



2025:DHC:4999



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

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Reserved on: 30th May, 2025**Pronounced on:** 19th June, 2025+ **BAIL APPLN. 1183/2025 & CRL.M.(BAIL) 649/2025****JAGADISH DAS****THROUGH ITS PAROKAR**

.....Petitioner

Through: Mr. Amit Chadha, Senior
Counsel with Mr. Counsel
(appearance not given).

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP.

CORAM:**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. This is an application for grant of anticipatory bail, filed on behalf of petitioner in case FIR No. 88/2022 dated 06.07.2022, Economic Offences Wing, Mandir Marg, New Delhi under Sections 409/420/120-B IPC.

2. As per the allegations, the complainant-firm, Taj Exports purchased 26 Kgs gold of 24 karats from Yes Bank after paying total amount of Rs. 9,66,80,104/-. Yes Bank delivered the purchased questioned gold bars through its hired companies-M/s Brinks India Private Limited and M/s Securitrans India Private Limited to the



authorized persons cum employees of alleged company-M/s Jewels Creation Private Limited. The gold bars were handed over to Jagadish Das, who is the Director of M/s Jewels Creation Private Limited for making jewellery articles. The jewellery of 16131.440 Kgs of gold was made out of 26 Kgs gold and handed over to complainant-firm. Accused Jagadish Das neither made jewellery of the balance 9868.560 gms gold, nor returned the same to the complainant/firm-M/s Taj Exports.

3. Petitioner did not join the investigation and evaded his arrest and was declared a proclaimed person by the trial Court vide order dated 23.10.2024. Section 174A IPC has also been invoked against the petitioner. Charge sheet has been filed against the petitioner under Sections 409/420/174A IPC before the Court of learned CJM, Central District.

4. Mr. Amit Chadha, learned Senior Counsel appearing for the petitioner submits that petitioner is a renowned goldsmith with a longstanding civil/commercial relationship with the complainant and the dispute arose from a business dealing, thereby lacking criminal intent. The FIR is alleged to be an abuse of criminal law for coercive recovery. It has been submitted that persons alleged to have received the gold were not the employees of the company of the petitioner. It is submitted that 26 Kgs of gold was never delivered to the petitioner. The same was delivered to some other persons, namely, Mr. Arup Bhuiya and Mr. Ranjan Mitra, who are unrelated to the petitioner. The gold was delivered to the agents of the complainant i.e. Mr. Arup



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Bhuiya and Mr. Ranjan Mitra through delivery partners of Yes Bank i.e. M/s Brinks India Private Limited and M/s Securitrans India Private Limited. Even though petitioner is a goldsmith and has business dealings with the complainant since 2005, but had never taken the delivery of gold from M/s Brinks India Private Limited and M/s Securitrans India Private Limited. There is no documentary evidence to substantiate any employer-employee relationship of the petitioner with the persons who took the delivery of the alleged gold.

5. It is further submitted that complainant himself acknowledged in a letter to the Investigating Officer, dated 03.10.2024 that he has retained petitioner's original property documents, pending the settlement of dues, thereby indicating monetary dispute rather than criminal wrong. Even before the registration of the FIR, the petitioner lodged a complaint dated 26.03.2021 at Dum Dum Police Station, Kolkata against the complainant regarding non return of property documents. It is also submitted that complainant's arrangement with Yes Bank shows that multiple vendors, including the petitioner were authorized to collect bullion, as confirmed from Axis Bank and accompanying delivery challans.

6. It has been further submitted that prosecution served all the processes viz notices under Section 41A Cr.P.C, NBWs, proclamation under Section 82 Cr.P.C on the same address i.e. 203, R.N. Tagore Road, Paragans, North Kolkata, West Bengal. Such premises has been lying locked since last about 1.5 years and no one has been seen at the house. It is submitted that charge sheet reflects that there are eight



other addresses of the petitioner available with the Investigating Officer, but no warrants/notices or summons were served on those addresses. Petitioner was unaware of the proceedings until February, 2025. The trial Court mechanically passed the order for issuance of NBWs, process under Section 82 Cr.P.C. and wrongly declared the petitioner as proclaimed person in a cavalier manner. The mandatory procedure under Section 78 and 79 Cr.P.C. with regard to the service of warrants was not adhered, and therefore, the entire proceedings are vitiated.

7. Per contra, the learned APP appearing on behalf of State, while referring to the status report, submits that petitioner is the Director of M/s JD Jewels Creation Pvt. Ltd. and Mr. Arup Bhuiya and Mr. Ranjan Mitra are his associates/employees who were appointed by the petitioner to collect bullion on his behalf from the logistic services of M/s Brinks India Pvt. Ltd. and M/s Securitrans India Pvt. Ltd. as apparent from the transactions of gold delivery details in the status report. He contends that despite multiple follow-ups, petitioner failed to return the remaining 9868.560 gms of gold to the complainant and despite issuance of NBWs and proceedings under Section 82 Cr.P.C, he refused to appear before the Court, thereby portraying his cavalier attitude and thus, he is not entitled for the grant of bail.

8. In rebuttal, learned Senior Counsel submits that Constitutional Courts can grant anticipatory bail in exceptional circumstances and proclamation under Section 82 Cr.P.C does not create an absolute bar.



9. As per the status report, in the year 2019, the petitioner and his wife Sutpa Das, being Directors of M/s JD Jewels Creation Pvt. Ltd., approached the complainant-firm for procurement of job-work of gold jewellery. They assured to complete the job-work with sincerity and without fault in preparing the jewellery articles. On their assurance, complainant-firm agreed to allocate the job-work to the petitioner.

10. The complainant-firm allocated the job-work to the petitioner-company from time to time. The investigation has revealed that complainant-firm, which purchased 26 Kgs of gold from Yes Bank delivered the gold bars through its hired companies i.e. M/s Brinks India Private Limited and M/s Securitrans India Private Limited to M/s JD Jewels Creation Pvt. Ltd. through its authorised persons cum employees. Jewellery of 16131.440 Kgs of gold was made out of 26 Kgs gold and handed over to the complainant-firm but petitioner neither made jewellery of the remaining 9868.560 gms of gold, nor returned the same to the complainant-firm.

11. During investigation, the complainant-firm provided all the relevant documents/delivery challans/ledgers regarding purchase of gold from Yes Bank and its delivery to M/s JD Jewels Creation Pvt. Ltd. through its hired agencies i.e. M/s Brinks India Private Limited and M/s Securitrans India Private Limited. The status report further reveals that M/s JD Jewels Creation Pvt. Ltd sent the confirmation to the complainant regarding receipt of questioned gold bars.

12. In reply to the notice under Section 91 Cr.P.C, Yes Bank confirmed that the complainant-firm had purchased 26 Kgs gold and



the purchased gold was delivered to the accused-company through its two hired agencies i.e. M/s Brinks India Private Limited and M/s Securitrans India Private Limited.

13. In reply to notice under Section 91 Cr.P.C, M/s Brinks India Private Limited sent reply and provided certified copy of delivery challan. Status report reveals that as per the details/copies of documents provided by M/s Brinks India Private Limited, 5 Kgs of gold was delivered to Mr. Arup Bhuiya on behalf of complainant-firm. Similarly, M/s Securitrans India Private Limited also sent a reply and provided certified copies of three delivery challans. As per the details/copies of documents provided by M/s Securitrans India Private Limited, 4 Kgs gold was delivered to Mr. Ranjan Mitra on 20.02.2020, 10 Kgs gold was delivered to Mr. Arup Bhuiya on 27.02.2020 and 7 Kgs gold was delivered to Mr. Arup Bhuiya on behalf of complainant firm.

14. Notices under Section 160 Cr.P.C were issued to Mr. Arup Bhuiya and Mr. Ranjan Mitra. They joined the investigation and got recorded their statements under Section 161 Cr.P.C. In their statements, they confirmed that they were employees of the accused-company and have received the questioned gold from transport companies as mentioned above and further handed over the same to the petitioner-Mr. Jagadish Das for making jewellery articles.

15. Investigation reveals that petitioner-Jagadish Das was the active Director of M/s JD Jewels Creation Pvt. Ltd and is also the beneficiary of the questioned gold. He dishonestly misappropriated the questioned



gold and cheated the complainant-firm thereby causing wrongful loss to the complainant-company and wrongful gain of 9868.560 gms of gold to himself.

16. The allegations qua the petitioner are grave and serious in nature. As per petitioner's own averment in his application, a copy of notice under Section 41A Cr.P.C. was sent on WhatsApp number of his son. Thus, he was aware of the registration of FIR and pendency of investigation but did not join the investigation. He may be required for the purpose of custodial interrogation. The power to grant pre-arrest bail under Section 438 Cr.P.C is an extraordinary power and is to be exercised sparingly. The anticipatory bail cannot be granted in a routine manner.

17. As per **State Vs. Anil Sharma, (1997) 7 SCC 187**, it is a well-established legal principle that custodial interrogation is significantly more effective for eliciting information compared to questioning an accused who is protected by an anticipatory bail order under Section 438 Cr.P.C (Section 482 BNSS). Granting anticipatory bail to the petitioner at this stage would undeniably obstruct the course of further investigation. Such relief cannot be granted as a matter of routine, especially when it may be misused by the petitioner as a protective shield against further investigation.

18. An additional factor to be taken into account is that proceedings under Section 82 Cr.P.C. were initiated against the petitioner and he was declared a proclaimed person. In the case of **Srikant Upadhyay & Others Vs. State of Bihar & Another, 2024 SCC OnLine SC 28**, the



Hon'ble Supreme Court elaborately examined the consequences of being declared an absconder/Proclaimed person under Section 82 Cr.P.C. on the entitlement to anticipatory bail. The Court clarified that when a person is found to be deliberately avoiding arrest and has been declared an absconder or proclaimed offender/person, it considerably undermines their claim for pre-arrest bail/anticipatory bail. The relevant portion of the judgment reads as under:

*“9. It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that **the power to grant anticipatory bail under Section 438, Cr. P.C. is an exceptional power and should be exercised only in exceptional cases and not as a matter of course.** Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant.(See the decision of this Court in *HDFC Bank Ltd. v. J.J. Mannan*).*

*10. When a court grants anticipatory bail what it actually does is only to make an order that in the event of arrest, the arrestee shall be released on bail, subject to the terms and conditions. Taking note of the fact the said power is to be exercised in exceptional circumstances and that it may cause some hindrance to the normal flow of investigation method when called upon to exercise the power under Section 438,CrPC, courts must keep reminded of the position **that law aides only the abiding and certainly not its resistant. By saying so, we mean that a person, having subjected to investigation on a serious offence and upon making out a case, is included in a charge-sheet or even after filing of a refer report, later, in accordance with law, the court issues a 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.** We will dilate this discussion with reference to the factual matrix of this case.*



However, we think that before dealing with the same, a small deviation to have a glance at the scope and application of the provisions under Section 82, Cr. P.C. will not be inappropriate.

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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.”

19. In **Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730** the Hon’ble Supreme Court held thus:-

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as “absconder”. **Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.**”



20. The Hon'ble Supreme Court in **Prem Shankar Prasad v. State of Bihar, (2022) 14 SCC 516** has observed as under:

“10.2. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that Respondent 2-accused is absconding and even the proceedings under Sections 82/83 CrPC have been initiated as far back as on 10-1-2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to Respondent 2-accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc. which came to be considered by the learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under Sections 82/83 CrPC by simply observing that “be that as it may”. The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

10.3 In State of M.P. v. Pradeep Sharma [State of M.P. v. Pradeep Sharma, (2014) 2 SCC 171 : (2014)1 SCC (Cri) 768] , it is observed and held by this Court that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 CrPC, he is not entitled to relief of anticipatory bail...

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11. Thus the High Court has committed an error in granting anticipatory bail to Respondent 2-accused ignoring the proceedings under Sections 82/83 CrPC.”

21. In the most recent decision in the case of **Serious Fraud Investigation Office vs. Aditya Sarda [2025 SCC OnLine SC 764]**, very pertinent observation has been made with regard to the powers of



Court to grant anticipatory bail under Section 438 Cr.P.C. It has been observed that:-

“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 of 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.”

22. The status report reveals the consistent disobedience of the petitioner to comply with the orders of the trial Court as he failed to join the investigation and appear before it even after issuance of NBWs and process under Section 82 Cr.P.C., illustrating his consistent disobedience. Keeping in view the law and judicial precedents, anticipatory bail shall not be granted to person, who is a proclaimed person under Section 82 Cr.P.C except in exceptional circumstances. The present case does not form an exceptional or



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extraordinary case where this discretionary power of the Court be used. In the light of cumulative circumstances, petitioner is not entitled to seek the benefit of pre-arrest/ anticipatory bail.

23. The present application is, therefore, dismissed. The pending application(s), if any, also stand disposed of.

RAVINDER DUDEJA, J.

19 JUNE, 2025/ vd/AK