$~86 to 91

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

\+ BAIL APPLN. 1494/2025, CRL.M.A. 11675/2025 & CRL.M.A. 11674/2025

UPINDER KRISHEN SAS .....Petitioner

Through: Mr. Krishnan Venugopal, Sr. Vacatete with Mr. Shivendra Singh, Mr. Avinash Mathews, Ms Prakriti Rastogi, Mr Jitendra Kumar Singh,Ms Nandini Kaushik, Advocates.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Manoj Pant, APP for State.

\+ BAIL APPLN. 1486/2025, CRL.M.A. 11653/2025 & CRL.M.A. 11652/2025

HAR SHARAN GUPTA .....Petitioner

Through: Mr. Krishnan Venugopal, Sr. Vacatete with Mr. Shivendra Singh, Mr. Avinash Mathews, Ms Prakriti Rastogi, Mr Jitendra Kumar Singh,Ms Nandini Kaushik, Advocates.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Manoj Pant, APP for State.

\+ BAIL APPLN. 1487/2025, CRL.M.A. 11655/2025 & CRL.M.A. 11654/2025

PRABHAT KUMAR SWARUP .....Petitioner

Through: Mr. Krishnan Venugopal, Sr. Vacatete with Mr. Shivendra Singh, Mr. Avinash Mathews, Ms Prakriti Rastogi, Mr Jitendra Kumar Singh,Ms Nandini Kaushik, Advocates.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Manoj Pant, APP for State.

\+ BAIL APPLN. 1488/2025, CRL.M.A. 11657/2025 & CRL.M.A. 11656/2025

ADARSH SWARUP .....Petitioner

Through: Mr. Krishnan Venugopal, Sr. Vacatete with Mr. Shivendra Singh, Mr. Avinash Mathews, Ms Prakriti Rastogi, Mr Jitendra Kumar Singh,Ms Nandini Kaushik, Advocates.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Manoj Pant, APP for State.

\+ BAIL APPLN. 1489/2025, CRL.M.A. 11659/2025 & CRL.M.A. 11658/2025

RAHUL SWARUP .....Petitioner

Through: Mr. Krishnan Venugopal, Sr. Vacatete with Mr. Shivendra Singh, Mr. Avinash Mathews, Ms Prakriti Rastogi, Mr Jitendra Kumar Singh,Ms Nandini Kaushik, Advocates.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Manoj Pant, APP for State.

\+ BAIL APPLN. 1490/2025, CRL.M.A. 11661/2025 & CRL.M.A. 11660/2025

GOVIND SWARUP .....Petitioner

Through: Mr. Krishnan Venugopal, Sr. Vacatete with Mr. Shivendra Singh, Mr. Avinash Mathews, Ms Prakriti Rastogi, Mr Jitendra Kumar Singh,Ms Nandini Kaushik, Advocates.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Manoj Pant, APP for State.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

<u>O R D E R</u>

% 22.04.2025

1. By way of these applications, the applicants are seeking grant of anticipatory bail in case arising out of FIR bearing no. 163/2025, registered at Police Station Punjabi Bagh, Delhi for the offences punishable under Sections 420/406/34/120B of the Indian Penal Code, 1860 [hereafter *'IPC'*].

2. Issue notice. Mr. Naresh Kumar Chahar, the learned APP accepts notice on behalf of the State.

3. The present case stems from a complaint filed by Mr. Nishant Gupta, one of the partners of Shivalik Packaging Industries, a company engaged in the wholesale distribution of superior quality PET preforms, PET bottles, and related products, against SVP Industries Limited (accused no. 1), a company engaged in the manufacturing and sale of industrial alcohol and country liquor under various brand names such as Fighter, Dilse, Mr. India, and others, along with its directors and associated entities (which were mentioned as accused no. 2 to 13). The complainant alleged that in June-July 2021, the accused persons, including key directors and officials of accused no. 1, had initiated business discussions with the complainant company at its Punjabi Bagh office and through video conferences. During

these interactions, the complainant was introduced by accused no. 2,3 and 4 to accused nos. 8 and 9, stated to be senior officials of Globus Spirits Ltd. The complainant was informed that Globus Spirits Ltd., which was in the business of spirits, had entered into a contract with accused no. 2 and 3 wherein accused no. 2 and 3 had to supply 50 lakh PET bottles (200 ml) over a period of 6 to 10 months to Globus Spirits Ltd. Relying on repeated representations, personal guarantees, and claims that the accused had substantial business interests in Globus Spirits Ltd., the complainant had supplied the goods on credit between October 2021 and March 2022 to the accused no. 1. It was alleged that despite the delivery of goods against purchase orders, the accused person failed to honour the payment obligations and continued to delay payments under various pretexts. Subsequent visits and communications by the complainant yielded no results. Upon further inquiry, it came to light that the accused had dishonestly diverted the goods to shell entities controlled by them or their associates, including Holmwood Enterprises LLP, Mansurpur Sales & Services Pvt. Ltd., Globus Spirits Ltd., Swarup Fibre Industries Ltd., and others, and misappropriated the proceeds for personal gain. The complainant also discovered that similar fraudulent practices were adopted by the accused against other suppliers and small businessmen under false representations. It was further stated that the complainant got to know that Globus Spirits Ltd. had previously been subjected to a significant GST search and seizure operation in 2020. The complaint alleges that the accused persons, through a well-planned conspiracy and deliberate misrepresentations, had induced the complainant to extend goods on credit and have thereby caused a wrongful loss of Rs. 96,22,699/- (plus interest

@18%). It was alleged that the allegations disclose the commission of offences under Sections 406/420 of IPC as well as Section 4 of the Prevention of Money Laundering Act, 2002. On these allegations, the present FIR was registered.

4. The learned senior counsel appearing for the petitioners argues that the FIR in the present case is false, frivolous, and motivated by malice. It is submitted that the criminal proceedings have been initiated with an oblique motive to exert pressure in what is essentially a civil and commercial dispute arising out of contractual transactions. It is contended that the registration of an FIR in a matter that fundamentally pertains to alleged non-payment and commercial differences between two companies reflects a clear misuse of the coercive machinery of criminal law. The learned senior counsel submits that the petitioners have fully cooperated with the investigation and have provided all documents and information as sought by the Investigating Officer (IO) through both WhatsApp and email, and the status report filed by the prosecution deliberately suppresses this crucial fact and attempts to portray the petitioners in a false light. It is further contended that no case of criminal breach of trust or cheating is made out against the petitioners, in the absence of any cogent evidence showing that they had any dishonest or fraudulent intention at the inception of the transaction or at any time thereafter. The learned senior counsel submits that the ingredients necessary to attract the penal provisions under Sections 406/420 of IPC are completely absent in the present case. It is also argued that the amount claimed by the complainant is neither admitted nor crystallized and is in fact subject to adjustment on account of multiple defective consignments supplied by the

complainant itself. It is urged that a detailed reconciliation of accounts is yet to take place and any liability, if any, can only be determined upon such reconciliation. Therefore, the question of criminal liability does not arise at this stage. Finally, it is submitted that the petitioners are respectable individuals with no prior criminal antecedents and are not at flight risk. All relevant materials are already in possession of the I.O., and as such, custodial interrogation of the petitioners is not necessary. It is thus prayed that the petitioners be granted anticipatory bail.

5. The learned APP for the State, on the other hand, argues that the allegations against the present petitioners are serious in nature, and they have siphoned off the money deliberately with dishonest means. It is submitted that the petitioners have not cooperated with the investigation. It is argued that in light of the allegations against the petitioners, their custodial interrogation is required to find out the truth. **It is also pointed out that during investigation, one CA of the accused company has disclosed the internal *modus operandi* of the accused company i.e. as to how payments are structured and diverted to other companies.** The learned counsel for the complainant, in addition, also submits that Globus Spirits Ltd. had previously been subjected to a significant GST search and seizure operation in 2020, and that similar fraudulent practices had been adopted by the accused persons against other small businessmen also. It is, therefore, prayed that the applications filed by the accused persons for grant of anticipatory bail is dismissed.

6. This Court has **heard** arguments addressed on behalf of the petitioners, the complainant as well as the State, and has perused the

material placed on record.

7. In a nutshell, the allegations against the petitioners are that they, in their capacity as Managing Directors/Directors of SVP Industries Ltd., had dishonestly induced the complainant, Shivalik Packaging Industries, to supply 50 lakh PET bottles for use in their liquor manufacturing business, without any intention of making payment. Despite receiving the goods between October 2021 and March 2022, the petitioners, allegedly, had failed to pay the outstanding amount of ₹96,22,699/-. It is further alleged that the petitioners, in connivance with each other, had created shell companies to divert the supplied stock, had manipulated financial records, and siphoned off proceeds from subsequent sales in order to avoid their contractual liabilities and cause wrongful loss to the complainant.

8. It is the contention of the learned senior counsel for the petitioners that the entire case pertains to a civil commercial transaction that has been given a criminal colour. It is argued that at best, the allegations indicate a breach of contract and do not attract the ingredients of a criminal offence. However, at this stage, this Court is unable to accept the said argument – in the face of the specific allegations made in the complaint and the initial investigation conducted by the police. The complainant has alleged not merely a default in payment, but a systematic *modus operandi* involving creation of shell entities, diversion of goods to those entities, and siphoning of funds, which *prima facie* indicates a fraudulent and dishonest intention from the inception of the transaction. In such circumstances, the matter cannot be said to be a mere civil dispute, at this stage.

9. This Court is conscious of the legal position that civil disputes should

not be given the colour of criminal prosecution and that the penal provisions should not be used as tools of arm-twisting in commercial disputes. However, in the present case, the complaint does not reflect a mere breach of contract or commercial misunderstanding. The allegations, if taken at face value, point towards dishonest inducement, formation of shell companies to divert material, manipulation of accounts and deliberate evasion of payment – all of which indicate a criminal intention on the part of accused persons.

10. As per the supplementary status report/reply filed by the IO before the learned Sessions Court, the accused persons had joined investigation pursuant to grant of interim protection but they had allegedly not cooperated with the same and failed to answer the queries put to them. They were also unable to explain the entries in the ledger of SVP Industries Ltd. and Globus Spirits Ltd.

11. This Court also notes that during the investigation, one individual – which this Court was informed was the Chartered Accountant of the accused company – has made a statement explaining the internal *modus operandi* of how payments were structured and diverted. The learned senior counsel for the petitioners has contended that the said individual was merely a cashier and had left the employment of the accused company two years ago. However, in this Court's opinion, this submission does not hold much weight in the face of the contents of the statement recorded during investigation, which is at an initial stage, which shows the said individual had knowledge of the accounting practices and alleged misappropriation of funds by the accused. The fact that he had earlier worked closely with the accused company and had insight into the internal functioning lends

credibility to his version, and at this stage, such a statement cannot be brushed aside.

12. The investigation of the case is at an initial stage. In this Court's view, the custodial interrogation of the accused persons would be necessary for unearthing the entire conspiracy and the modus operandi to the alleged acts of cheating, creating shell companies, misappropriation and siphoning of the money by the accused persons.

13. In view of the foregoing discussion, and considering the seriousness of allegations and the necessity for custodial interrogation, this Court does not find it to be a fit case for grant of anticipatory bail.

14. The bail applications are accordingly dismissed.

15. It is however clarified that the above observations are solely for the purpose of deciding anticipatory bail, and the same shall not be construed as the opinion of this Court on the merits of the case.

16. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 22, 2025/

Click here to check corrigendum, if any