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

\+ BAIL APPLN. 2427/2025

AMANPREET SINGH MALHOTRA .....Petitioner

Through: Mr. Madhav Khurana, Ms. Teeksh Singhal, Mr. Dipesh Sharma, Ms. Vanshika Sharma and Ms. Dyuksha Walia, Advocate

versus

STATE OF DELHI AND ANR .....Respondents

Through: Mr. Mukesh Kumar, APP for the State and Mr. Naresh Dagar along with SI Pardeep Kumar, PS Rajouri Garden and Mr. Kunal Sharma, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

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

% 18.08.2025

1. The present application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] seeks pre-arrest bail in FIR No. 180/2025, registered at P.S. Rajouri Garden under Sections 420/468/471 of the Indian Penal Code, 1860.[2]

2. On the previous date, this Court, upon a preliminary assessment of the matter, particularly noting that the co-accused, namely the relatives of the Applicant, had been granted bail by this Court in the subject FIR, directed the Applicant to join the investigation and granted him interim protection.

[1] "BNSS"

3. Pursuant to the aforesaid directions, the Applicant did, in fact, join the investigation. This has been duly confirmed by the State in its status report. However, in the said report, the State has emphasized the necessity of the Applicant's custodial interrogation. It is submitted that, following the issuance of a notice under Section 94 of the BNSS, the Applicant furnished a reply dated 16th July 2025, which purportedly indicates that he is withholding certain documents. According to the State, the Applicant has failed to provide minutes of meetings, share certificates, shareholding certificates, and other related documents that allegedly substantiate the transfer of 18,000 shares by the Complainant to the Applicant. It is further contended that the Applicant has admitted that no SH-4 form was executed. In view of these circumstances, the State submits that the Applicant's custodial interrogation is essential to unearth the documentation purportedly created by him and to ascertain his precise role in the matter.

4. The Court has considered the submissions advanced by Mr. Mukesh Kumar, APP for the State. However, it is pertinent to note that these very objections were considered by this Court at the time of granting bail to the Applicant's relatives, namely, his paternal uncle (Chacha), his brother, and his first cousin. As rightly pointed out by Mr. Madhav Khurana, Senior Counsel for the Applicant, these same grounds were rejected by the Court as insufficient to warrant the co-accused's custodial interrogation. The relevant observations are extracted below:

> *55. It is an admitted fact that the Complainant is relative of the Applicants herein. It is also an admitted fact that there is an ongoing acrimonious matrimonial discord between the Complainant and her husband, which is evident from the proceedings under the DV Act, divorce proceedings, maintenance disputes, and mediation attempts pursuant to orders passed by*

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[2] "IPC"

this Court. The FIR was registered on 22.03.2025 pertains to an event of transfer of shares allegedly occurred on 30.07.2022, more than two years prior. There is no explanation offered for this delay in lodging the FIR, particularly when the Complainant had already been engaged in extensive litigation against her husband since 2020.

56. The List of Share Transfer shows that on 30.07.2022, the female members of the Applicant's family have transferred several shares to the male members of the family. The FIR stems from this transfer of shares.

57. The Company appears to be a closely held family-run business, and there is no public shareholding involved. FIR does not disclose as to when the Complainant became aware about the alleged share transfer. It only mentions about the report of independent auditor, who conducted audit of the Company in 2023. It is stated that from perusal of the said audit report, the Complainant came to know that her name is not mentioned as the shareholder although she was holding 18,000 shares of the Company. If further mentions that upon perusal of List of Share Transfer dated 06.09.2023 of the Company, she found that her 18,000 shares were transferred to her husband without her consent.

58. The FIR is silent about the exact details about the date on which the Complainant became the shareholder and when the Complainant became aware about the auditor's report and List of Share Transfer of 2023. The time gap between the incident of alleged forgery and misappropriation and filing the complaint is also not explained in the FIR.

59. The Status Report indicates that the entire investigation is based on the documents and the Applicants and the Company have provided all the documents that are within their power and possession. The IO has not identified any further document evidence that could be recovered through custodial interrogation other than Form No. SH-4, which the Applicants have admitted that it does not exist.

60. In view of the admission by the Applicants that the shares were transferred without execution of Form No. SH-4, the same would be considered during the trial. An admission of non-existence of Form No. SH-4 and consequence of transfer of the shares without execution of Form No. SH-4 are legal questions for which custodial interrogation is not required.

61. The Status Report also shows that the RoC has provided all statutory records already filed with the RoC. This record will be considered by the IO during the investigation in accordance with law. The Applicants have admitted that the shares in questions held by the Complainant were transferred to her husband and now they are re-transferred to the Complainant. The Applicant have also not been able to demonstrate any consent by the Complainant for this transfer.

62. The FIR is based on an incidents of share transfer from the Complainant to her husband and then to Mr. Amanpreet Singh Malhotra, the Applicant herein, which are now transferred back to the Complainant. The Applicants have given justification for such transfers, which will be considered during the trail. The fact remains that there have been transfers that have been *documented and are admitted by the Applicants. Hence, entire investigation revolves around the documentary evidence, which is already with the IO as reflected in the Status Report.*

63. When it is admitted that Form No. SH-4 was not executed, the question of forgery on the said document does not arise. Whether the Form No. SH-4 is a ―valuable security within the meaning of Section 30 of IPC and whether there was any cheating or misappropriation of shares of the Complainant was undertaken by the Applicants will be a matter of trial and, at this stage, it will not be appropriate to comment on the merits of the investigation, which is ongoing.

64. Further, the timing of the FIR after the failure of mediation between the Complainant and her husband for an incident that occurred two years prior to the date of the FIR is questionable. It is not disclosed in the FIR as to how and when the Complainant became aware about the report of the independent auditor of 2023. Even the residential address of the Complainant and the Registered Office of the Company are situated at the same premises. Hence, it is not possible to believe that the Complainant had no access to the records of the Company.

65. In such circumstances, the Applicants are entitled to the benefit of presumption of innocence. The Constitution Bench of the Supreme Court in ***Gurbaksh Singh Sibbia v. State of Punjab,*** *(1980) 2 SCC 565 while stressing that a free man is entitled to presumption of innocence observed that*

> *"31. 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. On the other hand, if it 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. 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. 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…"*

66. The Supreme Court in the case of ***Siddharam Satlingappa Mhetre v.***

State of Maharashtra, *(2011) 1 SCC 694 categorically observed that*

> *"85. It is a matter of common knowledge that a large number of undertrials are languishing in jail for a long time even for allegedly committing very minor offences. This is because Section 438 CrPC has not been allowed its full play. The Constitution Bench in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] clearly mentioned that Section 438 CrPC is extraordinary because it was incorporated in the Code of Criminal Procedure, 1973 and before that other provisions for grant of bail were Sections 437 and 439 CrPC. It is not extraordinary in the sense that it should be invoked only in exceptional or rare cases. Some Courts of smaller strength have erroneously observed that Section 438 CrPC should be invoked only in exceptional or rare cases. Those orders are contrary to the law laid down by the judgment of the Constitution Bench in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465]..."*

67. The investigation in the present case hinges entirely on documentary evidence comprising of the Board Resolutions of the Company, List of Share Transfer and Form No. SH-4. The Applicants have provided all the documentary evidence and repeatedly asserted that no such Form No. SH-4 was ever executed. Even the Company has mentioned that Form No. SH-4 is not traceable in the records of the Company and the RoC has also not provided the same to the IO, which supports the stand of the Applicant about non-existence of Form No. SH-4. ***Notably, the custodial interrogation is requested only to ascertain the possession of Form No. SH-4. When no such document exists as admitted by the Applicants, there is no purpose of custodial interrogation of the Applicants.***

68. The Applicants have joined the investigation and responded to multiple notices under Section 94 of BNSS. They do not have any prior criminal antecedents. They have provided replies and submitted audited financial reports of the Company for past several years. ***While the IO alleges non-cooperation due to non-production of Form No. SH-4, the Applicants have consistently maintained that the said document does not exist. The mere non-production of a document not in the possession/existence of the Applicants cannot be equated with their non-cooperation.***

69. There is no allegation that interim protection granted to the Applicants has been misused. There is no material indicating tampering of evidence or threat to witnesses. Applicants have appeared before the IO as and when required. They have further undertaken to cooperate with the investigation.

70. As held in ***Pradip N. Sharma v. State of Gujarat****, 2025 SCC OnLine SC 457, the necessity for custodial interrogation beyond scrutiny of official records must be demonstrated, especially where the case hinges on documentary evidence and presence of the accused can be secured without pre-trial detention. In the present case, no reasons are demonstrated for which custody of the Applicants is essential, beyond reiterating the need for document, the Applicants disclaims having and the RoC deny possessing.*

Since the Applicants have joined the investigation, no purpose would be served by subjecting the Applicants to custodial interrogation.

71. As regards the submission of the State that grant of anticipatory bail to the Applicants would prevent the IO from conducting investigation and recovering documents, the State can pursue the remedies available under the law to seek cancellation of Anticipatory Bail granted to the Applicants, if the Applicants misuse the same by not co-operating with the investigation and not providing the documents other than Form No. SH-4, which admittedly does not exist or attempting to tamper evidence or influence the Complainant or commit any act prejudicial to the records of the case.

5. In view of the above, this Court is of the considered opinion that the Applicant is entitled to the benefit of parity, as the case of the Prosecution against him stands on the same footing as that of the co-accused who have already been granted bail. In light of the foregoing, and considering that the Applicant has demonstrated *bona fide* intent by joining the investigation and appearing before the Investigating Officer in compliance with this Court's directions, the present application is allowed.

6. Accordingly, in the event of arrest, the Applicant is directed to be released on bail on furnishing of personal bail bonds in sum of INR 1,00,000/- with two sureties of the like amount, subject to the satisfaction of the concerned SHO, on the following conditions:

a. The Applicant shall join and cooperate with the investigation as and when directed by the IO;

b. The Applicant shall not leave the boundaries of the country without informing the IO/ SHO concerned;

c. The Applicant shall not contact the witnesses or tamper with the evidence in any manner;

d. The Applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;

7. In the event of there being any FIR/DD entry / complaint lodged

against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

8. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

9. In the above directions, the present application is disposed of.

SANJEEV NARULA, J

AUGUST 18, 2025/MK