

(2015) 05 DEL CK 0144

In the Delhi High Court

Case No : Bail Appln. 145 and 146 of 2015

Samrat Singh Nirula and Others

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 437, 438, 438(1), 91

Penal Code, 1860 (IPC) — Section 120B, 149, 34, 419, 420

Citation : (2015) 9 AD 150 : (2015) 220 DLT 583

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Ashok Bhasin, Vikas Pahwa, Senior Advs. and Abhishek Dhingra, for the Appellant; Satish Verma, APP, Janak Singh, SI and Pary-in-Person, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Manmohan Singh, J.—The present application has been filed by the petitioners under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No. 12/2015 under Section 419/420/467/468/471/506/120B IPC registered at P.S. New Friends Colony.

2. The case of the complainant, namely, Gaurav Kalra is that in the month of May, 2013 the accused/petitioners Samrat Singh Nirula and Manrich Singh Narang called the complainant at their residence i.e. A-258 New Friends Colony, New Delhi, where the other co- accused persons were present and they all allured the complainant by telling that accused/petitioners have got a good opportunity to purchase approximately 40 Acres of agricultural land at Sohna (Haryana) for Rs.18.33 Crores.

2.1 They further assured the complainant that genuineness of all the documents have been verified by them and that the said land is free from all encumbrances. In the meeting the accused persons offered 33.33% share as a partner to the

complainant. The accused persons told that they have already paid an amount of Rs.6 crores as part payment and total payment is to be made on or before 30th June, 2013 otherwise deal would not be completed. A copy of an Agreement to sell dated 6th May, 2013 signed between Ms. Raj Bala W/o Sh. Hari Dass Gupta as the owner and as Director of M/s. Goldenkist Developers Pvt. Ltd. in favour of accused persons was also given to the complainant by them at their residence. As per the Agreement to sell, Mrs. Raj Bala was shown as the owner of 24 Acres, 2 Kanal and 7 Marlas and as a director of M/s. Goldenkist Developers Pvt. Ltd. was also shown as owner of 14 Acres and 2 Marlas of land in Sohna, District. Gurgaon. Accused persons also showed the land in question at Sohna, District. Gurgaon, to the complainant.

2.2 Later on the basis of representation of accused persons Rs.6.11 Crores was paid by the complainant to the accused persons against the partnership of 33.33% in the purchase of land in Sohna.

2.3 It is alleged that on 24th May, 2013 an MoU between Samrat Singh Nirula, Manrich Singh Narang and Smt. Priya Kalra w/o Sh.Gaurav Kalra was signed to this effect. Later on, in the first week of June 2013 accused persons told the complainant that in order to save the stamp duty, they will get the land transferred in the name of complainant through GPA.

2.4 It is alleged that Manrich Singh Narang told the complainant that rest of the payment against their share to Mrs. Raj Bala has also been made by them to the sellers of the Sohna land. Therefore on 7th June, 2013, two GPAs were executed; (1) Smt. Rajbala W/o Sh. Hari Dass (as owner of the land) in favour of Smt. Priya Kalra W/o Sh. Gaurav Kalra (2) Mrs. Raj Bala (as Director of M/s. Goldenkist Developers Pvt. Ltd., Nehru Place, New Delhi) in favour of Priya Kalra W/o Sh. Gaurav Kalra, and both the above GPAs were registered in the office of Sub. Registrar at Noida, (UP). In this process a blank cheque and some blank papers were signed and handed over by complainant to the accused(s).

2.5 It is stated that in the month of May, 2014, the accused persons again sought financial help of Rs.4.6 Crores and requested that out of the said amount Rs.60 lacs was required through cheque. A MoU to this effect was also signed between Smt. Surinder Kaur and Jatinder Kaur Narang (as first party) and Sh. Gaurav Kalra (as second Party). Complainant again paid Rs.4.6 crores i.e. Rs.4 crores in cash in 34 installments and Rs.60 lacs by way of two cheques (Cheque no. 384135 dated 29th May,2014 for Rs.25 lacs to Mr. Samrat Nirula and Cheque no. 384136 dated 31st May, 2014 for Rs.35 lacs to Mr. Manrich Narang). Against this financial help, the complainant was made a major partner (63.15%) in two of their office spaces owned by alleged persons at Kilokari, New Delhi.

2.6 In August, 2014 the complainant visited the land in question at Sohna (Haryana) and found some sign boards of different persons showing as owners. On suspicion, the complainant conducted an enquiry on the genuineness of the deal and found from the Office of Sub Registrar, Sohna (Haryana) that a part of

land in question is registered in the name of Ms. Raj Bala W/o Sh. Hari Dass and other part is registered in the name of M/s. Goldkist Developers Pvt. Ltd. and not M/s. Goldenkist Developers Pvt. Ltd., as purported by the accused(s). The complainant also checked and found that the company and the address of M/s. Goldenkist Developers Pvt. Ltd. at Nehru place, New Delhi does not exist. The complainant also inquired from the accused persons about the Sohna land transaction and specifically asked for a clarification about the same, but they did not pay any heed to the complainant's requests.

3. It is submitted that the accused persons forged the documents of Sohna land property and the Kirlokari properties and cheated the complainant for substantial amount of money, and it is only after the registration of the case by the complainant, that the investigation was taken up by the concerned IO of the Police Station, New Friends Colony, and the persons who were involved in this conspiracy of cheating the complainant were arrested and the events unfolded as to how and for what consideration of money they, on behest of the accused persons, performed all the acts of impersonation as well as making false and fabricated property documents, pasted identical photographs of multiple sellers and buyers, and also made and affixed false stamp of the Government authority i.e. Office of the Sub- Registrar Delhi.

4. It is stated that only after the arrest of the involved persons and their respective custodial interrogation was conducted by the police, the conspiracy of cheating the complainant was unearthed. The persons arrested in this case have already been sent to the judicial custody after they disclosed the chain of events to the police about how the accused persons conspired against the complainant and induced him and cheated him for substantial amount of money. It is argued that the allegations made by the complainant against the accused persons in his criminal complaint are strongly supported by the disclosure statements of the co-accused and other persons involved in this case of cheating and conspiracy against the complainant and that it was done with the co-operation of the associates of accused persons and at the behest of Samrat Singh Nirula and Manrich Singh Narang as they adopted a modus operandi to cheat the complainant and his wife by forging the original property documents including to make scanned/coloured copies of title deeds look exactly like genuine. The accused persons also affixed the identical photographs of multiple sellers and buyers of the Kirlokari properties over the photocopy of the title deeds, and affixed fake stamps of the concerned Sub-Registrar. Therefore, it is submitted that in view of such grave offence committed by the petitioners, their custodial interrogation is required in order to complete the investigation in the matter and this Court should not exercise its discretionary powers in favour of the petitioners, as the record indicates and points out their role and involvement.

5. Learned APP for the State and the learned Senior counsel appearing on behalf of the complainant have referred the status reports filed by the police and urged that the custodial interrogation of the accused persons are further indispensably

necessary for the investigating agency to unearth all the links involved in the criminal conspiracy committed by the accused persons. In the present case, it is evident from the statements of the co-accused, reflected in the status report of the IO dated 10th February, 2015, that these two petitioners are the kingpin and master mind of the whole transactions and ultimate beneficiary. The police has to recover the original forged and fabricated documents, cheated amount, original title deeds and other documents.

6. The following judgments are referred by the learned APP for the State:-

(i) State Rep. by the C.B.I. Vs. Anil Sharma, AIR 1997 SC 3806 : (1997) CriLJ 4414 : (1997) 3 Crimes 252 : (1997) 3 CTC 60 : (1997) 7 JT 651 : (1997) 5 SCALE 689 : (1997) 7 SCC 187 : (1997) 3 SCR 737 Supp : (1997) AIRSCW 3722 : (1997) 7 Supreme 670

(ii) Lavesh Vs. State (NCT of Delhi), (2013) 115 CLT 354 : (2012) 4 JCC 2330 : (2012) 8 JT 336 : (2012) 8 SCALE 303 : (2012) 8 SCC 730

(iii) Muraleedharan Vs. State of Kerala, AIR 2001 SC 1699 : (2001) CriLJ 2187 : (2001) 2 Crimes 239 : (2001) 75 ECC 481 : (2001) 5 JT 84 : (2001) 3 SCALE 440 : (2001) 4 SCC 638 : (2001) 3 SCR 57 : (2001) 2 UJ 1161 : (2001) AIRSCW 1687

(iv) Balwant Singh Negi Vs. State, (2012) 4 JCC 2446

(v) Ajit Singh Yadav Vs. State, (2012) 4 JCC 2400

(vi) Deepa Tracy Vs. State (NCT of Delhi), (2003) 3 AD 249 : (2003) 104 DLT 378 : (2003) 68 DRJ 70 : (2003) 2 JCC 625 .

7. They also referred the order dated 17th January, 2015 passed by the Additional Sessions Judge wherein the anticipatory bail application filed by the accused persons was heard and was rejected.

8. In the bail applications, the case of the petitioners is that vide MoU dated 3rd January, 2012, Samrat Singh Nirula in his mother's name, and Manrich Singh Narang in his father's name along with Priya Kalra jointly invested in property bearing F-268 Sarita Vihar, New Delhi. Later on 29th November, 2012 the said property was sold vide registered sale deed No. 15345, and the sale proceeds were proportionately distributed, and Samrat Singh received Rs.11 Lakhs vide cheque no.201384 on 18th May, 2013. It was agreed that the property shall be purchased in the name of Priya Kalra, the possession of the property shall be with Sh.Rajinder Singh Narang and the title deeds shall be kept with Smt. Surender Kaur. Once the property was sold for Rs.63.5 lakhs, the share of the petitioners was paid to them on 18th May, 2013. This amount is now being misused by the complainant in falsely implicating them. In June, 2013, the complainant Gaurav Kalra and his wife Priya Kalra showed title documents of Sohna land in Priya's name and on the basis of said documents fraudulently induced and sold a 2/3rd proportion of Sohna land to the petitioners. The said

transaction was entered into by way of MOU dated 14th June, 2013. The petitioners paid Rs.60 Lakhs to Priya Kalra towards the payment of said land. Later upon an enquiry the petitioners found that Sohna land was owned by Mrs. Raj Bala, a NRI and a resident of Singapore, and she had never sold the land to Priya Kalra. The petitioners then realized that the complainant had produced a co-conspirator to impersonate as Mrs. Raj Bala.

9. It is alleged by the petitioners that all the above mentioned documents i.e. the agreement dated 6th May, 2013, undertaking dated 16th May, 2013, MOU dated 24th May, 2013 and MOU dated 3rd June, 2014 are forged and fabricated by the complainant, as the petitioners never executed any of these documents.

10. The petitioners submit that they sent a legal notice dated 30th October, 2014 and also preferred a criminal complaint dated 14th November, 2014 against Gaurav and Priya and as a counter blast, Gaurav and Priya Kalra in connivance with co-conspirators forged and fabricated furthermore documents and on the basis of those documents registered a false FIR against the petitioners. These forged documents are mentioned below:

(a) An agreement to sell dated 6th May, 2013 purportedly executed between Raj Bala M/s. Golden Kist and Samrat Singh Nirula and Manrich Singh Narang, showing that Raj Bala agreed to sell the Sohna lands to them. Allegedly the petitioners also paid Rs.6 Crores as advance towards sale consideration of Rs.18.33 Crores.

(b) Undertaking dated 6th May, 2013 to show that Raj Bala undertakes to sell the Sohna land to the petitioners, and have received Rs.6 Crores.

(c) A MOU dated 24th May, 2013 purportedly executed between Samrat Singh Narang, Manrich Singh Narang and Priya Kalra. Priya Kalra states to have advanced Rs.6.11 Crores to them as financial assistance (6 Crores in cash, and 11 Lakhs by cheque) for jointly purchasing Sohna property.

(d) MOU dated 3rd June, 2014 purportedly executed between (1) Surinder Kaur and Samrat Singh Nirula, (2) Jatinder Kaur Narang and Manrich Singh Narang (as first party) and Gaurav Kalra (as second party). Gaurav Kalra states to have advanced a financial help of Rs.4.60 Crores (4 Crores in cash and Rs.60L by cheques) to the petitioners. In lieu of the same, allegedly the Petitioners agreed to transfer 63.15% share of Taimoor Nagar properties bearing 4-B, Kilokri, Tehsil Defence Colony in favour of Gaurav Kalra. It is alleged that the petitioners also agreed to pay rent of Rs.1,25,000-/ per month to Gaurav Kalra, as he let out the said properties to the petitioners.

11. It is submitted that there is no evidence of the petitioners taking or accepting Rs.6 Crores in cash. This allegation of the complainant is completely false and fabricated. It is reiterated that Rs.11 lakhs was received vide cheque dated 18th May, 2013, by Priya Kalra from the sale proceeds of Sarita Vihar property and there is also no evidence of the petitioner taking or accepting Rs.4 Crores in

cash. This allegation of the complainant is completely false and fabricated. Vide MOU dated 3rd May, 2014, it is pointed out that there is neither any receipt nor any evidence of having paid Rs.4 Crores in cash to the petitioners. Rs.60 Lakhs was received by way of 2 cheques dated 27th May, 2013 as return of the money invested by the petitioners in Sohna property.

12. It is alleged that the complainant had forged the said documents, as he did not realize and inadvertently filed 2 copies of the first page of alleged MOU dated 24th May, 2013 before the Additional Chief Metropolitan Magistrate, Saket along with their application under Section 156(3) Cr.P.C. 1st copy which has a stamp affixed and bears the signature of Rakesh Kumar, stamp vendor, and 2nd copy is without the stamp and signature of Rakesh Kumar. The only inference which can be drawn from the fact that the complainant was in possession of both these pages is that they have forged it. The said documents are filed along with additional documents placed on record on 9th February, 2015.

13. Mr. Vikas Pahwa, Senior counsel for the petitioners argues that custodial interrogation in the present case is not necessary in view of reasons explained as the complainant has no case on merit and still the complainant is pressing for custodial interrogation in order to torture all the petitioners including the old citizen/family members of the petitioners. He says that the accused has a right of silence which is a constitutional right of every accused of a crime though his clients have joined the investigation and have answered every question put to them by the police. However, the accused cannot be compelled to answer by custodial interrogation as per police choice. It is agency to prove it.

14. It is submitted by Mr. Pahwa that the IO Janak Singh, SI and complainant Gaurav and his wife Priya Kalra in connivance with other accused persons have hatched a criminal conspiracy and have forged and fabricated various documents and they are trying to make a false case against petitioners.

15. It is argued by Mr. Pahwa that the investigation conducted by Police Station, New Friends Colony is improper as the investigation in this case ought to have been conducted by the Anti Forgery Section of the EOW as they are the expert body in conducting a case like this where large scale forgeries have been committed by the complainant.

16. It is submitted that the petitioners have deep roots in the society, and have joined investigation on 5th February, 2015, 6th February, 2015, 8th February, 2015 and have even produced documents as ordered under section 91 Cr.P.C. by the IO. The petitioners further undertake to join investigation in future.

17. In reply to the petitioners' contentions, it was submitted that the defence raised by the petitioners/accused persons is that the stamp vendor could not possibly identify photographs of Samrat Singh Nirula and Manrich Singh Narang after the expiry of 16 months but in the present case, he was able to identify Samrat and Manrich from the photographs shown to him because of the following peculiarities:

i) Samrat and Manrich used to regularly buy stamps from him, which was lastly purchased 6 months back.

ii) Samrat is the "only Sardar" he has ever seen who is a chain smoker and used to smoke cigarette every time he visited him.

iii) Samrat has cat eyes and is short built.

18. The order in both the bail applications after hearing was reserved on 10th February, 2015. The parties have also filed their written submissions. Along with the written submissions filed on behalf of the petitioners, an additional affidavit dated 18th February, 2015 of Mr. Samrat Singh Nirula was also filed where certain additional facts/disclosures were made. The comments were necessary and thus, the matter was listed on 27th February, 2015 for seeking clarification. On that date, the complainant sought time to verify the same. Few adjournments were also taken for the purpose. In the meanwhile, the petitioners filed one more additional affidavit of Mr. Damman Babbar Nirula on 12th March, 2015. The additional status report on behalf of the State was filed on 25th March, 2015. In reply thereto, another affidavit of Mr. Damman Babbar Nirula was filed in the Registry on 24th April, 2015. Few submissions were made on behalf of the complainant and the bail applications were reserved for orders.

19. This Court is conscious about the fact that while considering the application for anticipatory bail, only the prima-facie view of the case is to be taken; the entire matter should not be considered on merits and most of the time, the report of the police is to be taken as gospel truth at the time of deciding the anticipatory bail application and the averments made in the complaint cannot be brushed aside as investigation in the matter is essential and if necessary accused custodial custody should be taken in order to fetch the truthfulness of the matter. However, in the present case if the complaint as well as the averments made in the bail application is read in a meaningful manner, it is a case of serious nature so as the gravity of the offence. It is true that the defence raised by the accused should not be considered at the time of deciding the anticipatory bail but at the same time the Court cannot close its eyes if the other circumstances are available in order to find prima facie truth particularly when the complainant and police is insisting of custody of the accused parties including wife, mother who have deep roots in the society.

20. In view of the seriousness of the matter, I am of the view that the following facts are very much relevant to decide the present applications. The admitted circumstances are available on record which cannot be disputed by either of the parties. The same are as under:

(a) That the petitioners and the complainant have been friends for the last many years. They have jointly entered into commercial real estate transactions from time to time. In fact they are the brokers.

(b) The case of the complainant is that Rs.10 crores were paid to the petitioners

i.e. Rs.6 crores on 24th May, 2013 and Rs.4 crores on 3rd June, 2014 in cash which is denied by the petitioners who state that the allegations of the complainant are incorrect as no source of this amount was disclosed by the complainant either in his account books nor any tax was paid.

(c) Both the parties are making the allegations against each other for forging the documents involved in the matter.

(d) Both the parties submit before the Court that they do not have the original documents in their possession. The complainant says that those are lying with the petitioners who specifically deny the same.

21. The petitioners/accused persons are ready to give their signatures or any other documents in order to send the same before the FSL for comparison of the signatures. The petitioners have also privately obtained the report from the handwriting expert which is against the complainant. Under these circumstances, the Court has to decide whether the petitioners are entitled for any relief in the matter or their custodial interrogation was required in view of the allegation made in complaint and the status reports filed by the police which disclosed the statement of other accused recorded in police custody confirming the allegation of the complainant.

22. It is reiterated that the complainant in the above said matters is Gaurav Kalra. According to him, he and his wife have paid Rs.10 crores in cash to the petitioners (Rs.6 crores on 24th May, 2013 and Rs.4 crores on 3rd June, 2014) against the execution of the MOUs dated 24th May, 2013 and 2nd June, 2014.

23. It is pertinent to mention here that the parties have filed large number of documents including status reports and affidavit after the hearing in the bail application started and also when finally the matters were reserved for orders on 27th April, 2015.

24. In the first additional affidavit filed on 18th February, 2015, it is stated that the complainant is salaried person and he found out that he had a total income of Rs.46 lac approximately during the assessment year 2013-2014 and during the year 2014-2015 the total income of Rs.45 lac was shown. The specific statement was made in the affidavit that the complainant has not disclosed the cash amount of Rs.10 crores in his account books. Therefore, the allegation made in the complaint on the basis of which the FIR was registered pertaining to transfer of Rs.10 crores in cash by the complainant i.e. Rs.6 crores on 24th May, 2013 and Rs.4 crores on 3rd June, 2014 in favour of the petitioners, the details of which are mentioned in Memorandum of Understandings dated 24th May, 2013 and 3rd June, 2014 are false and frivolous. It is the case of the petitioners that the said complainant Gaurav Kalra and his wife in connivance with the co-conspirators forged and fabricated documents and filed a false complaint against the petitioners.

25. Similarly, one of the petitioners in the second affidavit of Mr. Damman

Babbar Nirula filed on 12th March, 2015, it was deposed that Priya Kalra wife of Gaurav Kalra, had disclosed a total income of Rs.4.75 lac approximately during the Assessment Year 2013-14 and a total income of Rs.9.45 lac approximately during the Assessment Year 2014-15. She had never disclosed cash amount of Rs.6 crores in her books of accounts. It was stated that all the documents relied by the complainant, i.e. MOUs pertaining to the payment of Rs.10 crores are bogus, forged and fabricated. It was further stated that the complainant and his wife in connivance with the co-conspirators forged and fabricated documents.

In the additional status report dated 25th March, 2015, it was stated that the notice was issued to the complainant on 7th March, 2015 and 16th March, 2015 for providing details and source of Rs.10.71 crores allegedly paid by the complainant and his wife to the petitioners. The details of certain documents are filed by the complainant in order to explain to the Court that the complainant during the year 2012-13 had done many transactions of various properties, as they were dealing in sale and purchase of properties and having a considerable amount of money at the time when the alleged payment was made to the petitioners.

26. Reply to the said status report was given by filing of an additional affidavit dated 24th April, 2015 of Mr. Damman Babbar Nirula who also filed the bank statement of the complainant in order to demonstrate that if the supporting claims of the complainant were to be believed in entirety, the complainant was in receipt of total of Rs.4,01,12,017/- (not disclosed in his ITRs) since January, 2012 who has admittedly incurred expenditures/paid Rs.3,92,80,192/- towards various heads since January, 2012. It was also submitted in the affidavit that the bank statements of accounts held by the complainant in Citi Bank and HDFC Bank filed by him along with his application under Section 156(3) Cr.P.C. makes it clear that the complainant has not made any substantial cash withdrawals during the period of 2012-2014 which fact completely demolish claims and allegations of the complainant of having paid Rs.10 crores in cash to the petitioners. In the affidavit, it is also stated that the transactions which are alleged to have been registered with the government authorities, are completely false and bogus, as the complainant has unsuccessfully shown the source of cash amount of Rs.10 crores allegedly paid by the complainant to the petitioners. It is stated in the affidavit that the petitioners have joined the investigation on 6th February, 2015, 8th February, 2015 and 28th February, 2015 and produced the documents as ordered under Section 91 Cr.P.C. When they again visited the police station and met the IO on 28th February, 2015, he refused to pay any heed to their version of facts. It is also submitted that on 16th March, 2015 at 7.00 p.m. they received the notice under Section 91 Cr.P.C. and pursuant thereto, they visited the police station along with the reply to the notice and the IO read the reply, however, he refused to give a receiving for the same. Therefore, the same was sent to the IO by speed post on 20th March, 2015. It is mentioned in the affidavit that in pursuant to their representation dated 12th February, 2015, the Commissioner of Police, Delhi by order dated 9th April, 2015

had transferred the investigation in the present case from South-East District, Delhi to EOW, Delhi with immediate effect. However, by flouting the said order, the IO has filed the final report in the Court of Additional Chief Metropolitan Magistrate, South-East District, Saket on 15th April, 2015, i.e. after 6 days of the order of transfer of investigation.

27. In the following judgments, the law of anticipatory bail has been discussed:-

i) In the case of Ravindra Saxena Vs. State of Rajasthan, AIR 2010 SC 1225 : (2010) CLT 350 : (2010) 1 Crimes 30 : (2009) 15 JT 384 : (2009) 14 SCALE 609 : (2009) 1 SCR 433 : (2010) AIRSCW 523 : (2009) 8 Supreme 225 , it is held that anticipatory bail cannot be denied merely because allegations of cheating and forgery have been made. Further held that High Court could not ignore appellant's plea that dispute between him and complainant regarding sale of specific flats, was purely of civil nature and complainant had already filed suit for specific performance.

ii) In the case of Muraleedharan Vs. State of Kerala, AIR 2001 SC 1699 : (2001) CriLJ 2187 : (2001) 2 Crimes 239 : (2001) 75 ECC 481 : (2001) 5 JT 84 : (2001) 3 SCALE 440 : (2001) 4 SCC 638 : (2001) 3 SCR 57 : (2001) 2 UJ 1161 : (2001) AIRSCW 1687 , it was held that if pre-arrest bail is granted to appellant merely on grounds that investigating agency would not be able to collect any material to connect appellant with crime except confessional statement of co-accused then there is misuse of discretion by Sessions Judge under Section 438 Cr.P.C.

iii) In the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, AIR 2011 SC 312 : (2011) 1 Crimes 109 : (2011) 1 RCR(Criminal) 126 : (2010) 12 SCALE 691 : (2011) 1 SCC 694 : (2011) 1 SCC(Cri) 514 : (2011) AIRSCW 3813 : (2010) AIRSCW 7007 : (2010) 7 Supreme 194 : (2010) 8 Supreme 353 , it was held:

"109. A good deal of misunderstanding with regard to the ambit and scope of Section 438 CrPC could have been avoided in case the Constitution Bench decision of this Court in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, AIR 1980 SC 1632 : (1980) CriLJ 1125 : (1980) 2 SCC 565 : (1980) SCC(Cri) 465 : (1980) 3 SCR 383 was correctly understood, appreciated and applied. This Court in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, AIR 1980 SC 1632 : (1980) CriLJ 1125 : (1980) 2 SCC 565 : (1980) SCC(Cri) 465 : (1980) 3 SCR 383 laid down the following principles with regard to anticipatory bail:

(a) Section 438(1) is to be interpreted in the light of Article 21 of the Constitution of India.

(b) Filing of FIR is not a condition precedent to exercise of power under Section 438.

(c) Order under Section 438 would not affect the right of police to conduct investigation.

(d) Conditions mentioned in Section 437 cannot be read into Section 438.

(e) Although the power to release on anticipatory bail can be described as of an "extraordinary" character this would "not justify the conclusion that the power must be exercised in exceptional cases only". Powers are discretionary to be exercised in the light of the circumstances of each case.

(f) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-examined after hearing. Such ad interim order must conform to requirements of the section and suitable conditions should be imposed on the applicant.

110. The Law Commission in July 2002 has severely criticised the police of our country for the arbitrary use of power of arrest which, the Commission said, is the result of the vast discretionary powers conferred upon them by this Code. The Commission expressed concern that there is no internal mechanism within the Police Department to prevent misuse of law in this manner and the stark reality that complaint lodged in this regard does not bring any result. The Commission intends to suggest amendments in the Criminal Procedure Code and has invited suggestions from various quarters. Reference is made in this article to the 41st Report of the Law Commission wherein the Commission saw "no justification" to require a person to submit to custody, remain in prison for some days and then apply for bail even when there are reasonable grounds for holding that the person accused of an offence is not likely to abscond or otherwise misuse his liberty. Discretionary power to order anticipatory bail is required to be exercised keeping in mind these sentiments and spirit of the judgments of this Court in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, AIR 1980 SC 1632 : (1980) CriLJ 1125 : (1980) 2 SCC 565 : (1980) SCC(Cri) 465 : (1980) 3 SCR 383 and *Joginder Kumar Vs. State of U.P. and others*, AIR 1994 SC 1349 : (1994) CriLJ 1981 : (1994) 2 Crimes 106 : (1994) 3 JT 423 : (1994) 2 SCALE 662 : (1994) 4 SCC 260 : (1994) 3 SCR 661

Relevant consideration for exercise of the power

"111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, AIR 1980 SC 1632 : (1980) CriLJ 1125 : (1980) 2 SCC 565 : (1980) SCC(Cri) 465 : (1980) 3 SCR 383 that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused 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;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

28. It is settled law that the Court can draw an adverse inference against the accused but the Police cannot compel answers by custodial interrogation. It is not legally correct that custody of the accused is required by the Police merely

because there is an allegation against them. It is incorrect to think that once the FIR against the accused is registered he must be arrested by thinking that the accused might be involved in offence. This Court is of the view that each case depends upon its own circumstances. No doubt that the police have the powers to investigate the matters as per their way as per law but it does not mean that the police will exercise power just because there are allegations in the complaint by the complainant. The arrest is necessary if the accused is likely to flee from justice or there is an apprehension that the accused may tamper with the evidence or he is involved in a heinous crime/offences and his arrest is imperative for the purpose of security reason or if Court felt that he may repeat same offences in future unless he is arrested. The custodial interrogation is a euphemism for torture. While considering the application for anticipatory bail, the Court has to keep all these facts in its mind, especially in the cases of commercial type disputes and of civil nature.

29. Learned APP for the State and the learned Senior counsel appearing on behalf of the complainant have argued that while dealing with the anticipatory bail, normally the Court may not go into the aspect of cash amount if paid by the complainant to the petitioners. They submit that the issue of Rs.10 crores paid by the complainant and his wife in cash to the petitioners is the subject matter of trial. The same should not be enquired at this stage of deciding anticipatory bail. It is true that in normal matter, the said query may not be relevant. However, the facts in the present case are very peculiar, i.e. both the parties are making the allegations against each other for forging the documents, viz. agreements, MOUs. They do not have any original documents in their possession. The statement of asserted accused are referred by the counsel for complainant which was recorded in police custody. It is very difficult, under these circumstances, to assess the real position as to who is misleading the Court. It is also correct that one of the parties has forged the documents. In case the complainant would have able to show the source of Rs.10 crores to the Court, even prima facie at this stage, the version of the complainant could have been believed. The substantial amount was allegedly paid in cash. It is cash transaction. Both the parties are dealing in real-estate business and are known to each other. They did many previous transactions. It is difficult to believe that a party would give huge money in cash to another party and would not keep the original documents in its possession who is dealing in property business for a long period. This Court does not want to express any opinion. The petitioners are ready to give their signatures and send the documents to FSL for verification of the signatures. The complainant is not able to prima-facie satisfy the Court as to why he and his wife have not disclosed allegedly Rs.10 crores to the petitioners, in their books of accounts and show the said amount before the Income-Tax Office.

30. When the matter was being heard, the learned Senior counsel appearing on behalf of the complainant, there was no specific denial on behalf of the respondent that the affidavits filed by the petitioners giving the details of amount disclosed are not correct. In the affidavit it was mentioned that Gaurav Kalra had

disclosed a total income of Rs.46 lac approximately during the Assessment Year 2013-14 and a total income of Rs.45 lac approximately during the Assessment Year 2014-15. Similarly, it was mentioned in the affidavit that Priya Kalra wife of the complainant had disclosed the total income of Rs.4.75 lac approximately during the Assessment Year 2013-14 and a total income of Rs.9.45 lac approximately during the Assessment Year 2014-15. In any case these are issues which are necessary to be tested at the time of trial. No finding in this regard can be arrived at this stage. At present the main concern is that on the basis of material placed on record whether the petitioners are entitled for relief or not and secondly, on the face of the complaint the allegations can probably be correct or not.

31. The Court under these circumstances without expressing any opinion on merit prima facie found that the complainant has failed to disclose the source of the cash amount of Rs. 10 crores allegedly paid to the petitioners. No doubt, it is a serious matter and it is a clear case of forgery and fabrication of the documents. One additional fact has also come to the knowledge as pointed out by the petitioners that the Commissioner of Police has specifically passed the order dated 9th April, 2015 for transferring the investigation in the present FIR No. 12/15 from South-East District, Delhi to EOW, Delhi with immediate effect, however, the IO in the matter filed his final report in the Court of Additional Chief Metropolitan Magistrate, South- East District, Saket on 15th April, 2015, i.e. after 6 days of the order of transferring of investigation. It appears that nothing could have been done by the EOW in the matter in view of immediate filing of report by the IO who did not want to further investigate the matter by EOW thoroughly in view of seriousness of the matter. The said act creates the doubt in the mind of the Court as during the course of hearing, learned Senior counsel appearing on behalf of the petitioners requested the court to refer the matter for EOW or the investigation in the present case be conducted by the Expert Body i.e. Anti Forgery Unit of Economic Offences Wing in view of the large scale of forgery involved in the matter which has the jurisdiction of the Economic Offences Wing because there is involvement of about Rs.11 crores which is more than Rs.5 crores as per Standing Order No. 173/10 dated 26th October, 2010 issued by the Commissioner of Police, pertaining to the pecuniary jurisdiction of the Economic Offences Wing, Delhi Police. But despite of referring the matter to EOW by the Commissioner of Police, the final report was filed by the IO in the trial court.

32. In the Bail Application No. 145/2015 the parties are the widowed mothers and their wives of the petitioners in Bail Application No. 146/2015. It is the case of the petitioners that their names have been inserted in the FIR apparently in view to put pressure. It is argued on their behalf that Smt. Jatinder Kaur Narang one of the mother who allegedly executed the MOU dated 3rd June, 2014, was hospitalized for severe Pneumonia during 29th May, 2014 till 6th June, 2014, and she could not have executed the alleged MOU and probably the complainant while preparing the documents did not realize that one person whose name is mentioned would be in the hospital on that date. The discharge summary and

other medical documents are placed on record.

33. Under these circumstances and facts of present case, the prayers made in both Bail Applications are allowed without expressing any opinion on merit. It is directed that in the event of their arrest, the petitioners shall be released on bail subject to their furnishing a personal bond in the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the trial court and further subject to the following conditions:-

(a) that they shall appear and join investigation if so required now and,

(b) that they will furnish their present address and contact number to the IO and will not shift from the said address or change the contact number, without prior permission of the IO;

(c) that they will surrender their passports to the IO and will not leave the country without permission of the Court. In case of violation of any of the conditions above, it will be open to the State to apply for cancellation of the bail.

34. Both applications are accordingly disposed of.