently absconding), was employed with the complainant in the USA. Post COVID-19, the accused engaged in grave economic offences against the complainant.
40. Learned Senior Counsel for the complainant submitted that the accused created two fraudulent entities, Azure Freight and Logistics LLP and



Azure International LLC, to misappropriate funds and siphon money from the complainant.

41. Learned Senior Counsel for the complainant submitted that the accused wrongfully accessed the proprietary information of the complainant and recruited former employees of the complainant to facilitate the commission of the crime, violating provisions of the IT Act and various other Acts.
42. Learned Senior Counsel for the complainant submitted that the accused siphoned Rs. 3.13 crores from Azure USA to Azure India, of which Charu Khera personally received Rs. 94.22 lacs. These funds were misappropriated for personal benefits and financial transactions linked to the other co-accused.
43. Learned Senior Counsel for the complainant submitted that the accused misrepresented to the clients and shipping lines of the complainant that Azure was either a subsidiary or an affiliate of the complainant, leading to the wrongful diversion of business and funds. It has been submitted that the accused used misleading tactics by continuing to use the email addresses, logos, and trade affiliations of the complainant to maintain false credibility with clients and vendors, thereby stealing contractual benefits, such as preferential rates, credit terms, and service agreements.
44. Learned Senior Counsel for the complainant submitted that the accused engaged in forgery and fabrication of valuable securities by altering



Bills of Lading, fraudulently changing the courier addresses to reroute critical documents, and accessing confidential data unauthorizedly.

45. Learned Senior Counsel for the complainant submitted that the Applicants have falsely claimed to have no role in the business affairs of Azure and have attempted to shift the burden of the crime onto the absconding accused, Siddharth Khera. However, their active involvement is evident from financial transactions, ownership documents, and communication records.
46. Learned Senior Counsel for the complainant submitted that the Applicants, despite repeated notices under Section 41A Cr.P.C., failed to cooperate with the investigation. Instead, they resorted to pretexts such as medical emergencies at locations linked to their family members.
47. Learned Senior Counsel for the complainant submitted that the Applicants have a history of destroying evidence, including deleting emails, altering digital records, and transferring company accounts to their fraudulent entities to evade detection.
48. Learned Senior Counsel for the complainant submitted that co-accused Siddharth Khera is already absconding, and proceedings under Section 82 Cr.P.C. are underway. Learned senior counsel submitted that in these circumstances, grant of anticipatory bail to the present accused persons would further frustrate the investigation.
49. Learned Senior Counsel for the complainant has submitted that the accused are misusing the interim protection granted to them by



providing evasive and contradictory answers to investigation agencies, thus hampering the uncovering of the full conspiracy. Reliance has been placed on *State Rep. By The C.B.I. v. Anil Sharma*, (1997) 7 SCC 187, and *Rupshree Majumder v. State*, Bail Application No. 66 of 2023, Delhi High Court.

FINDING AND ANALYSIS

50. I have heard learned counsels for the parties and examined their rival contentions.
51. Before examining the issues arising in the present petitions, this Court deems it appropriate to first discuss the principles behind the grant of pre-arrest bail to an accused. Section 438 of the Code of Criminal Procedure, 1973 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 subsection (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, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued 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).*
- (4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860)."*

52. It is a settled proposition of law that the Court will *inter alia* take into account following factors, while deciding an application for anticipatory bail;
- The nature and gravity of the accusation and the exact role of the accused;
 - The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
 - The possibility of the applicant to flee from justice;



- d. The possibility of the accused's likelihood to repeat similar or other offences;
- e. If the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; and
- f. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

It is pertinent to mention that Courts before granting anticipatory bail must evaluate the entire available material against the accused very carefully, and must clearly comprehend the exact role of the accused in the case so as to rule out any possibility of over-implication and false implication.

53. In ***Gurbaksh Singh Sibbia v. State of Punjab***, (1980) 2 SCC 565, the Supreme court laid down the guidelines for the Courts to take into consideration while granting an anticipatory bail. It was *inter alia* held that in regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made.
54. It was further *inter alia* held that on the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable



rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond and there are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail, which includes the nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and — the larger interests of the public or the State are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail.

55. The Apex Court further observed that it is better to leave to the High Court and the Court of Session to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do as the principles cannot be put into any straight jacket formulae.
56. The above-mentioned principles have been reiterated by the Supreme Court in the case of ***Sushila Aggarwal v. State (NCT of Delhi)***, (2020) 5 SCC 1 whereby, the Apex Court discussed the principles regarding the grant of the anticipatory bail and *inter alia* summarized 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. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

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

57. Grant of pre-arrest bail is an extraordinary power and should be exercised only in exceptional cases. This Court considers that a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation, and there should be no harassment, humiliation and unjustified detention of the accused. The Court has to also address the reasonable apprehension of tampering of the witness or apprehension of threat to the complainant.



58. The Supreme Court, in *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24, opined that ordinarily, an 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. Judicial discretion conferred upon the Court has to be properly exercised after application of mind as to the nature and gravity of the accusation and it has *inter alia* been held that in cases of economic fraud, anticipatory bail should be granted only in exceptional circumstances, where there is no possibility of tampering with evidence or obstructing justice. It was *inter alia* held as under:

“83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.”

59. In the instant case, the applicants have approached this Court after apprehending arrest in relation to FIR No.14/2022 dated 27.01.2022 registered at PS: EOW, under Sections 408/420/467/468/471/120B IPC on the complaint made by the Director, Seagull. The allegations as presented by the prosecution against the applicants, Aadhar Khera and



Charu Khera, are grave in nature and involve a well-orchestrated financial fraud resulting in the misappropriation of substantial sums of money.

60. As per the status report, the role of the Applicant - Aadhar Khera is as under;

“11. ROLE OF APPLICANT AADHAR KHERA:

Main contention of the accused in the present application is based upon his role in M/s Azure Freight and Logistics LLP. It has been emphasized that the applicant is a sleeping/formal partner in the LLP. Further it has also been claimed that the applicant was never in-charge of day-to-day affairs of the LLP and did not sign any balance sheet of Azure LLP ((Para-8.1, Para-8.2, 12 & 15). These contentions of the applicant are incorrect on the basis of the records in the following manner:

a. The applicant Aadhar Khera is a designated partner in M/s Azure Freight and Logistics LLP along with his mother Mrs. Charu Khera. This company was incorporated in November-2020.

b. The applicant and his mother Mrs. Charu Khera have contributed equal amount of Rs. 50,000/- each for incorporation of the company as total monetary value of contribution by partners in the LLP is Rs.1,00,000/-(One lac).

c. Incorporation documents filed in the ROC reflects that the email ID and the Mobile number of the entity being incorporated are aadhar.khera@gmail.com and 8396919000, respectively, which belongs to the applicant/accused Aadhar Khera. This indicates that the applicant himself had incorporated the LLP.

d. LLP Form No. 11 file for filling of the annual return of LLP for 2020- 2021 was filed under digital signature of the applicant accused who is having his DPIN No. 08961354 of the designated partner.

e. The applicant Aadhar Khera is first signatory in the bank account No. 9819439000 maintained with Kotak Mahindra bank by M's Azure Freight and Logistics LLP in which an amount of Rs. 3.13 Crores



(Aprx.) has been received from the account of M/s Azure International LLC, in which the business and funds of the complainant company were diverted as mentioned in fore-paras. Examination of the bank account of this LLP discloses that it has received most of money from Azure International LLC, only.

f. Examination of the bank statement of M/s Azure Freight and Logistics LLP and the bank account of the applicant revealed that he was regularly receiving partner's remuneration from the company i.e. M/s Azure Freight and Logistics LLP since April-2021 at the rate of Rs.1,00,000/-(One Lac) per month.

g. On 19/07/2021 the applicant Aadhar Khera has taken "Client Meet Reimbursement" of Rs. 6,830/- from M/s Azure freight and Logistics LLP which shows that he was actively involved in day to day affairs of the company.

h. As per para No. 10(i) of the LLP Agreement, "All the designated partners shall act as working partner and shall devote such time and attention in the conduct and affairs of the partnership business as the circumstances and business needs may require time to time". In view of the said provision, the submissions made by the applicant that he is only a sleeping partner in the LLP, is incorrect

i. As per para No. 10(v) of the LLP Agreement, "Each working partner shall be entitled to draw a sum not exceeding Rs.1,00,000/- per month as the remuneration or such higher or lower sum as may be mutually agreed by the partners.

j. Scrutiny of statement of A/e No. 59108396919000 maintained by Aadhar Khera with HDFC bank revealed that three amounts of Rs. 7,43,342.8, Rs. 22,56,035.85 and Rs.31,13,816.05 have been received in US dollar as foreign remittance between December-2021 and July-2022. It is suspected that this amount was received by him from accused Siddharth Khera.

k. Further examination of the bank statement of M/s Azure Freight and Logistics LLP revealed that, this company is paying salary to the ex-employees of the complainant company.

l. During further course of investigation Sh. Amit Kumar Goyal, former director of the complainant company and also ex-employee M/s Azure



Freight and Logistics LLP, stated that the applicant accused Aadhar khera along with Ajay Khera and Siddharth Khera has offered him the job in the LLP.

m. During the course of investigation statement of Sh. Siddharth Charan Jena, Ex-Director of M/s Seagull Maritime Agencies Pvt. Ltd. was recorded. In the statement Sh. Siddharth Jena stated that, Sidharth Khera started sending cash to India by initiating banking transaction from Seagull's account in the USA to Dubai based companies namely M/s Golden Coast and M/s World Vision and from there by converting incash to India, since early part of 2015. The cash was collected by Ajay Khera and Adhar Khera. The amount should be more than 1.50 to 2.0 Crores per year and cumulative Rs. 18/19Crore.

12. Though the accused Aadhar Khera has joined investigation and submitted his reply to the questionnaire. He also joined investigation of the case on 21/10/2012 after getting order for no arrest by the Hon'ble court of Id. ASJ.

13. During the course of interrogation he gave incorrect answers to the questions asked during interrogation. When, during interrogation, specific questions about his role in M/s Azure freight and logistics LLP were asked he stated that, he is a sleeping / formal partner in the LLP. Further he claimed that he was never in-charge of day-to-day affairs of the LLP and did not sign any balance sheet of Azure LLP. He further answered that he never took any salary from the LLP. All these answers are incorrect on the grounds explained in Para No. 11. Therefore, he is required to be subjected to sustained and custodial interrogation as reply to the most of the questions asked during interrogation are incorrect in view of the material collected during the investigation. In fact he has submitted wrong and misleading answers to most of the material questions.



14. Further, amount siphoned off from the complainant company and relevant forged documents are to be recovered from the accused persons.

15. In order to unearth this deep rooted conspiracy, and recovery of incriminating material i.e the amount received through hawala via Dubai, as explained above, custodial interrogation of the accused is required.

16. On the basis of the investigation conducted so far, it is submitted that applicant/accused Aadhar Khera is the Designated Partner of the company M/s Azure Freight and Logistics LLP since incorporation and having the control over the day to day affairs of the company. The money trail is to be ascertained and recovery thereof is to be effected. His custodial interrogation is required in present case to recover cheated amount and to unearth the deep rooted criminal conspiracy. Further investigation of this case is in progress.”

61. Similarly, as the per the status report, the role of the Applicant – Charu Khera is as under;

11. ROLE OF ACCUSED MRS. CHARU KHERA: -

In addition to the above during the course of investigation the following role of accused Charu Khera has come on record:

- i. The Khera family, (Ajay Khera, Charu Khera, Aadhar Khera, Siddharth Khera and Shruti Arora) under leadership of Ajay Khera created two entities by the name of M/s Azure International LLC and M/s Azure freight and Logistics LLP (in the USA and India) with an intent to defraud Seagull by forging documents, unauthorized accessing portals, cheating clients, and stealing BLs.*
- ii. As per the records, accused Aadhar Khera and Mrs. Charu Khera are designated partners in M/s Azure Freight and Logistics LLP.*



iii. From the evidences collected it has been established that the payments for the job done by the complainant company for which payments were to be received from the clients, were diverted by the accused persons by fraudulent manner in the account of M/s Azure International LLC and some part of that money was diverted to India in the bank account of M/s Azure Freight and Logistics LLP and further the amount was distributed among the accused persons.

iv. Scrutiny of bank account No. 981943900 of M/s Azure freight and Logistics LLP maintained with Kotak Mahindra Bank revealed that an amount of Rs.3.13 crores (Aprox) was credited in this account out of which more than 3.05 crores were received from the accused company namely M/s Azure International LLC. Further scrutiny of bank account No. 981943900 of M/s Azure freight and Logistics LLP maintained with Kotak Mahindra Bank revealed that, between May-2021 and September-2022 a sum of Rs.52,81,000/-(Aprox) was transferred in the account No. 59109819069000 of Mrs. Charu Khera maintained with HDFC bank out of this an amount of Rs.3,83,000/- (Aprox) was transferred in the account No. 00601050294061 of accused Ajay Khera maintained with HDFC bank, during the same period of time.

vi. Scrutiny of A/c No. 9891069000 jointly held by Mrs. Charu Khera and Ajay Khera in Kotak Mahindra Bank revealed that an amount of Rs.32 lacs (Aprx.) was credited in this account from the account of M/s Azure Freight and Logistics LLP. Scrutiny of the statement of account No. 9000009000 Jointly held by Ajay Khera and Mrs. Charu Khera revealed that an amount of Rs. 10.50 lacs (Aprx.) were credited in this account from the account of Charu Khera maintained in HDFC bank and Kotak Mahindra bank in which the funds were being received from the M/s azure Freight and Logistics LLP.

vii. Charu Khera received Rs.5000 from Ajay Khera on 2nd Oct 2020 and on the same day paid for a course fee of Freight Forwarding (submitted in ROC too). Hence Ajay Khera paid for course fees of Charu Khera.



viii. On 2nd Sept 2022, payment of Rs. 51,363 made to Ajay khera. On the same day, it was paid back to Azure by Ajay Khera and then paid back to Charu Khera.

12. It is further submitted that, Charge sheet against accused Ajay Khera has already been filed before the Hon'ble Court which is pending trial before the Court of Ld. ACMM/SE and the Hon'ble Trial Court has already taken cognizance against him.

13. In compliance of Standing Order No. 05/2022, the names of accused persons namely Siddharth Khera, Chaaru Ajay Khera, Aadhar Khera, Shruti Arora, Kristey Coley, Rachel Groogan, Zingrem Kaping, Hira Malhotra, Rajesh Jha, Ajay Tewari, Arpit Baweja, Gurprakash Singh Bagga were kept in column No. 12 of the charge sheet as investigation qua these accused/alleged persons is still continuing. However, the Hon'ble Trial Court has taken cognizance against all the accused persons except Kristey Coley and Rachel Groogan. It is also submitted that the process u/s 82 Cr.P.C. has been issued against accused Siddharth Khera.

14. It is further stated that anticipatory bail application of accused Hira Malhotra and Aadhar Khera has already been dismissed by the Hon'ble Court of Ld. ASJ/South-East, vide order dated 31/10/2022 and 1G/11/2022 respectively. Further anticipatory bail application of accused Aadhar Khera is pending before the Hon'ble Delhi High Court and next date of hearing is fixed for 26/02/2024.

15. Anticipatory bail application of the applicant has also been declined by the Hon'ble Court of Ld. ASJ/South-East, Saket Courts, New Delhi vide order dated 15/01/2024.

16. It is further submitted that during the course of investigation search was conducted at the registered office of M/s Azure Freight and Logistics LLP, in which the applicant is designated partner, but the records of the company were not found there. The records of the company are essentially required for the purpose of investigation, which are to be recovered from the applicant being designated partner.



17. The proceeds of the crime which were received by the company M/s Azure Freight and Logistics LLP and the applicant are yet to be recovered from the applicant.”

62. The Court, while entertaining the application for anticipatory bail without any doubt, is required to take into account the paramount consideration of the liberty of the individual. The purpose of legislation behind providing this jurisdiction is to ensure that there should not be any false implication or over-implication and also to ensure that in cases where custodial interrogation is not required, a person should not be unnecessarily put to any restraint. The Court is also conscious of the fact that arrest in all cases is not necessary rather, it has repeatedly been held that arrest should always be the last option/resort. The investigating agencies have been bestowed with an exemplary discretion to effect the arrest of an accused in the criminal case. However, such discretion has to be exercised within the four corners of the law and should not be allowed to be misused in any manner.
63. In ***Gurbaksh Singh Sibbia*** (supra), the Court, while enumerating the conditions for granting or refusal of anticipatory bail, specifically stated that the grounds as stated therein are only illustrative and not exhaustive. The Courts are required to take into consideration the facts and circumstances of each case and then to decide whether the applicants before them should be granted discretion of anticipatory bail or should an order has to be passed enabling the investigating agency to further investigate the offence fully and completely.



64. The Court is fully conscious of the fact that a person is presumed innocent till he has been held guilty, and therefore, the tilt of the discretion may be in favour of the prospective accused, but at the same time, the interest of the complainant or the prosecution cannot be ignored outrightly.
65. The facts in the present case are alarming in nature. Co-accused Mr. Ajay Khera was an employee of the complainant/company and as per the allegations, he later on he introduced his son Mr. Siddharth Khera, who was posted in USA Branch of the complainant/company. The allegations are that the accused persons who are members of one family i.e. the father, mother and sons and daughter-in-law, entered into a well-planned conspiracy to siphon off and divert the funds of the complainant company. They, in fact, purported alter ego of the complainant company and robbed into the business of the complainant company. Such kind of offences are very serious to the commercial and economic world and are required to be seen with the utmost seriousness. The accused persons are in such close relations that the possibility of them not giving correct information, to save each other cannot be brushed aside.
66. It has been said repeatedly that the conspiracies are hatched and executed in the dark. It is very difficult to get direct evidence in the conspiracies and more difficult, when the alleged accused persons are so closely related to each other. The case involves financial transactions and in such a case, the sustained and custodial interrogation seems to be the most vital option. The role of the accused



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persons as has been delineated and discussed above indicates very serious allegations against them. The Court is conscious of the facts that any finding or observations on the quality of probative value of the evidence may be prejudiced.

67. The submissions being advanced by the learned senior counsel for both the petitioners revolve around the premises that they were merely signatory and did not play any active role. Such an assertion cannot be accepted on its face value in the view of the material available on record. The parity with Ajay Khera also cannot be claimed at this stage. The contention of learned senior counsel for the petitioner that merely because the petitioner have joined investigation the requirement of sustained and custodial interrogation cannot be disposed with.
68. In these circumstances and in view of the discussion made above, the present applications are dismissed as devoid of any merit.

DINESH KUMAR SHARMA, J

FEBRUARY, 06 2025

Pallavi/smg