$~69, 147, 148

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

**%** ***Date of Decision: 29.10.2026***

\# **CNR No. DLHC010496822026**

\+ **BAIL APPLN. 4369/2026**

(69) JASPREET SINGH @ JASSI .....Petitioner

versus

STATE OF NCT OF DELHI THROUGH SHO .....Respondent

\# **CNR No. DLHC010460912026**

\+ **BAIL APPLN. 4066/2026**

(147) PAWAN GUPTA @ALEX @ RAKESH .....Petitioner

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

\# **CNR No. DLHC010502822026**

\+ **BAIL APPLN. 4443/2026**

(148) SAYAM SAHNI .....Petitioner

versus

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

Through:

**Presence**:

Mr. Nikhil Mehta, Mr. Prakrit Aneja, Mr. Varun Sharma, Mr. Yash Mehta, Mr. Kushal Singh Thakur and Mr. Lavish, Advs. for petitioner in item nos.69 and 147.

Mr. Romil Pathak, Mr. Aryan Pathak and Md. Bilal, Advs. for petitioner in item no.69.

Mr. Mudit Jain, Ms. Mahima Malhotra, Mr. Vaibhav Bahl and Mr. Harjas, Advs. for petitioner in item no.148.

Mr. Utkarsh, APP for State.

Inspector Anand Kumar, IFSO, Special Cell.

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**CORAM:**
**HON'BLE MR. JUSTICE SACHIN DATTA**

**SACHIN DATTA, J. (ORAL)**

1. These three petitions arise from FIR No.153/2026, dated 17.06.2026, registered at PS Special Cell, IFSO, New Delhi, under Sections 318(4)/319/340/61(2)/3(5) of the Bharatiya Nyaya Sanhita, 2023 (hereinafter "*BNS*") read with Sections 66C/66D of the Information Technology Act, 2000. Section 112 of the BNS has been invoked in the course of investigation. Since all three petitions arise out of the same FIR and rest upon a common factual matrix, they are being disposed of by way of this common order.

2. It is the case of the prosecution that on the night of 16.06.2026, upon receipt of secret information, a raid was conducted at premises bearing No. M-16/17, New G-280, Back Side, L-Type, Rajapuri, behind Akash Hospital, Sector-5, Dwarka, New Delhi, from where an illegal call centre is alleged to have been operated. Fourteen persons were found seated in cubicles at laptop workstations and were apprehended on the spot. It is alleged that they were engaged in cheating citizens of the United States of America by impersonating the technical support staff of Microsoft and inducing them to part with money through gift cards, vouchers and cryptocurrency. Laptops, mobile phones, a digital video recorder, call slips and scripts, a victim database and voice recordings were seized.

3. It is noticed that the chargesheet, dated 06.08.2026, was filed on 08.08.2026. Charges are yet to be framed, and consequently, no witness has been examined so far. The next date before the trial Court is 26.11.2026. Further investigation is stated to be in progress.

4. It is pointed out that apart from these three applicants, all other co-

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accused, who have been arrested, have been arrested are on bail.

5. It may be noticed at the outset that, although, *vide* orders dated 25.09.2026 (in Bail Appln. 4066/2026) and 15.10.2026 (in Bail Appln. 4443/2026), a status report was directed to be filed in each of these matters, no status report has been filed before this Court. This Court has, accordingly, proceeded upon the material placed on record by the petitioners, which includes the charge-sheet and the replies/status reports filed by the Investigating Officer before the Courts below.

**BAIL APPLN. 4369/2026**

6. This is an application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023. It transpires during the course of hearing that the petitioner was arrested on 22.10.2026.

7. The application has, therefore, become infructuous. In regard to this, a reference can be made to the Supreme Court's decision in ***Dhanraj Aswani v. Amar S. Mulchandani,*** **(2024) 10 SCC 336**, wherein the Court noted:

> *"34. In Gurbaksh Singh Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565], this Court emphasised that the applicant must have a tangible reason to believe. Vague apprehension will not do. Secondly, it held that the High Court or the Court of Session should not ask an applicant to go before the Magistrate to try his luck under Section 437CrPC.* ***It was also observed that once the accused is arrested, Section 438CrPC ceases to play any role with reference to the offence or offences for which he is arrested.*** *This Court also cautioned against passing a blanket order for anticipatory bail.*
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> ***
>
> *65.1. An accused is entitled to seek anticipatory bail in connection with an offence so long as he is not arrested in relation to that offence.* ***Once he is arrested, the only remedy available to him is to apply for regular bail either under Section 437 or Section 439CrPC, as the case may be****. This is evident from para 39 of Gurbaksh Singh Sibbia."*

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(emphasis supplied)

8. Accordingly, the application is dismissed. It is clarified that this Court has expressed no opinion on the merits of this application, as the application cannot, in law, be considered at this stage.

9. However, the applicant is at liberty to seek regular bail before the appropriate Court in accordance with law. The same, if filed, shall be decided on its own merits.

**BAIL APPLN. 4066/2026**
**BAIL APPLN. 4443/2026**

10. The applicant/petitioner Pawan Gupta @ Alex @ Rakesh (in Bail Appln. 4066/2026) was apprehended at the spot and has been in custody since 17.06.2026, *i.e.*, for almost four and a half (4 ½) months. He was allegedly the Manager/IT Head of the technical and management team and is alleged to have trained the callers and diallers.

11. The applicant/petitioner Shyam Sahni (in Bail Appln. 4443/2026) was not present at the premises and is not named in the FIR. He was allegedly the Technical Infrastructure Provider, the allegation being that he supplied and renewed subscriptions to VoIP and toll-free number services and was paid in cryptocurrency. He was arrested on 01.07.2026. As such, he has been in custody for almost four (4) months.

12. Learned counsel for the petitioners submits that the chargesheet has been filed and that the relevant electronic evidence has been seized and is in the custody of the investigating agency. It is also submitted that no victim has come forward and no statement of any person affected is on record, and that there is no complainant and no quantification of any loss. It is further

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contended that the arrest of the petitioners did not conform to Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "*BNSS*"). In the case of Sayam Sahni (Bail Appln. 4443/2026), it is submitted that the notice under Section 35(3) was handed over to his father and was never served upon him personally. It is also pointed out that none of the offences invoked is punishable with imprisonment exceeding seven (7) years.

13. Learned APP for the State opposes these applications. He submits that the petitioners have a crucial role in the cross-border fraud and that investigation is still continuing and that the statements of the victims, who are citizens of the United States, are awaited through the Federal Bureau of Investigation. The contention that there has been non-compliance with Section 35 of the BNSS, 2023 is also refuted.

14. It is noticed that for offences punishable with imprisonment up to seven years, Section 35(1)(b) of the BNSS permits arrest without warrant only where a police officer has reason to believe that the person concerned has committed the offence and is satisfied, for reasons recorded in writing, that arrest is necessary for a purpose specified therein. Otherwise, Section 35(3) of the BNSS mandates a notice of appearance. Where such a notice has been issued and has not been complied with, the power of arrest arises under Section 35(6) of the BNSS. Investigating agencies are duty-bound to comply with this mandate.

15. In this regard, reference may be made to the judgment of the Supreme Court in ***Satender Kumar Antil v. Central Bureau of Investigation*, 2026 INSC 115**, wherein, while interpreting Section 35 of the BNSS, 2023, it has been observed as follows:

> *"21. After being satisfied that there is a necessity of arrest, **a police***

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***officer is bound to record his reasons either for arrest, as provided for under Section 35(1)(b) of the BNSS, 2023****, or for merely issuing a notice under Section 35(3) of the BNSS, 2023. Section 35(1)(b) of the BNSS, 2023, thus, carves out an exception, with its inbuilt safeguards.*

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*30. While making an arrest under Section 35(6) of the BNSS, 2023, after the stage of issuing a notice seeking presence under Section 35(3) of the BNSS, 2023, the circumstances and factors that were in existence at the time of issuing the said notice shall not be taken into consideration by a police officer while making an arrest subsequently. In other words,* ***for effecting an arrest under Section 35(6) of the BNSS, 2023, it must be based upon materials and factors which were not available with the police officer at the time of issuing a notice under Section 35(3) of the BNSS, 2023****.* ***Therefore, the power of arrest under Section 35(6) of the BNSS, 2023 is to be exercised rather sparingly****, only under circumstances as aforementioned.*

*31. Hence, we have no hesitation to hold that* ***a notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, qua an offence punishable with imprisonment up to 7 years, is the rule, while an arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, is a clear exception****.*

***

*32.* ***The power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023 must be interpreted as a strict objective necessity, and not a subjective convenience for the police officer****. It does not mean the police officer can arrest to simply ask questions. However, it means that the police officer must satisfy himself that the investigation, qua an offence punishable with imprisonment up to 7 years, cannot proceed effectively without taking the concerned individual into custody. Any interpretation to the contrary would clearly frustrate the purpose and legislative intent of Sections 35(1)(b) and Sections 35(3) to 35(6) of the BNSS, 2023.*

*33. On the basis of the interpretation given by us, we conclude as follows:*

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*c.* ***For effecting an arrest, qua an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned***

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***in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence***.

***

*e. Even if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under Section 35(1)(b) of the BNSS, 2023,* ***the arrest shall not be undertaken, unless it absolutely warranted.***"

(emphasis supplied)

16. In the present applications, the status reports filed before the lower Court do not disclose the reasons for arrest of either of the petitioners, as is required by Section 35 of the BNSS. In Bail Appln. 443/2026, neither notice nor proof of its service on the applicant is placed on record. As regards the service of the notice upon the applicant's father, the following direction of the Division Bench of this Court in ***Amandeep Singh Johar v. State (NCT of Delhi)*, 2018 SCC OnLine Del 13448**, is noted:

"*16. We have heard Mr Sanjay Jain, learned ASG and Mr Satyakam, ASC, GNCTD on the aforesaid issues and the reports. Upon consideration of the report and the suggestions made by the parties under the leadership of the Worthy Registrar General and with their consent,* ***it is directed that so far as working of Section 41 A, the following procedure shall be strictly followed by the police in Delhi:***

***

*(viii) The investigating officer shall follow the following procedure:—*

***a The original is served on the Accused/Suspect****;*

*b A carbon copy (on white paper) is retained by the IO in his/her case diary, which can be shown to the concerned Magistrate as and when required;*

*c Used booklets are to be deposited by the IO with the SHO of the Police Station who shall retain the same till the completion of the investigation and submission of the final report under Section 173 (2) of the CrPC*

*d The Police department shall frame appropriate rules for the preservation and destruction of such booklets. …*"

(emphasis supplied)

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17. It is not necessary to finally decide the question of compliance with Section 35 of the BNSS, 2023, and nothing stated herein shall be construed as a finding on that question. Suffice it to note that compliance has not been shown in these proceedings, and that this is a circumstance which this Court is entitled to take into account while considering the petitioners' prayer for bail.

18. Apart from the aforesaid, the following facts and circumstances also weigh with this Court:

a. The charge-sheet has been filed, and the electronic evidence stands seized and is in the custody of the investigating agency;
b. No statement of any victim is on record, and there is no complainant;
c. The offences are punishable with imprisonment up to seven years and are triable by a Magistrate;
d. All the co-accused who have been arrested, other than the petitioners, are already on bail;
e. The alleged owner is now in custody, and the apprehension of the petitioners coordinating with him no longer obtains with the same force;
f. Neither petitioner has any previous conviction; *and*
g. Charges are yet to be framed, the statements of the victims are awaited from a foreign agency, and the trial is unlikely to conclude in the near future.

19. It is relevant to take note of the decision of the Supreme Court in ***Manish Sisodia v. Directorate of Enforcement,* 2024 INSC 595**, wherein it was observed as follows:

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> *"53.* ***The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment****. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency.* ***It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception"****.*
>
> *54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents.* ***It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution.*** *As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial."*
>
> (emphasis supplied)

20. A Coordinate Bench of this Court, *vide* order dated 18.02.2025, in ***Rudra Kumar Verma v. State of NCT of Delhi*****, Bail Appln. 4375/2024**, observed as under:

> *"32. In light of the aforementioned judicial precedents and considering that the investigation in this case has been completed, the* ***charge-sheet has been filed, keeping the applicant in custody for almost six (6) months and his further incarciration as an under trial serves no further purpose. Since all the evidence is electronic and document-***

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> ***based and is already in the possession of the investigating agency, the likelihood of the applicant tampering with the evidence if released on bail is remote and bleak***. ***Regarding the respondent's apprehension that the applicant may be a flight risk, this concern can be adequately addressed by imposing stringent conditions and, therefore, could not be the sole ground for denying bail***. …"
>
> (emphasis supplied)

21. This Court is cognizant of the fact that allegations in the present case are grave in nature; however, the Court also cannot lose sight of the dicta in ***Prabhakar Tewari v. State of U.P.,*** **(2020) 11 SCC 648**, wherein the Supreme Court observed:

> "*7. …* ***The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail.*** *The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail. This appeal is dismissed.*"
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> (emphasis supplied)

22. In the circumstances, in the opinion of this Court, the petitioners are entitled to bail.

23. Accordingly, Bail Appln. Nos. 4066/2026 and 4443/2026 are allowed.

24. The petitioners are directed to be released on regular bail on furnishing a personal bond of Rs.50,000 with one surety of like amount to the satisfaction of the learned Trial Court. The same shall be subject to the following conditions:

a. The applicants shall not leave the NCT of Delhi without

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permission of the trial Court;

b. The petitioners shall not leave India without permission of the trial Court and shall surrender their passports before the Trial Court;

c. The applicants shall provide his permanent address to the trial Court, and also the address where he will be residing during the pendency of the case;

d. The applicants shall intimate the Investigating Officer (IO) and file an affidavit before the trial Court regarding any change in his residential address;

e. The applicant/petitioner shall furnish his mobile number to the Investigating Officer (IO)/Station House Officer (SHO) concerned, which shall be kept in working condition at all times. The mobile number shall be kept switched on, with location services enabled at all times, and the same shall be shared with the IO. The mobile number shall not be changed without prior intimation to the IO during the pendency of the trial;

f. The applicant/petitioner shall report to the IO as and when called upon to do so;

g. The applicant/petitioner shall not, directly or indirectly, make any inducement, threat, or promise to any person acquainted with the facts of the case, or tamper with the evidence of the case, in any manner whatsoever;

h. The applicant/petitioner shall appear before the trial Court on each and every date of hearing; and

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i. The applicant/petitioner shall not indulge in any criminal activity during the period of bail.

25. In the case of any breach of the aforesaid conditions, the State shall be entitled to seek cancellation of bail.

26. The petitions are disposed of in the above terms.

**SACHIN DATTA, J**

**OCTOBER 29, 2026/**cl/vk

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