IN THE HIGH COURT AT CALCUTTA

CRIMINAL MISCELLANEOUS JURISDICTION

APPELLATE SIDE

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

C.R.M.(A) 1689 of 2025

Archana Bagla

Versus

Serious Fraud Investigation Office

For the petitioner : Mr. Sandipal Ganguly Sr.Adv.
Mr. Somopriyo Chowdhury
Mr. Anurag Modi
Ms. Ankita Sidkar
Ms. Piyashi Tajoo

...Advocates

For the SFIO : Mr. Arun Kumar Maiti (Mohanty)
Mr. Shaunak Ghosh
Mr. Piyush Kumar
Ms. Isabella Pal

...Advocates

Lastly heard on : 13.01.2026

Judgment on : 10.03.2026

JAY SENGUPTA, J:

1. This is application for anticipatory bail under Section 482 of the BNSS corresponding to Section 438 of the Cr.P.C. in connection with Company Case No. 4 of 2024 presently pending before the Learned Special Judge, 2nd Court in respect of charges under Section 628 of the Companies Act, 1956 and under Sections 447, 448, 166 and 217(8) of the said Act.

2. Learned senior counsel appearing on behalf of the petitioner has submitted as follows. The petitioner is a lady aged about 50 years. A complaint has been filed by the SFIO after completion of purported investigational proceeding, inter alia, on the allegation that a company namely, Amrit Feeds Limited (AFL), had acquired term loan and working capital facilities from several banks such as Punjab National Bank, Axis Bank Limited, ICICI Bank Limited, HDFC Bank Limited and the Bank of India amounting to Rs. 195 crores approximately. However, out of the said working capital facilities and term loans, Rs.93.61 crores and Rs.51.66 crores respectively remained outstanding. The petitioner has been implicated in the aforementioned case simply because she is the wife of Shri Harish Bagla, the erstwhile managing director of AFL. Allegedly, at one point of time the petitioner was a director of the said company. On completion of investigation, SFIO submitted a complaint against the petitioner and other accused persons on 27.03.2024 before the Learned Special Court and prayed for summons. This reflects that SFIO did not require the custody of the petitioner nor considered her an absconding accused. The petitioner upon being summoned by the Learned Special Court duly appeared through her learned advocate and filed an application under Section 205 of the Code. However, by an order dated 26th November 2024, the petitioner's prayer made under section 205 of the Code of Criminal Procedure, 1973 was rejected by the Learned Special Court with the direction that the petitioner must appear and apply for bail. The aforesaid is contrary to Tarsem Lal vs Directorate of Enforcement reported (2024) 7 SCC 61, which makes it clear that if an accused appears pursuant to a summons issued on the complaint, he cannot be said to be in custody and therefore there is no question of granting bail and there is nothing to preclude an accused from filing application under Section 205 CrPC or the accused shall be entitled to furnish bonds in accordance with section 88 of the Code of Criminal Procedure, 1973 before the Learned Court below. Since the Learned Court below insisted on the petitioner to appear and pray for bail; he was constrained to file an application for anticipatory bail which was rejected by the Learned Court below vide order dated 6th May 2025. Though the SFIO has argued before this Hon'ble Court that the petitioner has been evading the process of investigation and therefore she should be taken into custody; but fact remains that the SFIO has not only prayed for issuance of summons against the petitioner before the Learned Trial Court, they have not even challenged the order issuing summons passed by the learned Trial Court. The petitioner duly appeared in response to the said summons and therefore, the so-called coercive processes which were initiated during the course of investigation, prior to filing of complaint, cannot be permitted to be relied upon post filing of complaint when no such coercive process has been prayed for by the investigating agency. The petitioner never absconded from the due process of law and appeared physically before the SFIO on 27th December, 2022. Thereafter, the petitioner prayed for some more time due to medical emergency which was not accepted by the SFIO. Moreover, after issuance of summons by the learned Trial Court the petitioner duly appeared through her learned Advocate on every date and was duly represented. Proviso to Section 212(6) of the Companies Act, 2013, creates an exception to the rigors of Section 212(6) of the Companies Act, 2013 qua the charges under Section 447 of the Companies Act, 2013 in respect of women, sick or infirm and person aged under 60 years. The Hon'ble Delhi High Court in SFIO vs. Aarti Singhal reported in 2023 SCC Online Del 1956 para 10, 11, 12, 41 to 44 and 46 relying on earlier decision of Komal Chaddha vs. SFIO (Delhi High Court) upheld the grant of bail to a similarly circumstanced lady and clearly held that the proviso clause in respect of women, sick, infirm and people aged below 16 years is an exception to Section 2112(6) of the Companies Act, 2013. The petitioner, a woman, is a name lender director in the company, the proviso to Section 212(6) of the Companies Act, 2013 shall apply. Moreover, when the investigating agency itself has not prayed for any coercive process against the accused. The petitioner also relies upon the decision of Deepak Shroff CRR No. 2701 of 2024 judgement dated 22nd August, 2024 passed by this Court in which a co-accused person of the petitioner was granted liberty to filed appropriate bond under Section 88 of the Code of Criminal Procedure, 1973 before the learned Court below upon appearance. The SFIO has relied upon the judgement of SFIO vs. Aditya Sarda reported in (2025) INSC 477. However, in the said case, warrant of arrest was issued followed by initiation of proclamation proceedings under Section 82 of the Code of Criminal Procedure, 1973. It is in these circumstances that when the Hon'ble High Court had granted anticipatory bail to the petitioner insptie of being a proclaimed offender the Hon'ble Supreme Court of India set aside the order granting anticipatory bail. There is absolutely no relevance of the case relied upon by the SFIO being State of UP and Anr. vs. Synthetics and Chemicals Limited and Anr. reported in 1991 (4) SCC 139, which is a judgement related to Articles 245, 246, 269, 286 and 298 of the Constitution of India and the doctrine of per in curium. This Hon'ble Court cannot be invited to decide whether a judgement of the Hon'ble Supreme Court of India is per in curium or not. The judgement reported in AIR 2011 Cal 158 Taxmaco Limited vs. Tirupati Build Estate Private Limited is another judgement based on the law of precedents and per in curium. Moreover, the case of Taxmaco (supra) relates to proceeding under the Arbitration and Conciliation Act, 1996. The case of TGN Kumar Vs. State of Kerala & Ors. reported in (2011) 2 SCC 772 relates to a case when the Hon'ble Supreme Court of India refused to lay down any generic directions regarding the discretion of the Magistrate under Section 205 of the Code of Criminal Procedure, 1973 in respect of proceedings under Section 138 of the Negotiable Instruments Act. The said judgement has no bearing in the instant case and does not in any way affect the observation of the Hon'ble Supreme Court of India in the case of Tarsem Lal (supra).

3. Learned counsel appearing on behalf of the Serious Fraud Investigation Office (SFIO, for short) has submitted as follows. The petitioner, Archana Bagla was the director of Amrit Feeds Limited from 24.04.2010 onwards. Along with her husband, Harish Bagla, who is the managing Director of Amrit Feeds Ltd. and director of the other group/related companies and shell entities, she was also holding key managerial position in Amrit Feeds Ltd. and the position of a director in the group companies as well as in shell entities and was also a designated partner in M/s Bagla Towers LLP, which were used to divert/siphon off the money received from the banks. The petitioner was activity engaged in day-to-day affairs of Amrit Feeds Limited along with her husband Harish Bagla. Under her directorship Amrit Feeds Limited has availed a total of Rs.195.46 crores in the form of term loans (Rs.129.41 crore) and as Cash Credit facilities (Rs.66.05 crores) from public and private sector banks and siphoned of the same to the related/shell entities which were controlled by Amrit Feeds Limited, its directors and related parties without using it for the actual purpose for which these credit facilities were taken. As on date of being declared as Non-Performing Assets by various banks, the total amount outstanding is Rs. 144.68 crores. The petitioner along with her husband, her family members and entities controlled by the Bagla family had significant control over the affairs of the group companies. That during the period when the diversion and siphoning off funds has taken place from Amrit Feeds Limited, the petitioner was the signatory of the financial statements of Amrit Feeds Limited (from FY 2011-12 to FY 2012-13 and from FY 2015-16 to FY 2017-18) and as well as those of the shell entities namely, Sreedeb Commodities Pvt. Ltd. (from FY 2011-12 to FY 2021-22) and Shree Shakambhari Properties Pvt. Ltd. (FY 2012-13 to FY 2021-22). As per the Companies Act, 2013, she is under obligation to give true and fair view about the affairs of Amrit Feeds Limited as well as other entities under her control. The petitioner was an authorized signatory of the following bank accounts held by Amrit Feeds Limited and its related entities, which were used for diverting and siphoning off bank funds. Investigation has revealed that out of the total funds amounting to Rs. 195.46 crores received by Amrit Feeds Limited, funds amounting to Rs. 79.35 crores originating from term loan account and cash credit account of Amrit Feeds Limited were siphoned to shell entities and subsequently used for acquisition of immovable properties and further transferred the funds to the group companies. Furthermore, the petitioner along with her husband Harish Bagla, H.K. Bagla HUF (of which he is the Karta) and Shree Shakambhari Properties Private Limited (shell entity controlled by Harish Bagla), have subscribed 16,10,000 shares of Amrit Feeds Limited for Rs. 14.32 crores. The petitioner is prosecuted for committing fraud under Section 447 of the Companies Act, 2013 and Section 448, 166 and 217 (8) of the Companies Act, 2013 and offence under Section 628. Further, even after issuance of bailable warrant against the petitioner on 10.02.2023 returnable on or before 24.02.2023, she did not appear before the opposite party. Therefore, a non-bailbale-warrant was issued in her name on 28.02.2023 to which jurisdictional police authorities have replied that the petitioner is absconding. The petitioner has failed to cooperate with the investigating agency/SFIO during the course of the investigation and is now resorting to delaying tactics to avoid appearing before the Learned Special Court. The petitioner has repeatedly not appeared before SFIO, on summons issued on several occasions.

4. However, on 14.11.2025, learned counsel appearing on behalf of the SFIO, upon instruction from the Investigating Officer who was present in Court then, has submitted that due to inadvertence at the time of filing of the complaint, a prayer was made only for issuance of summons as a routine matter, although before filing of the complaint, warrant had to be issued against the present petitioner by the SFIO for non-cooperation.

5. In reply, it was submitted by the learned counsel representing the petitioner that she had always cooperated with the investigation. She had met the Investigating Officer once and gave all the relevant papers. Afterwards due to medical issues concerning her father in law, she could not attend the Investigating Officer. It cannot be accepted that it was a mistake on the part of the Investigating Officer to have only prayed for issuance of summons. Significantly, the SFIO did not object to the issuance of summons before the learned Court or did not challenge the order before a superior Court.

6. I heard the learned counsels for the parties, perused the application, the copies of relevant documents collected during investigation and the written notes of submissions.

7. A serious allegation has been leveled that major portion of huge sums taken as working capital facilities and term loans remained outstanding from the accused. The petitioner was also a director of the concerned Amrit

Feeds Limited from 24.04.2010 onwards. During the period in which the diversion and siphoning off funds took place from the company, the petitioner was allegedly the signatory to the financial statements of the company as well as other entities.

8. On the other hand, it is contended on behalf of the petitioner that she is a female member of the household and had been implicated falsely and only because she was the wife of the prime accused and the erstwhile managing director of the company, Amrit Feeds Limited (AFL, in short).

9. Most importantly, on completion of the investigation, the SFIO submitted a complaint against the petitioner and other accused persons on 27.03.2024 before the Learned Special Court and prayed for issuance of summons. Upon being summoned, the petitioner appeared through her learned Advocate and filed an application under Section 205 of the Code. But, the said prayer was turned down on 26.11.2024. A revision is purportedly pending over the same.

10. Therefore, the facts of the case seem to fall within the ambit of Tarsem Lal vs Directorate of Enforcement (supra). There, it was made abundantly clear by the Hon'ble Apex Court that if an accused appeared pursuant to a summons issued on a complaint, he could not be said to be in custody. Therefore, it was not necessary to apply for bail. However, the Special Court could direct the accused to furnish bond in terms of Section 88 of the Cr.P.C.. On sufficient cause being shown, the Special Court could even grant exemption from personal appearance to the accused by exercising power under Section 205, Cr.P.C..

11. As regards applicability of the decision in Tarsem Lal (supra) to the present facts, reliance has been placed on behalf of the SFIO on the judgements in SFIO vs Aditya Sarda (supra). However, the same is distinguishable from the present facts as in that case after filling of complaint, several warrants of arrest had to be issued by the Court itself and in respect of some of the accused, proclamation proceedings became pending under Section 82 of the Code as the accused did not respond to the process issued by the Court. Therefore, the Hon'ble Apex Court set aside the grant of the anticipatory bail.

12. In the present case, the facts are quite distinct. First, the petitioner claimed to have met the Investigating Officer during investigation. She had referred to exchange of communications at pages 131, 133, 134 and 135 of petition. But, a warrant was issued against her during investigation. However, more importantly, at the time of filing of the complaint, a prayer was made only for issuance of summons. In fact, summons was issued to the petitioner. Her application seeking exemption from personal appearance was turned down over which a revision is pending. But, she was apparently asked to appear and pray for bail.

13. Hence, the decision in Tarsem Lal (supra) being applicable on the present facts and obviously binding on all Courts, appropriate relief ought to have been granted by the Learned Special Court in terms of the said judgement.

14. Therefore, this is a fit case where the relief sought is required to be moulded in order to ensure a complete adherence to the ratio laid down by the Hon'ble Supreme Court in Tarsem Lal (supra).

15. In fact, in Nathu Singh vs State of UP & Ors., (2021) 6 SCC 64, a Three Judges Bench of the Hon'ble Apex Court recognized the authority to invoke inherent powers under Section 482 of the Code in passing an order to secure the ends of justice, even while deciding an application for anticipatory bail, provided there are adequate reasons for doing so.

16. In view of the above and in the interest of justice, this Court directs the petitioner to appear before the Learned Special Court on the next date fixed so that an appropriate order can be passed by the Learned Special Court in this regard, in terms of the decision rendered by the Hon'ble Apex Court in Tarsem Lal (supra) that in the event an accused appears pursuant to issuance of summons in such a case, he or she may be permitted to furnish bonds in accordance with Section 91 of the BNSS corresponding to Section 88 of the Code, to the satisfaction of the Learned Special Court. However, in such event, the petitioner shall also file an undertaking before the Learned Special Court that she shall regularly appear before the Court on the dates fixed unless her appearance is specifically exempted by exercise of powers under Section 228 of the BNSS corresponding to Section 205 of the Cr.P.C..

17. With these observations and directions, the application is disposed of.

18. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)