



2025:DHC:2616



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Pronounced on: 16.04.2025*+ **BAIL APPLN. 792/2025 & CRL.M.(BAIL) 381/2025****BHAVNA LATHER**

.....Petitioner

Through: Mr. Aditya Wadhwa, Mr. Siddharth Sunil, Ms. Ragini Kapoor and Mr. Arunav Sarma, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for State with SI Mukesh Chauhan PS EOW, Mandir Marg.
Mr. Sunil Dalal, Sr. Adv. with Mr. Devesh Bhatia, Mr. Nikhil Beniwal, Ms. Riya Rana and Ms. Shipra Bali, Advs. for complainants.+ **BAIL APPLN. 793/2025 & CRL.M.(BAIL) 383/2025****JOGINDER SINGH LATHER**

.....Petitioner

Through: Mr. Aditya Wadhwa, Mr. Siddharth Sunil, Ms. Ragini Kapoor and Mr. Arunav Sarma, Advs.

versus

**STATE OF NCT OF DELHI THROUGH
INVESTIGATING OFFICER**

.....Respondent

Through: Mr. Aman Usman, APP for State with SI Mukesh Chauhan PS EOW, Mandir Marg.
Mr. Sunil Dalal, Sr. Adv. with Mr. Devesh Bhatia, Mr. Nikhil Beniwal,



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Ms. Riya Rana and Ms. Shipra Bali,
Advs. for complainants.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The petitioners have filed the present applications under Section 482 BNSS, 2023 read with Section 438 CrPC seeking Anticipatory Bail in connection with FIR No. 59/2019 registered at PS-Economic Offences Wing.
2. The allegations against the petitioners as noted from the charge sheet are that the FIR was registered on the basis of the complaint made by one Mrs. Suman Solanki along with other 54 complainants against the accused company namely, M/s Prabhu Shanti Real Estate Private Ltd. It is stated in the complaint that the complainants are the home buyers and they had invested in the project namely, 'PDM HI-Tech Homes' launched by M/s Prabhu Shanti Real Estate Pvt. Ltd., situated at Sector-3A, Bahadurgarh, Jhajjar, Haryana.

It is stated that the complainants were induced to invest in the said project by flashy newspaper advertisements and hype created for the said project on social media by the accused persons. Most of the complainants had deposited 90% of the consideration amount with the accused company, however, the said amount has been misappropriated and siphoned off into the sister companies of the accused company under the shadow of delivering flats in the said project.



In concluding part of the chargesheet, it is specifically stated that the investigation has revealed that the directors of the accused company namely, Bijender Singh Lather, Joginder Singh Lather, Ram Niwas Lather and Sajjan Singh Beniwal had hatched a criminal conspiracy in the year 2008 and promoted M/s Prabhu Shanti Real Estate Private Ltd. to cheat the general public on the pretext of allotment of flats, plots etc.

It is further stated that the findings of the forensic auditor clearly show that funds collected from the homebuyers were diverted to other companies and projects. It is stated that the petitioners were directors of the accused company at the relevant time, who were directly involved in the decision-making process. In this way, all these people acted as a single unit to execute the fraud of 'PDM Hi-Tech Homes'.

3. Further facts, as noted from the record, which are relevant for deciding the present petitions seeking anticipatory bail are that the FIR was registered on 04.04.2019 and the petitioners appear to have joined the investigation on few occasions i.e. on 22.08.2019, 11.10.2019, 10.11.2020 and 20.01.2021. The petitioners also claim to have made detailed representations and supplied documents to assist the investigation.

4. It is the case of petitioner/Joginder Singh Lather that on 17.11.2020, despite the fact that he had been cooperating with the investigation, he got to know after seeing a notice in a newspaper that the learned CMM (Trial Court) vide order dated 24.02.2020 issued NBWs, and subsequently vide order dated 16.10.2020 had initiated the proceedings under Section 82 CrPC, against him (1st coercive proceedings).

5. Soon thereafter, Joginder Singh Lather filed an anticipatory bail application (1st anticipatory bail application) before the learned ASJ (North-



West) Rohini Courts. However, on 02.12.2020 the learned ASJ (North-West), Rohini while deciding the objection as to the territorial jurisdiction raised by the complainant-Suman Solanki, held that either of the court, North or North-West, has the jurisdiction to hear the applications. On 05.12.2020, hearing of the said bail application was adjourned on account of the fact the territorial jurisdiction of the concerned court had been challenged by complainant in CrI.M.C 2386/2020 before this Court.

6. On 09.12.2020, petitioner/Joginder Singh Lather also filed a CrI.M.C. 2412/2020 in this Court *inter alia* praying that the order dated 02.12.2020 to the extent that it held that the Court of the North District, Rohini Courts too had jurisdiction to entertain the bail application be set aside. The prayer was also made to set aside the order dated 05.12.2020 whereby the interim relief was denied to the petitioner by the learned ASJ (North-West) in view of the submissions made before him that this Court *vide* order dated 04.12.2020 has stayed the proceedings of the bail application in the complainant/Suman Solanki's CrI.M.C. 2386/2020.

7. In petitioner/Joginder Singh Lather's aforesaid CrI.M.C. 2412/2020, he was granted interim protection from arrest *vide* order dated 09.12.2020 subject to his not leaving the country and joining the investigation as and when required.

8. In the meanwhile, i.e., on 14.12.2020, Joginder Singh Lather sought cancellation of proceedings initiated by the learned CMM under Section 82 CrPC *vide* aforesaid order 16.10.2020. On few dates matter was adjourned. On 15.01.2021 the learned CMM yet again adjourned the matter and did not decide Joginder Singh Lather's application seeking cancellation of proceedings initiated under Section 82 CrPC. Feeling aggrieved by the



aforesaid two orders, the petitioner/Joginder Singh Lather filed another CrI.M.C. 217/2021 *inter alia* praying for quashing/setting aside of order dated 16.10.2020 and 15.01.2021 passed by the learned CMM/Trial Court.

9. It is the case of the petitioner/Joginder Singh Lather that on numerous occasions i.e., on 20.01.2021, 10.03.2021, 10.09.2021 and 07.10.2021, he joined the investigation. He also entered appearance before the learned Trial Court either himself or through counsel on 15.01.2021, 03.02.2021, 20.02.2021, 05.03.2021, 27.03.2021, 21.06.2021, 07.07.2021, 27.10.2021 and 28.10.2021.

10. On 09.10.2021 1st anticipatory bail application of Joginder Singh Lather was disposed of due to lack of territorial jurisdiction.

11. On 28.10.2021, the learned Trial Court dismissed the application filed by Joginder Singh Lather seeking cancellation of process. Thereafter, on 02.11.2021, basis the application filed by IO, the learned Trial Court again issued NBWs against Joginder Singh Lather. Thereafter, on 30.11.2021 the learned Trial Court issued fresh proceedings under Section 82 CrPC (2nd coercive proceedings).

12. Aggrieved by orders dated 28.10.2021, 02.11.2021 and 30.11.2021, petitioner/Joginder Singh Lather filed another CrI.M.C. 14/2022. *Vide* order dated 06.01.2022, this Court stayed the operation of the 2nd coercive proceedings under Section 82 CrPC till next date of hearing, and the said interim protection continued thereafter on numerous dates.

13. Sequel to above, the petitioner/Joginder Singh Lather moved 2nd anticipatory bail application sometime in the second half of January, 2022. On 27.01.2022, the said 2nd anticipatory bail application of Joginder Singh Lather was dismissed. Aggrieved thereupon, Joginder Singh Lather filed his



overall 3rd anticipatory application (*1st anticipatory bail application before this Court*) on 03.03.2022. The same was, however, withdrawn by petitioner/Joginder Singh Lather on 20.02.2024 with liberty to approach the learned Trial Court.

14. On or about 29.04.2022, upon completion of investigation, the chargesheet was filed before the learned Trial Court under Sections 406/420/120B of IPC. Thereafter, it appears that on 03.08.2023 the complainants filed a protest petition before the learned Trial Court praying to take cognizance of additional offences under Sections 409/467/468/471 IPC against the accused persons including the petitioners herein.

15. In the meanwhile, by way of judgment dated 19.11.2022 passed in CrI.M.C. 217/2021, this Court set aside the 1st coercive proceedings under Section 82 CrPC which were initiated by the learned CMM against Joginder Singh Lather *vide* order dated 16.10.2020.

16. The learned CMM *vide* order dated 11.08.2023 took cognizance of offences under Sections 409/420/467/471/120B IPC. Accordingly, summons was issued against Bhavna Lather, whereas NBWs were issued against other accused persons including petitioner/Joginder Singh Lather. The relevant extract from the order dated 11.08.2023 reads thus:

“ In view of above said facts and circumstances, the IO is directed to file explanation that why action should not be recommended against him.

Further, the accused persons did not join the investigation and they are allegedly not available on their addresses, therefore, in the considered opinion of this court, the presence of accused persons (except accused BhawnaLathar) cannot be secured except by issuance of NBWs against them. According to IO, no NBWs or process U/s 82 Cr.PC were obtained against Bhawna Lathar during



investigation, therefore, it will be appropriate that only summons be issued against her.

In view of the fact that process U/s 82 CrPC were executed / issued against accused persons except accused Bhawna Lathar and the said accused persons are not available on their addresses, therefore, issue NBWs against accused persons except accused Bhawna Lathar through concerned IO/SHO returnable on the date fixed.

Issue summons to accused Bhawna Lathar through concerned IO/SHO returnable on 15.09.2023.”

17. The accused persons including the petitioners herein filed separate revision petitions assailing the order dated 11.08.2023 passed by the learned CMM. *Vide* order dated 14.09.2023, the learned Revisional Court stayed the operation of the order dated 11.08.2023. However, subsequently *vide* judgment dated 05.06.2024, the Revision Petitions were dismissed. The learned Revisional Court, while observing that the accused persons are not available at their addresses and further noting the submission of I.O. that the presence of accused persons cannot be secured except by way of issuance of NBWs, and that the petitioner/Bhavna Lather did not cooperate during the investigation, directed the learned Trial Court to take appropriate steps in accordance with law.

18. Accordingly, *vide* order dated 10.07.2024, the learned CMM issued NBWs against the accused persons including the petitioners herein.

19. To be noted that this Court, in the meanwhile, *vide* order dated 14.03.2024 in CrI.M.C. 14/2022 had set aside the 2nd coercive proceedings under Section 82 Cr.P.C., which were initiated against the petitioner / Joginder Singh Lather by the learned Trial Court *vide* orders dated 28.10.2021, 02.11.2021 and 31.11.2021.



20. Mr. Aditya Wadhwa, the learned counsel for the petitioners submits that the apprehension of the petitioners stems from the learned Trial Court's wrongful initiation of coercive proceedings and erroneous invocation of additional sections at the stage of taking cognizance.

21. He submits that the petitioners have duly cooperated with the investigation and on numerous occasions joined the investigation. According to him, it is not the case of the Investigating Agency that the petitioners did not join the investigation. The chargesheet in the present case has been filed against the petitioners as a non-arrest chargesheet. The investigation *qua* the petitioners is complete and there is no requirement for their custody.

22. He submits that it is trite law that anticipatory bail can be granted even after filing of a chargesheet or cognizance thereof has been taken. In support of this submission, he has placed reliance on the following decisions: - i) *Mahender Gambhir and ors. vs. SFIO, Bail Appln. 3414/2022*; (ii) *Vinod Kumar Sharma and Another vs. State of Uttar Pradesh and Another, (2021) SCC OnLine SC 3225*; (iii) *Bharat Chaudhary vs. State of Bihar, (2003) 8 SCC 77*, (iv) *Kailash Chand Jain vs. State of NCT of Delhi, 2018:DHC:2334* and (v) *Musheer Alam vs. State of Uttar Pradesh, SLP (Crl) No. 18081/2024*, order dated 17.01.2025.

23. By placing reliance on decisions of Hon'ble Supreme Court in *Shri Gurbaksh Singh Sibbia & Ors. vs. State of Punjab, (1980) 2 SCC 565* and *Siddharam Satlingappa Mhetre vs. State of Maharashtra & Ors., (2022) 1 SCC 676*, Mr. Wadhwa submits that the petitioners are entitled to the benefit of presumption of innocence at this stage.

24. He submits that no coercive proceedings were ever initiated against



Bhavna Lather during the investigation.

25. He submits that the petitioners having joined the investigation on previous occasions and having filed the present applications, shows that they wish to join the trial to prove their innocence. He contends that the petitioners are also not a flight risk and the very fact that petitioners have filed CrI.M.C. 7695/2024 challenging the order dated 05.06.2024 of the learned Revisional Court, as well as the order dated 11.08.2023 passed by the learned CMM, demonstrates that they are not absconders.

26. He submits that it is trite law that ordinarily when an accused is not arrested during the investigation and the chargesheet is filed without arrest, they ought not to be taken into custody upon entering appearance pursuant to summons issued by the Trial Court.

27. He submits that a perusal of order dated 11.08.2023 demonstrates that only summons was issued against Bhavna Lather, whereafter, she filed the revision petition. He submits that upon dismissal of the revision petition on 05.06.2024, the Trial Court has erroneously directly issued NBWs against Bhavna Lather *vide* order dated 10.07.2024 and initiated proceedings under Section 82 CrPC on 27.09.2024.

28. He further submits that in the revision petition challenging the order dated 11.08.2023, the learned Revisional Court on 14.09.2023 had granted stay, which was operational till 05.06.2024 and therefore, there was no occasion for Bhavna Lather to join proceedings in the Trial Court, and thus, her non-appearance could not have been taken adversely.

29. He submits that the Trial Court also erred in not considering that not only petitioner/Bhavna Lather duly cooperated during investigation but upon dismissal of revision petition on 05.06.2024, also filed a quashing petition



being CrI.M.C. 7695/2024 before this Court. Therefore, it cannot be said that Bhavna Lather was evading any process of court and was absconding.

30. He submits that against petitioner/Joginder Singh Lather, the prosecution has merely contended that he did not cooperate with the investigation and did not give satisfactory answers. It is trite law that mere non-cooperation or giving non-satisfactory answers cannot be the basis to seek arrest of an accused person.

31. He submits as petitioner/Joginder Singh Lather had entered appearance before the Trial Court either himself or through counsel on 15.01.2021, 03.02.2021, 20.02.2021, 05.03.2021, 27.03.2021, 21.06.2021, 07.07.2021, 27.10.2021 and 28.10.2021 and this Court had also set aside two prior set of coercive proceedings against him. Moreover, the factum of Joginder Singh Lather joining the investigation has also been affirmed by this Court.

32. He submits the fact that Joginder Singh Lather had joined the investigation; that this Court had set aside two prior set of coercive proceedings against him and that he has also filed a CrI.M.C. 7695/2024 along with Bhavna Lather before this Court, shows that petitioner/Joginder Singh Lather is also not an absconder.

33. He further submits that filing of previous anticipatory bail application by Joginder Singh Lather and its subsequent withdrawal is not a bar to a subsequent anticipatory bail application filed in changed circumstances as it is trite law that there cannot be any estoppel against statutory rights. To buttress this submission, he has placed reliance on the following decisions :-

- (i) *CIT (Central) vs. B.N. Bhattacharjee and Another*, AIR 1979 SC 1725;
- (ii) *Corpn of Madras vs J. Periyannayagi and Ors.*, 2007 SCC OnLine Mad



401 and (iii) *Christian Michel James vs. Directorate of Enforcement, Bail Appln. 2566/2021.*

34. He submits that direct issuance of NBWs against petitioner/Joginder Singh Lather vide order dated 11.08.2023 is in teeth of settled law that generally the attendance of accused persons ought to be effected through summons and only in the event of non-appearance should the courts resort to issuance of bailable-warrants at first, followed by NBWs if required. To buttress his contention, he places reliance on the decisions in ***Inder Mohan Goswami & Anr. v State of Uttaranchal & Ors., (2007) 12 SCC 1.***

35. He submits that even subsequent coercive proceedings initiated vide orders dated 10.07.2024 and 27.09.2024 are erroneous as they fail to note that the revision petition filed by Joginder Singh Lather was dismissed only on 05.06.2024 and thereafter, he had filed a CrI.M.C. 7695/2024 before this Court, which is still pending adjudication.

36. Lastly, he submits that even on merits the ingredients of offences under Sections 406/409/420/463 IPC are not made out against the petitioners.

37. On the other hand, Mr. Sunil Dalal, learned Senior Counsel for the complainants opposes the applications under consideration. He submits that the accused company has collected more than Rs.155 Crores from innocent home buyers / complainants and siphoned off the same in their other projects in furtherance of their dishonest intention. He submits that as the collected monies were not utilized on the project, the accused company could not handover the possession of the flats on time.

38. He submits that the petitioner/Joginder Singh Lather moved an Anticipatory Bail application before learned ASJ, Special Judge, POCSO



Act at Rohini Courts, Delhi which was dismissed as withdrawn on 14.09.2020. Subsequently, he applied for fresh Anticipatory Bail before learned ASJ (North-West), Rohini Courts, Delhi, which also came to be dismissed.

39. Mr. Dalal further submits that it is the discretion of the learned Trial Court to issue summons or warrants having regard to the facts and circumstances of each case. He contends that the learned Trial Court considering repeated non-appearance of the petitioners, issued NBWs *vide* order dated 10.07.2024 and subsequently initiated proceedings under section 82 CrPC *vide* order dated 27.09.2024.

40. Mr. Aman Usman, the learned APP submits that insofar as the petitioner Joginder Singh Lather is concerned, though Section 41A CrPC notices were issued to him and he joined the investigation, but he remained non-cooperative. He did not provide the requisite information for getting the trails of the investments of the complainants and tried to shift the liabilities to other Directors.

41. He submits that non-cooperation of petitioner/Joginder Singh Lather is evident from the fact that repeatedly coercive steps were initiated against him.

42. He submits that the petitioners have remained non-cooperative throughout the investigation. Hence, conduct of the accused persons has remained suspicious and inappropriate. It is accordingly prayed that the present applications should be dismissed.

43. I have heard the learned counsel for the petitioners, the learned senior counsel for complainants, as well as learned APP for the State and have gone through the material on record.



44. In sum and substance, Mr. Wadhwa has argued that – (i) the petitioners have duly joined the investigation on numerous occasions and cooperated with the investigation at all stages; (ii) the petitioners were never arrested during entire process of the investigation; (iii) the learned Trial Court erred in issuing NBWs without first seeking issuance of summons/bailable warrants against petitioners; (iv) the offences of which cognizance has been taken are not made out against the petitioners; and (v) the chargesheet was filed against the petitioners as a non-arrest chargesheet.

45. To be noted that both the petitioners, before filing of the present bail applications, had filed CrI.M.C. 7695/2024 before this Court challenging the learned Revisional Court's order dated 05.06.2024, whereby the revision petitions of the petitioners filed against the learned CMM's order dated 11.08.2023 taking cognizance and issuance of summons to petitioner/Bhavna Lather and issuance of NBWs against petitioner/Joginder Singh Lather, was dismissed. The said CrI.M.C. 7695/2024 is still pending adjudication and operation of the aforesaid orders dated 11.08.2023 and 05.06.2024 have not been stayed. Rather, subsequently, i.e., after filing of aforesaid CrI.M.C., the proceedings under Section 82 CrPC have also been initiated by the learned CMM *vide* his order dated 27.09.2024.

46. Incidentally, the present applications seeking anticipatory bail have been filed by the petitioner on 20.02.2025.

47. Therefore, the question which confronts the Court is, whether the Anticipatory Bail applications should be granted after issuance of NBWs, and initiation of proceedings under Section 82 CrPC against petitioners herein.

48. The answer is not far to seek. In ***Srikant Upadhyay & Ors. v. State of***



Bihar & Anr., 2024 SCC OnLine SC 282, the Hon'ble Supreme Court was confronted with the issue that whether pending the application of pre-arrest bail, the proclamation under Section 82 CrPC could have been issued and whether the anticipatory bail could be declined on account of issuance of such proclamation. The Hon'ble Supreme Court observed that once the court issues summons to a person, he is bound to submit himself to the authority of law. It only means that though he will still be at liberty, rather, in his right, to take recourse to the legal remedies available only in accordance with law, but not in its defiance. It was held that when warrant of arrest is issued or proclamation proceedings are initiated, the accused would not be entitled to invoke, except in exceptional cases, the extraordinary power of the court to grant anticipatory bail. It was further observed that granting of anticipatory bail, unlike regular bail, is certainly not the rule. The relevant part of the decision reads thus:

25. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the



extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.

26. The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance ofailable warrants even when their co-accused, after the issuance ofailable warrants, applied and obtained regular bail. Though the appellants filed an application, which they themselves described as “bail-cum-surrender application” on 23.08.2022, they got it withdrawn on the fear of being arrested. Even after the issuance of nonailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 82 Cr. P.C., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail.

(emphasis supplied)

49. The Hon’ble Supreme Court in ***State of Haryana v. Dharamraj, (2023) 17 SCC 510***, after noting its earlier *dicta* in ***Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730***, in unequivocal terms has held that a proclaimed offender is not entitled to Anticipatory Bail. However, the Hon’ble Supreme Court also expounded that in exceptional and rare cases, the Supreme Court and the High Court being Constitutional Courts can consider a plea seeking Anticipatory Bail, despite an accused person being declared as a proclaimed offender. The relevant paras of the said decision reads thus:

“16. What the High Court (also) lost sight of was that the respondent was a declared proclaimed offender. The High Court notes, at para 28, that it was not dealing with the prayer seeking quashing of the proclamation proceedings as the same were not made part of the petition before it. As things were, the respondent



was declared a proclaimed offender on 5.2.2021, and sought anticipatory bail from the High Court only in October 2021. As such, it was not correct for the High Court to brush aside such factum, on the basis of averments alone, purporting to explain the backdrop of such declaration by mere advertence to a similar sounding name, in the petition before it, as recorded at paras 9 and 10 of the impugned order¹. The declaration of the respondent as a proclaimed offender, and such declaration subsisting on the date of the impugned order, we are unable to agree with the High Court that the respondent was entitled to "reform and course correct".

17. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under Section 438 CrPC should not have been entertained, as he was a proclaimed offender.

18. We may note that in *Lavesh v. State (NCT of Delhi)*, this Court was categoric against grant of anticipatory bail to a proclaimed offender. In the same vein, following *Lavesh* is the decision in *State of M.P. v. Pradeep Sharma*, where this Court emphasised that a proclaimed offender would not be entitled to anticipatory bail. Of course, in an exceptional and rare case, this Court or the High Courts can consider a plea seeking anticipatory bail, despite the applicant being a proclaimed offender, given that the Supreme Court and High Courts are constitutional courts. However, no exceptional situation arises in the case at hand."

(emphasis supplied)

50. In this regard reference may also be had to the recent decision of Hon'ble Supreme Court in *Serious Fraud Investigation Office vs. Aditya Sarda*, 2025 SCC OnLine SC 764 wherein the Hon'ble Supreme Court was confronted with somewhat similar situation. The court observed that economic offences constitute a class apart as they involve huge loss of public funds and such offences need to be viewed seriously, especially, at the stage of entertaining anticipatory bail application of persons accused of



economic offences. It was further observed that even if the accused has not been arrested during investigation, still it is the discretion of the court taking cognizance of the offence to issue warrants or summons, as it thinks fit. Referring to the earlier decision of Hon'ble three Judges Bench in case of ***Inder Mohan Goswami*** (supra), the Hon'ble Supreme Court explained that in the said decision, it has been held that court is empowered to issue even a non-bailable warrant to bring a person to the court, when it is reasonable for the court to believe that the person will not voluntarily appear in the court or the police authorities are unable to find the person to serve him with the summons. It was further held that there cannot be a strait jacket formula to first issue summons even in case of a warrant case, irrespective of the gravity or seriousness of the offence. The Hon'ble Apex Court also observed that the High Courts while considering anticipatory bail applications should also consider the factum of issuance of non-bailable warrants and initiation of proclamation proceedings seriously and not casually. The relevant extract from the decision reads as under:

*“23. In view of the above settled legal position, it is no more res integra that economic offences constitute a class apart, as they have deep rooted conspiracies involving huge loss of public funds, and therefore such offences need to be viewed seriously. They are considered as grave and serious offences affecting the economy of the country as a whole and thereby posing serious threats to the financial health of the country. **The law aids only the abiding and certainly not its resistants. When after the investigation, a chargesheet is submitted in the court, or in a complaint case, summons or warrant is issued to the accused, he is bound to submit himself to the authority of law. If he is creating hindrances in the execution of warrants or is concealing himself and does not submit to the authority of law, he must not be granted the privilege of anticipatory bail, particularly when the Court taking cognizance has found him prima facie involved in serious***



economic offences or heinous offences. In such cases when the court has reason to believe that the person against whom the warrant has been issued has absconded or is concealing himself so that warrant could not be executed, the concerned court would be perfectly justified in initiating the proclamation proceedings against him under Section 82 Cr.P.C. The High Courts should also consider the factum of issuance of non-bailable warrants and initiation of proclamation proceedings seriously and not casually, while considering the anticipatory bail application of such accused.

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27. In none of the impugned orders, the High Court has bothered to look into the proceedings conducted, and the detailed orders passed by the Special Court for securing the presence of the Respondents - Accused. It cannot be gainsaid that the judicial time of every court, even of Magistrate's Court is as precious and valuable as that of the High Courts and the Supreme Court. The accused are duty bound to cooperate the trial courts in proceeding further with the cases and bound to remain present in the Court as and when required by the Court. Not allowing the Courts to proceed further with the cases by avoiding execution of summons or warrants, disobeying the orders of the Court, and trying to delay the proceedings by hook or crook, would certainly amount to interfering with and causing obstruction in the administration of justice. As held in Srikant Upadhyay's case (supra), when warrant of arrest is issued or proclamation proceedings are initiated, the accused would not be entitled to invoke, except in exceptional cases, the extraordinary power of the court to grant anticipatory bail. Granting anticipatory bail is certainly not the rule. The respondents-accused, who have continuously avoided to follow the due process of law, by avoiding attendance in the Court, by concealing themselves and thereby attempting to derail the proceedings, would not be entitled to the anticipatory bail. If the Rule of Law is to prevail in the society, every person would have to abide by the law, respect the law and follow the due process of law.

28. A faint attempt was made by the learned counsels for the Respondents to rely upon the decision in case of Tarsem Lal v. Directorate of Enforcement Jalandhar Zonal Office⁹, to submit that



*if the respondents were not arrested by the SFIO during the course of investigation till the filing of the complaint, the Special Court while taking cognizance of the alleged offences should have issued a summons only to the respondents-accused and not a warrant. The said submission is bereft of merits. As discussed earlier, as per Section 204, Cr.P.C. in a complaint case, which appears to be a warrant case, the Court taking cognizance of the offence, has the discretion to issue warrant or summons as it thinks fit, for causing the accused to be brought or to appear before it. As held by three Judge Bench of this Court in case of Inder Mohan Goswami (supra), the Court is empowered to issue even a nonbailable warrant to bring a person to the Court, when it is reasonable for the Court to believe that the person will not voluntarily appear in the Court or the police authorities are unable to find the person to serve him with a summons. **There cannot be a strait jacket formula, as sought to be submitted by the learned advocates for the Respondents that the Court must first issue a summons even in case of a warrant case, irrespective of the gravity or seriousness of the offence. As well settled by now, whether the attendance of the accused can be best secured by issuing a bailable warrant or non-bailable warrant, would be a matter, which entirely rests at the discretion of the concerned Court.** Although the discretion should be exercised judiciously, diverse considerations such as the nature and seriousness of the offence, the circumstances peculiar to the accused, possibility of his concealing or absconding, larger interest of public and state etc. also must be seriously considered by the court.*

29. In the instant case, the Special Court considering the seriousness of the alleged offences had initially issued bailable warrants, however, the Respondents kept on avoiding the execution of such warrants and did not appear before the Special Court though fully aware about the pendency of the complaint proceedings against them. The Special Court therefore had to pass detailed orders from time to time for the issuance of non-bailable warrants, and thereafter had also initiated the Proclamation proceedings under Section 82 of the Code, for requiring respondents to appear before it. The High Court however without paying any heed to the proceedings conducted by the Special Court against the respondents, and ignoring the well settled legal position, granted anticipatory bail to the Respondents vide the impugned orders. As discussed earlier, the



said Orders being perverse and untenable at law, cannot be allowed to be sustained, and deserve to be set aside.

30. In that view of the matter, the respective impugned orders dated 29.03.2023 and 20.04.2023 passed by the High Court granting anticipatory bail to the concerned accused who are the respondents in these Appeals, are set aside. The respondents-accused are directed to surrender themselves before the Special Court in one week from today. It is needless to mention that their bail applications as and when filed by them shall be decided by the Special Court in accordance with law. We clarify that we have not expressed any opinion on the merits of the case”

(emphasis supplied)

51. Now coming back to the facts of the case, notably, *vide* order dated 14.09.2023, the learned Revisional Court had initially stayed the operation of order dated 11.08.2023 passed by the learned Trial Court, however, the same was vacated by the learned Revisional Court *vide* order dated 05.06.2024, observing that the petitioners were non-cooperative during the investigation and directed the learned Trial Court to take action against the petitioners in accordance with law. Resultantly, *vide* order dated 10.07.2024, NBWs were issued against the petitioners which could not be executed.

52. It is thereafter on 26.09.2024, that the CrI.M.C. 7695/2024 challenging the order dated 11.08.2023 of the Trial Court and order dated 05.06.2024 of the Revisional Court was filed. On the first date of hearing, i.e., on 27.09.2024, no interim protection was granted to the petitioners. However, on the very same day i.e. on 27.09.2024, the learned Trial Court initiated process under Section 82 CrPC against the petitioners.

53. It is as late as on 20.02.2025 that the petitioners filed the present applications seeking Anticipatory Bail, which means that for around 8



months and 15 days¹, the petitioners were evading the process of law.

54. It is evident that even after initiation of proceedings under Section 82 CrPC on 27.09.2024, the petitioners waited for five long months for filing the present applications. Even after dismissal of the revision petition on 05.06.2024, petitioners did not challenge the said order for around 3 months and 20 days and for reasons best known to them the petitioners chose not to appear before the learned Trial Court after dismissal of their revision petitions.

55. Therefore, the conduct of the petitioners does not bring their case under the exceptional and rare circumstances warranting grant of anticipatory bail to them despite issuance of NBWs and initiation of proceedings under Section 82 CrPC against them.

56. Incidentally, the order dated 11.08.2023² passed by the learned Trial Court and order dated 05.06.2024³ passed by the learned Revisional Court are under challenge before this Court in CrI.M.C. 7695/2024 and there is no stay operating on the said orders. Even the orders dated 10.07.2024⁴ and 27.09.2024⁵ passed by the learned Trial Court issuing NBWs, and initiating process under Section 82 CrPC, respectively, against the petitioners, as admitted by Mr. Wadhwa, are premised on order dated 05.06.2024, which is a subject matter of challenge in CrI.M.C. 7695/2024. The orders dated 10.07.2024 and 27.09.2024 are also under challenge before this Court in separate petitions i.e. CrI.M.C. 1269/2025 filed by petitioner/Joginder Singh Lather and CrI.M.C. 1276/2025 filed by petitioner/Bhavna Lather and on the

¹ Counted from 05.06.2024, when the learned ASJ dismissed the Criminal Revision Petitions filed by the petitioners against the order dated 11.08.2023 taking cognizance.

² Order taking cognizance by learned CMM.

³ Order dismissing Criminal Revision against order dated 11.08.2023.

⁴ Order issuing NBWs against petitioners by learned CJM.

⁵ Order initiating process under Section 82 CrPC against the petitioners by learned JMFC.



said orders too, there is no stay operating. Therefore, while deciding petitioners' plea of anticipatory bail, this Court cannot embark upon an enquiry into the correctness or legality of order dated 05.06.2024 passed by the learned Revisional Court and orders dated 10.07.2024 and 27.09.2024 passed by learned CJM and JMFC, respectively.

57. At this juncture, apt would it be to advert to the decisions relied upon by Mr. Wadhwa as mentioned in para 22 above in order to contend that application for anticipatory bail can be entertained even after filing of a chargesheet or cognizance of offence has been taken. There is no quarrel to the said proposition, but this Court, as noted in para 47 above, is confronted with the question as to whether after issuance of NBWs and initiation of proceedings under Section 82 CrPC, anticipatory bail can be granted to the petitioners, and since the answer to the said question, in the facts and circumstances of the present case, has been found in negative, therefore, the reliance placed by Mr. Wadhwa on the said decisions is misconceived and completely irrelevant.

58. Though reliance has also been placed by Mr. Wadhwa on the decision of *Inder Mohan Goswami* (supra) to contend that the court should refrain from issuing NBWs at the first or second instance, suffice it to note that the Hon'ble Supreme Court in *Aditya Sarda* (supra) has observed while explaining the decision in *Inder Mohan Goswami* (supra) that the court is empowered to issue even a non-bailable warrant to bring a person to the court when he does not appear voluntarily or the police authorities are unable to find a person to serve him with the summons.

59. Insofar as reliance placed by the petitioners on the decisions: (i) *Mahender Gambhir* (supra); (ii) *Siddharth vs. State of Uttar Pradesh and*



Anr., (2022) 1 SCC 676; (iii) Satender Kumar Antil vs. CBI and Ors., 2022 SCC OnLine SC 825; (iv) Komal Chadha vs. SFIO, Bail Appln. 1740/2022, (v) Rana Kapoor vs. Directorate of Enforcement, Bail Appln. 559/2022 and (vi) Taranjeet Singh Bagga vs. SFIO, 2023 SCC OnLine Del 893, to contend that there was no occasion for the court to direct the arrest of the petitioners since they had not been arrested by the investigating agency either during the investigation or upon filing of the chargesheet, are concerned, it may be reiterated at the cost of repetition that in a warrant case it is the discretion of the court either to issue summons or warrants to secure the attendance of the accused as held by the Hon'ble Supreme Court in *Aditya Sarda* (supra). Further, the exercise of such discretion by the learned Trial Court is already under challenge by way of separate petitions and the fact remains that the NBWs, as well as, the process under Section 82 CrPC, have not been cancelled and set aside till date. For the same reason, the submissions of Mr. Wadhwa as summarised in para 44 above, which essentially challenges the exercise of discretion by the learned Trial Court for issuance of NBWs and initiation of coercive process under Section 82 of CrPC, will not assume any relevance in the present applications.

60. In view of the above discussion, the present anticipatory bail applications alongwith pending applications are dismissed and interim protection granted *vide* order dated 28.02.2025 stands vacated.

61. The applications stand disposed of.

VIKAS MAHAJAN, J

APRIL 16, 2025/N.S. ASWAL