

(2025) 06 DEL CK 0645

In the Delhi High Court

Case No : Bail Application NO. 2203 Of 2025 & Criminal Miscellaneous
Application Nos. 17905, 17906 Of 2025

Ravinder Singh Malhotra

APPELLANT

Vs

State Of Nct Of Delhi And Anr

RESPONDENT

Date of Decision : 25-06-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 35(3), 94, 482
Code of Criminal Procedure, 1973 — Section 437, 438, 439
Indian Penal Code, 1860 — Section 30, 415, 420, 467, 468, 471
Hindu Succession Act, 1956 — Section 14
Prevention of Corruption Act, 1988 — Section 13(2)
Companies Act, 2013 — Section 56

Citation : (2025) 06 DEL CK 0645

Hon'ble Judges : Tejas Karia, J

Bench : Single Bench

Advocate : N. Hariharan, Dipesh Sharma, Mani Bhadrajain, Sushant Singhal, Richa Dhawan, Pramod Kumar Dubey, Aditya Andley, Prince Kumar, Amrita Vatsa, Muskan Sharma, Kunal Sharma, Himanshu Sharma

Final Decision : Allowed

Judgement

Tejas Karia, J

1. These anticipatory bail applications are filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') in FIR No. 180 of 2025 ('FIR') dated 22.03.2025 under Sections 420/468/ 471 of the Indian Penal Code, 1860 ('IPC') registered at PS: Rajouri Garden, West Delhi, New Delhi. Since these Anticipatory Bail Applications are arising out of the same FIR having identical facts and prayers, they are decided by way of this common judgment.

2. The present Anticipatory Bail Applications are the second applications of the Applicants. The first anticipatory bail applications of the Applicants, praying for similar relief were filed before the learned Additional Sessions Judge-05 West: Delhi ('ASJ'), which were dismissed by the learned ASJ vide order dated

22.05.2025.

3. After the common order dismissing anticipatory bail applications by the learned ASJ, the present Anticipatory Bail Applications have been filed by the Applicants before this Court.

FACTUAL BACKGROUND:

4. The FIR in the present case was lodged on 22.03.2025 under Sections 420/468/471 of IPC by Mrs. Gagandeep Kaur ('Complainant') regarding allegedly fraudulent transfer of 18,000 equity shares owned by the Complainant of M/s Malhotra Electronics Private Limited ('Company').

The FIR alleges that 18,000 shares of the Complainant in the Company were allegedly transferred in the name of her husband - Mr. Amanpreet Singh Malhotra without her consent. The FIR alleged that as per the Auditor's Report of the Company for the year 2023, the Complainant's name was not mentioned in the List of Shareholders without the Complainant signing any document giving consent, nor authorising anyone to transfer her shares in the name of her husband. It is further alleged that the Applicants, who are also the Directors of the Company committed forgery and misappropriated 18,000 shares of the Complainant.

5. After the registration of the FIR, the Investigating Officer ('IO') sent a notice dated 07.04.2025 under Section 35 (3) of BNSS to the Applicants and the Complainant's husband ('Accused') to join the investigation in relation to the FIR. The Counsel for the Accused met the IO on 10.04.2025 informing that they have preferred anticipatory bail applications being Bail Application Nos. 622, 623, 672, 673, 674 of 2025 before the learned ASJ.

6. Thereafter, on 16.04.2025, the IO again issued notice to the Applicants requiring their presence on 17.04.2025. The said notice was replied to by the Counsel for the Applicants informing that the Applicants are ready to cooperate with the IO and further requested the IO to provide the list of documents required for investigating the matter.

7. On 19.04.2025, a notice under Section 94 of BNSS was issued to the Applicants to provide the requisite documents including Form No. SH-04 executed in respect of all the shares transferred in the Company for Financial Years ('FYs') 2020-21, 2021-22, 2022-23 and 2023-24 and other documents as sought for in the notice.

8. In the meanwhile, on 19.04.2025, the learned ASJ granted interim protection and directed the Applicants to join the investigation pursuant to which the Applicants joined the investigation.

9. Vide reply dated 25.04.2025 to the notice dated 19.04.2025, the Accused provided the Audited Balance Sheets of the Company for the FY 2020-21 to 2023-24 in their possession.

10. The Applicants submitted that all the documents in possession of the Applicants were provided and no document including Form No. SH-4 was executed, as alleged in the FIR.

11. On 22.05.2025, the learned ASJ vide order dated 22.05.2025 dismissed the anticipatory bail applications of the Applicant citing non-cooperation and non-production of the Form No. SH-4 following which, the Applicant— Tejinder Pal Singh Malhotra filed the BAIL APPLN. 2121/2025 before this Court. This Court, vide order dated 04.06.2025, granted interim protection to the said Applicant, who has joined the investigation on 05.06.2025.

12. The BAIL APPLN. Nos. 2195/2025, 2202/2025, 2203/2025 were listed before this Court on 09.06.2025 and interim protection was granted to the Applicants vide order dated 09.06.2025.

13. Thereafter, a Status Report dated 13.06.2025 was filed by the IO stating as per the independent auditor's report prepared for the year 2023, it came to the notice of the Complainant that her name was not mentioned in "Note No.2: Share Capital" of the said audit report, despite her holding 18,000 shares in the Company. The status report further states that upon perusal of the List of Share Transfer dated 06.09.2023, duly signed by Applicant— Gaganpreet Singh Malhotra — one of the Directors of the Company, it was found that 18,000 shares held by the Complainant were transferred in name of her husband without her consent or knowledge.

14. The Status Report further states that the Complainant has stated that she had not signed any document to give her consent or authorized anyone to transfer her shares in favour of her husband. It is alleged that Complainant's husband has cheated the Complainant and forged documents to transfer shares estimated to be valued at ₹ 2.70 crores.

15. It is also stated in the status report that during investigation/enquiry, a notice under Section 94 of BNSS was served upon the RoC to obtain the balance sheets for the FYs 2022–23 and 2023–24 of the Company. As per the List of Shareholders dated 31.03.2021, the Complainant was recorded as holding 18,000 shares, and her husband held 81,000 shares. However, as per the shareholder list dated 31.03.2023, shareholding of Complainant's husband increased to 99,000 and the Complainant's name was removed from the list.

16. The Status Report further states that, on checking the List of Share Transfer, it was found that the 18,000 shares of the Complainant were transferred to her husband by a board meeting dated 06.09.2023 of the Company, signed by Applicant— Gaganpreet Singh Malhotra on behalf of the board as Director of the Company. Further scrutiny revealed that, after the said transfer on 05.09.2024, the Complainant's husband transferred all 99,000 shares (his original 81,000 plus the transferred 18,000) in favour of Applicant— Gurpreet Singh Malhotra.

17. It is further stated in the Status Report that on 19.04.2025, Applicants—

Tejinder Pal Singh Malhotra and Gurpreet Singh Malhotra joined the investigation and a notice under Section 94 of BNSS was served upon them. On 25.04.2025, a joint reply to the notice was received on behalf of the Accused. On analysing the reply, it was observed that the Accused had not provided the mode of the share transfer or Form No. SH-4 or any supporting documents for the transfer of 18,000 shares from the Complainant to her husband. It was stated in their reply that if any Form No. SH-4 existed, it had been submitted to the RoC. However, the documents obtained from the RoC did not include any uploaded Form No. SH-4.

18. The Status Report states that upon interrogation, Complainant's husband disclosed that no deed or purchase transaction had taken place regarding the shares in question. The Applicants also stated that they had no knowledge of the documents based on which the shares were transferred from the Complainant to her husband.

19. It is further stated that on 05.06.2025, as per directions of this Court, Applicant— Tejinder Pal Singh joined the investigation, but did not cooperate and failed to provide Form No. SH-4. Status Report further states that documents received from the RoC indicate that the Applicant—

Tejinder Pal Singh had attended the Annual General Meeting ('AGM') held on 06.09.2023, during which the shares of the Complainant were transferred to her husband through a resolution.

20. The Status Report states that custodial interrogation of Applicant— Tejinder Pal Singh is sought for recovery of documents based on which 18,000 shares were transferred from the Complainant to her husband. Being directors, the share transfer was approved and attended by the Applicants at the AGM. The Complainant's husband is the beneficiary of said 18,000 shares and is presently absconding. Anticipatory Bail of Applicants is opposed at this stage on the ground that they may tamper with the investigation and evidence. There is also apprehension that the Applicants may assist the Complainant's husband, who is absconding in evading arrest.

SUBMISSIONS ON BEHALF OF THE APPLICANTS:

21. It is the case of the Applicants that the Company was set up in 1986 by their father along with his two brothers and is closely held private company. Over the years, business grew and other members of the family including the Applicants herein, and the spouses of the respective members were inducted as shareholders. The said shareholding has been shuffled from time to time for the purpose of accounting, tax and other compliances, on suggestions of company secretaries and auditors of the Company. As part of such family arrangement, shares of the Company were allotted to the spouses/wives of the shareholders wholly and solely in the fiduciary capacity.

22. It is submitted that the Complainant is the legally wedded wife of Mr.

Amanpreet Singh Malhotra and the marriage between the two took place on 25.01.2003. They have twin daughters born on 27.08.2006.

23. It is alleged that due to some marital discord between the Complainant and her husband, cases and counter cases have been filed by both, against each other, including the petition for divorce by her husband and a complaint under the provisions of the Protection of Women from Domestic Violence Act, 2005 ('DV Act') by the Complainant. Both cases are pending before the learned Judge, Family Court-01, West District, Tis Hazari Court, Delhi ('Family Court'). The Family Court vide order dated 20.09.2024 determined the maintenance for the Complainant and the children.

24. An appeal being MAT. APP (F.C.) 394/2024 ('Appeal'), captioned "Amanpreet Singh Malhotra vs Gangandeep Kaur Malhotra" was filed by Mr. Amanpreet Singh Malhotra against the order dated 20.09.2024, passed by the learned Family Court. During the pendency of MAT. APP (F.C.) 394/2024, this Court vide order dated 19.12.2024, referred the parties to mediation, wherein the Complainant and her husband attempted to amicably settle their disputes. Around February, 2025, the Complainant along with her two kids, shifted to USA and it is alleged that the mediation proceedings were attended only by the Complainant's brother. It is further alleged by the Applicants that during these mediation proceedings, exorbitant amounts were demanded from Mr. Amanpreet Singh Malhotra to settle the disputes due to which the settlement talks failed. This Court, thereafter, disposed of MAT. APP (F.C.) 394/2024, vide order and judgment dated 04.04.2025 dismissing the Appeal.

25. It is the case of the Applicants that in the midst of these mediation proceedings and while the Appeal was pending, the Complainant filed the instant complaint on 14.12.2024 and on 22.03.2025, the FIR was formally registered. The Applicants claim that the timing of the FIR, after nearly two years from the alleged incident and immediately after the breakdown of mediation, suggests that the FIR is an afterthought and has been filed as the Complainant's husband, who is also an accused in the FIR, refused to accept her demand of Rs. 18 Crores in mediation.

26. It is submitted that the Complainant is using FIR only to give way to her monetary demands from her husband as an afterthought due to unsatisfied monetary demands to accomplish her vindictive vendetta against her husband. It is further submitted that the FIR was lodged nearly two years after the alleged incident of share transfer and without producing any documentary evidence to substantiate the claim of forgery. It is submitted that despite the pendency of matrimonial proceedings between the Complainant and her husband since 2020, she had never claimed shareholding or disclosed any such investment in her income affidavit dated 16.02.2024, filed before courts in the pending matrimonial proceedings.

27. It is submitted that Form No. SH-4 was not executed and no forgery was

committed by the Applicants. The said document was not available with the RoC as no such forged documents, as has been alleged by the Complainant, are in existence. It is submitted that in absence of Form No. SH-4, no transfer in effect had taken place and ownership did not change hands and as such, the ingredients of cheating were not made out at all. It is further submitted that requisite steps are being undertaken by the Company under the provisions of the Companies Act, 2013 ('Companies Act') to rectify the shareholding of the Complainant.

28. It is further submitted that the Complainant has ferociously picked and chosen only specific details to be mentioned in her declaration of income affidavit dated 16.02.2024. The Complainant has not made any investment in the Company and the FIR filed by her is also silent about the same. The Complainant is also silent about the date when such alleged shareholding was transferred in her name. It is submitted that a simple common family arrangement is being used by the Complainant in the FIR as a tactics to exert/assert pressure on her husband and give way to her illicit demands. It is submitted that all the family members of the Applicants play a fiduciary duty in the said family business, but as the Complainant is motivated by her ill will of extorting money from her husband, it is only her who has chosen to raise objection regarding the same.

29. It is further submitted that the documents, alleged to have been forged, being Form No. SH-4, has never been executed by the Applicants or the Accused. The IO, vide status report dated 28.04.2025, filed before the learned ASJ has admitted that no Form No. SH-04 was available even with the RoC, thus establishing the stand of the Applicants regarding non-execution of the Form No. SH-04 and negating the allegations of forgery.

30. The Applicants have filed these Applications on the grounds that no effective share transfer has occurred, and no offence of forgery or cheating is made out. The Applicants have fully cooperated, supplied all available documents, and have no criminal antecedents. It is also one of the grounds that the entire case is based on documentary material, already available with the IO. It is submitted by the Applicants that they have neither absconded nor evaded the process of law, and custodial interrogation is completely unwarranted in this case. It is further submitted that Mr. Amanpreet Singh Malhotra and the Complainant are husband and wife, who are not having cordial marital relations and are living separately since January 2020. Thus, the allegations made by the Complainant are false, malicious, and an outcome of an ongoing matrimonial conflict between the Complainant and her husband.

31. It is submitted that entire gamut of dispute is rooted in a matrimonial conflict, where the Complainant is attempting to leverage the criminal proceedings to extract some monetary benefits from the Accused Persons. It is submitted that the Applicants have been roped in by the Complainant in a false and fabricated case and fears imminent arrest by the police officials at the instigation of the Complainant based on these false allegations.

32. The learned Counsel for the Applicant submitted that the shares in the name of the Complainant were given to her out of love and affection when she became a member of the family. Initially, 1,000 shares were given, and subsequently another 17,000 shares were given out of love and affection. The Complainant has not made any payment for those shares. It was submitted that not even the paid-up share capital of ₹ 10 per share was paid by the Complainant. It was further submitted that there was a mistake in relation to the allotment of those shares, which has been rectified, and those shares have now been restored back to the Complainant. There was neither wrongful gain to the Applicants nor wrongful loss caused to the Complainant in the process. Accordingly, Section 467 of IPC cannot be invoked in the present matter as element of unlawful loss is not present in this case. The Complainant did not invest anything in the Company and, therefore, there is no advantage to the Applicants as there is no unlawful loss caused to the Complainant.

33. The learned Counsel further submitted that Form No. SH-4 is essentially an internal document that was never created. The Company is run by the family and hardly any record is maintained, and only essential filings are done. The registered office of the Company is at the same place where the Complainant was residing. The documents sought were in her possession, and as shareholders can inspect records at any point in time, the Complainant herself is entitled to inspect the said documents and the IO can accompany her and inspect the record.

34. It is further submitted that the concerned shares were transferred in an informal fashion. However, the rectified List of Shareholders has now been filed before the RoC and shares have now been restored to the Complainant. Form MGT-7 filed before RoC also confirms the rectification of holding of the Complainant in the Company.

35. It was further submitted on behalf of the Applicants that there is no public shareholding in the Company. The total percentage of shareholding of the Complainant is merely 1.73%. The Company is a closely knit, family-run enterprise and there are shares of other female members of the Applicants' family as well along with the Complainant. Rectification was carried out in relation to those other female members also. Shares were given and taken from all the female members of the family and then given back to all the female members again. It was submitted that this is a family enterprise, wherein such arrangements keep happening.

36. The learned Counsel for the Applicants further submitted that the entire issue has arisen out of a matrimonial dispute between the husband and the wife. As regards the violations of the provisions of the Companies Act, the learned Counsel for the Applicants submitted that there are provisions for penalties for such violations, and the Company will suffer for not observing the necessary compliance in maintaining the records in accordance with law.

37. As regards the failure to produce Form No. SH-4, the learned Counsel for the Applicants submitted that the Applicants are being asked to create a record which does not exist. It was submitted that the Applicants cannot admit something, which is not true and cooperation in the investigation does not imply that an accused is bound to make statements merely to align with what the IO seeks or wishes to extract. The Applicants have consistently maintained that the said record does not exist. In any event, the issues raised are matters to be adjudicated during the course of trial, and no purpose would be served by taking the Applicants into custody in this regard.

38. The learned Counsel appearing for the Applicant— Gurpreet Singh Malhotra has submitted that the Applicant— Gurpreet Singh Malhotra is not named in the FIR and he is being roped in without having any role played. The learned Counsel further submits that in the FIR, the Complainant has made a statement that her shares be returned back to her and the same has now been returned back.

39. Accordingly, it was submitted on behalf of the Applicants that it is fit case for grant to Anticipatory Bail to the Applicants.

SUBMISSIONS ON BEHALF OF THE COMPLAINANT:

40. Mr. Pramod Kumar Dubey, the learned Senior Counsel appearing on behalf of the Complainant vehemently opposed grant of Anticipatory Bail to the Applicants. He submitted that the shares were a part of Complainant's streedhan, which now have been unlawfully taken away by the Applicants by executing forged documents. The Form No. SH-4 has also not been produced by the Applicants during the course of investigation.

41. The learned Senior Counsel further submitted that this is a complete case of forgery which has nothing to do with the matrimonial dispute. The amount of ₹ 2.7 crores, that is, the value of shares is a big amount and it cannot be said that there is no wrongful loss and wrongful gain in the present matter. The learned Senior Counsel further submitted that as per Section 14 of the Hindu Succession Act, 1956, the Complainant is the absolute owner of shares in question and thus, her consent was required for such a transaction to take place. Form No. SH-4 is a valuable security in terms of Section 30 of IPC. It was further submitted that the Applicants have not pointed out anything wrong in the order dated 22.05.2025 passed by the learned ASJ rejecting the Anticipatory Bail of the Applicants.

42. The learned Senior Counsel for the Complainant further submitted that Section 56 of the Companies Act requires a transferor and a transferee when any share is transferred. He further referred to clause 18 and 19 of the Articles of Association of the Company, which incorporates the Right of First Refusal clause and states as under—

"18. The Directors are empowered to make call on members of any amount payable at a time fixed by them.

19. Any member desiring to sell any of his shares must notify the Board of Directors of the number of shares, the fair value and the name of the proposed transferee and the Board must offer to the other share holders the shares offered at the fair value and if the offer is accepted, the shares shall be transferred to the acceptor and if the shares or any of them, are not so accepted within one month from the date of notice to the Board the members proposing transfers shall, at any time within three months afterwards, be at liberty, subject to Articles 19 and 20 hereof, to sell and transfer the shares to any persons at the same or at higher price."

43. The learned Senior Counsel for the Complainant further submitted that the Complainant was never informed even of the rectification carried out subsequently by the Company. He submits that there must be consent of the concerned shareholder while re-transferring shares, and the meeting of Board of Directors has to be convened for the said purpose, but none of these compliances were made in the present case.

44. The learned Senior Counsel for the Complainant also relied on the reply dated 02.06.2025 by the Chief Financial Officer of the Company to the notice dated 22.03.2025 issued under Section 94 of BNSS. Mr. Dubey submitted that the Applicants are changing their stand every time regarding the availability of Form No. SH-4 and compliance with the relevant provisions of the Companies Act. To support his submission, the learned Senior Counsel relied on Point No. 3 of the said reply. The same is extracted below:

"3. M/s Malhotra Electronics Pvt. Ltd. is a fully owned family business and all the Directors as well as the shareholders of the aforesaid company are from the same family. Further as a common practice in majority of family owned businesses across the Country that in order to retain the absolute shareholding of a company within a family the female members of the household (i.e. wife, daughter, daughter in law) are given a certain amount of shareholdings in the family business solely for the purpose of compliance and retention of the entire business within the bloodlines. Further in the present case also the transfer of shares as alleged in the present Complaint has been done as part of the routine shuffling of shareholdings within the family as per the family arrangement amongst its members. Further the SH-4 form as sought by you is not available with the Company. The Company has done compliances and filed documents with the ROC as per the relevant provisions of law."

45. However, in the reply dated 25.04.2025 from the Applicants to the notice dated 19.04.2025, it was stated that:

"...Further the SH-4 form as sought by you is not available with the Accused persons and if at all the aforesaid SH-4 forms exist, it must have been uploaded/ filed with the office of registrar of companies, as per the provisions of the Companies Act."

46. The learned Senior Counsel for the Applicants submitted that the recovery of

documents, the information as to who attended the meetings of the Board of Directors of the Company, what was the proposal, when it was submitted, who consented and who dissented — all such information is required from the Applicants.

47. The learned Senior Counsel for the Complainant has relied on the decision of the Supreme Court in *Pratibha Manchanda v. State of Haryana*, (2023) 8 SCC 181 to submit that while granting an anticipatory bail, the Court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation.

48. The learned Senior Counsel for the Applicant submitted that ingredients of Sections 415 and 420 of IPC are fulfilled in the present case and Anticipatory Bail shall only be granted in rarest of the rare case and not in a routine manner.

SUBMISSIONS ON BEHALF OF THE STATE:

49. The learned Additional Public Prosecutor ('APP') submitted that the very fact that shares have been transferred back establishes that those shares were wrongfully transferred earlier. The estimated value of the said shares is ₹ 2.7 crores. The Applicants are trying to make it a case of matrimonial dispute, whereas the case of forgery is apparent and same has to be investigated thoroughly by the investigating agency. The learned APP submitted that merely stating that it is a matrimonial dispute does not absolve the Applicants of forgery. In the process of re-transferring, the Applicants are using Form No. SH-4, which was not used for while executing the alleged transaction in question.

50. The learned APP further submitted that Form No. SH-4, as directed by the IO, has not been produced by the Applicants and thus it is submitted that the Applicants have not cooperated in the investigation. The learned APP submitted that the Applicants are not providing documents sought by the investigating agency and merely joining the investigation is not enough as the Applicants are required to cooperate with the IO. The learned APP further submitted that the documents relating to the share transfer are in the custody of the Applicants. The said documents are required to be recovered for investigation of the alleged crime.

51. The learned APP further submitted that the Applicants are not aware of the compliances according to the procedure prescribed under Companies Act and further submitted that the provisions thereunder have been blatantly disregarded in the present matter.

52. The learned APP relied on the judgment in *State v. Anil Sharma*, (1997) 7 SCC 187, wherein an accused, a Member of Legislative Assembly was granted the relief of anticipatory bail by the High Court in a case under Section 13(2) of the Prevention of Corruption Act, 1988 and the state challenged the same before the Supreme Court on the ground that the high office which the accused held and the wide influence which he could wield, would subject the investigating

agency to great handicap. The Supreme Court while allowing the appeal against the grant of anticipatory bail by the High Court observed that apprehension of the investigating agency in the said matter was quite reasonable considering the wide influence the accused could wield on the witnesses.

53. Accordingly, the learned APP strongly objected to grant of Anticipatory Bail to the Applicants.

ANALYSIS AND CONCLUSION:

54. It is settled law that while considering an application for anticipatory bail, the following factors have to be considered: (i) the nature and gravity of the accusation; (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and (iv) whether the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested.

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 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 Applicants' 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. It 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 appears likely, considering the antecedents of the applicant, that taking 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 a 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.

72. Thus, in light of the above observations and considering the overall facts and circumstance of the case, there is absence of necessity for custodial interrogation. Having carefully examined the contents of the FIR, Status Report and oral submissions of the Applicants, Complainant and the State, this is a fit case for grant of Anticipatory Bail to the Applicants with necessary conditions to ensure cooperation and appearance before the IO for the purpose of investigation.

73. In view of the above, present Applications are allowed and in the event of arrest, the Applicants are directed to be released on bail on furnishing a personal bond in the sum of ₹ 1,00,000/- (Rupees one lakh) for each of the Applicant with two sureties of the like amount to the satisfaction of the IO/SHO, on the following conditions:

i. The Applicants shall continue to join and cooperate with the investigation.

- ii. The Applicants will appear in person and provide all the documents within their power and possession as and when directed by the IO;
- iii. The Applicants shall not leave the Country without prior permission of this Court.
- iv. The Applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and the Complainant or tamper with the evidence of the case, in any manner whatsoever;
- v. The Applicants shall inform the IO in writing of any change in their residential address or mobile number.
- vi. The Applicants shall give their mobile numbers to the concerned IO/SHO and shall keep their mobile phone switched on at all times.

74. In the event of there being any violation of the stipulated conditions, it would be open to the State to seek redressal by filing an application seeking cancellation of the bail.

75. It is clarified that observations made in the present order are for the purpose of deciding present anticipatory bail applications and shall not influence the outcome of the Trial and not be taken, as an expression of opinion, on the merits of the case.

76. The present Applications are allowed in the aforesaid terms.