

Anil Sharma vs State (Nct Of Delhi) on 14 March, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 1246/2023
ANIL SHARMA

STATE (NCT OF DELHI)
Through:

+ BAIL APPLN. 1456/2023
HARSH SHARMA
Through:

STATE (NCT OF DELHI)
Through:

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

% 14.03.2024

1. These applications have been filed on behalf of Applicants Anil Sharma and Harsh Sharma, respectively under Section 438 Cr.P.C. for grant of anticipatory bails in case FIR No.0746/2022 dated 27.10.2022 under Sections 420/467/468/471/448/506/120-B IPC registered at PS: Vijay Vihar.

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2. Anticipatory bail application filed by Anil Sharma was dismissed by learned Sessions Court on 10.04.2023 while the application by Harsh Sharma was dismissed on 21.04.2023. Interim protection against arrest was granted by this Court to Anil Sharma vide order dated 18.04.2023 and

to Harsh Sharma vide order dated 03.05.2023, subject to their joining investigation and co-operating therein. Interim orders have continued till date. Since both bail applications arise out of the same FIR and there is similitude of facts as well as the legal issues raised by the parties, both applications are heard together and decided by this common order.

3. Status Report has been filed on behalf of the State, wherein it is stated that present FIR was registered on the complaint of one Vikram Puri S/o Ashok Puri, General Power of Attorney (GPA) holder of Sunny Puri. Since Vikram Puri filed the complaint in his capacity as Power of Attorney holder of Sunny Puri, reference to 'Complainant' hereinafter will be construed as reference to Sunny Puri, who purchased property bearing No.M-1/51 ad- measuring 100 sq. yds. for a sale consideration of Rs.75 lacs and property bearing No.M-1/52 ad-measuring 50 sq. yds. for a sale consideration of Rs.45 lacs, both falling in khasra No.61/5 of Village Pooth Kalan, Delhi, Abadi known as Budh Vihar, Phase-I, Delhi from Accused Anil Sharma through notarized Agreements to Sell and GPAs dated 12.05.2016 and 21.10.2016, respectively and possession was initially handed over to Sunny Puri. Complaint was triggered by an incident on 17.08.2022, when at about 10:00 AM, an unknown person Virender Hooda trespassed on the property and threatened to kill the watchman/security guard hired by the Complainant, if he did not vacate the same.

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4. It is stated in the Status Report that during the course of preliminary enquiry, Virender Hooda S/o Bhim Singh stated that he was a builder and was constructing property bearing No.M-1/52 ad-measuring 100 sq. yds. and claimed to be the owner of Upper Ground Floor of the said property. He produced a notarized GPA and Agreement to Sale dated 26.12.2020, executed by Mamta Sharma W/o Anil Sharma, regarding Upper Ground Floor of property bearing No.M-1/52-D ad-measuring 50 sq. yds.; M-1/52- B/1 ad-measuring 25 sq. yds.; and M-1/52-E ad-measuring 25 sq. yds. i.e. total area ad-measuring 100 sq. yds. out of khasra No.61/5, in his favour. Mamta Sharma was examined and she stated that her husband had executed GPAs and Agreements to Sell regarding the aforesaid properties in her favour and she, in turn, executed the documents of Upper Ground Floor in favour of Virender Hooda. Upon being asked to show the previous original documents indicating the chain of transfer of questioned properties, she stated that only her husband knew about it and did not produce the documents.

5. It is stated that during further investigation, Harsh Sharma S/o Anil Sharma, who had signed as a witness in the GPAs executed by Anil Sharma in favour of Sunny Puri, was also examined and he stated that he signed on all documents as his father had asked him to do so and he did not know the property details. During course of investigation, inspection of the questioned properties was carried out along with the Complainant and a rough map was prepared. Complainant pointed out that Anil Sharma had misrepresented the actual property M-1/52 as M-1/51 and property M-1/53 as M-1/52 and executed the documents in favour of the Complainant, while actually he was not the owner of property M-1/53, which was owned by one Shweta This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/03/2024 at 22:08:42 Sharma. Complainant stated that he was in possession of complete chain of property documents pertaining to M-1/51, Budh Vihar, Phase-I, Delhi and the Will with respect to the said property was registered in the office of Sub- Registrar VI-C, Delhi, which fact on verification, was found to be correct.

6. As per the Status Report, statement of Surender Kumar, the notary who had notarized the property documents executed between Sunny Puri and Anil Sharma regarding properties M-1/51 and M-1/52 was recorded, wherein he stated that documents pertaining to the properties including the earlier chain of documents were notarized by him and he verified his stamps and signatures on the said documents. Investigation revealed that Anil Sharma first sold property M-1/52 to the Complainant and thereafter to his wife. Search for Anil Sharma was made but he was absconding and the anticipatory bail applications of both Applicants were dismissed by the Sessions Court. Upon being granted interim protection by this Court, Anil Sharma joined investigation but during interrogation stated that he did not remember from whom he had purchased property M-1/51 or to whom he had sold the same. He stated that he was in need of money and signed the papers in favour of Sunny Puri and handed them over to Ajeet Arora, who was to hand over the documents to Sunny Puri, once Anil Sharma got the money. Anil Sharma further stated that he neither received the money from Sunny Puri nor were the original documents of the property returned to him. On being questioned as to why he did not file a complaint, he reasoned that Ajeet Arora had expired. He denied having sold property M-1/52 to Sunny Puri. On further interrogation on 01.07.2023, Anil Sharma stated that he had purchased property M-1/51 from Satbir and when Sunny Puri did not give him money despite signing the agreement, he started constructing the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/03/2024 at 22:08:43 property M-1/51 when another person came and claimed himself to be the owner of the said property. Panchayat was held and it was found that the other person had purchased the property before Satbir from the previous owner and hence, Anil Sharma gave up his possession of property M-1/51. Anil Sharma has criminal antecedents and is previously involved in FIR No.577/2021 under Sections 354/354B/323/506/509/34 IPC, registered at PS: Vijay Nagar.

7. Learned counsel for the Applicants contends that Applicants are innocent and have been falsely implicated in the present case. Complainant in his capacity as a GPA holder is not competent to file a complaint and seek registration of FIR. The Agreement to Sell was allegedly executed by Anil Sharma in favour of Sunny Puri on 12.05.2016 and thus there is long and unexplained delay of 6 years in registration of the FIR. Complainant's stand that Anil Sharma had handed over physical possession to Sunny Puri, is belied by the fact that Anil Sharma had purchased the property M-1/52-D, Budh Vihar in 1991 and has been residing therein with his family. He thereafter purchased Plot Nos. M-1/52-B-1 and M-1/52 E in 2004 and 2006, respectively and in the year 2020-2021 combined all the 3 plots and constructed a new building in a plot of 100 Sq. Yds. after demolishing the old one and has been in possession for the last 33 years. Police has wrongly believed

the version of the Complainant that he has paid Rs.75 lacs to Anil Sharma as it is legally impermissible under the Income Tax Act, 1961 to pay more than Rs.20,000/- in cash to buy a property. Moreover, the dispute involved in the present case is a civil dispute and cannot be decided in criminal proceedings. Complaint has been filed only to extort money from the Applicants. Photocopies of GPAs have been filed by the Applicants This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/03/2024 at 22:08:44 which establish the ownership of Anil Sharma and show how the properties were transferred to him through the chain of documents. Reliance is placed on the judgment of the Supreme Court in Lal Chand & Others v. State of Haryana, (1984) 1 SCC 686, to contend that the Supreme Court has observed that if a civil remedy is available to the Complainant, which he fails to exhaust, the criminal case becomes doubtful.

8. Mr. Yudhvir Singh Chauhan, learned APP for the State states that while the Applicants have joined the investigation under the protection of the interim orders granted by this Court, however, they are not co-operating in the investigation. Custodial interrogation of the Applicants is required as they have failed to produce the original documents concerning the properties in question and are evasive in their replies with respect to the GPAs, Agreements to Sell, receipts, etc. allegedly executed in favour of the Complainant. The entire chain of documents needs to be unearthed as there are complex transactions between the Complainant, the Applicants, their family members and some third persons. There are serious allegations of forgery of GPAs as there are several other claimants to the properties such as Shweta Sharma and Virender Hooda. Details of monetary transactions, registration of documents and other people involved as buyers or purchasers etc. need to be unearthed including the possibility of this being a multi victim scam. Both Applicants work in collusion with each other to cheat people of their hard-earned money and Anil Sharma is already an accused in another FIR.

9. Learned counsel for the Complainant argues on the same lines and strenuously opposes the bail applications. It is submitted that Applicants have cheated and induced the Complainant into buying properties to which This is a digitally signed order.

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against the Accused should be ignored or overlooked and he should be granted anticipatory bail. Reliance is also placed on the judgment of the Supreme Court in *State v. Anil Sharma*, (1997) 7 SCC 187, where the Supreme Court has observed that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. Lastly and significantly, reliance is placed on the judgment in *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24, wherein the Supreme Court has observed that ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the Accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial This is a digitally signed order.

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10. I have heard learned counsels for the parties and examined their rival contentions.

11. Before examining the respective contentions and issues arising in the present cases, it would be relevant to refer to some judicial precedents, wherein guidelines have been elucidated for considering anticipatory bail applications. In *Gurbaksh Singh Sibbia and Ors. v. State of Punjab*, (1980) 2 SCC 565, the Supreme Court held that grant of anticipatory bail depends on variety of factors and any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. In *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694, the Supreme Court inter alia observed as under:-

"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 *Sibbia* case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] was correctly understood, appreciated and applied. This Court in *Sibbia* case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] 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

(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.

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(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 Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] and Joginder Kumar v. State of U.P. [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172].

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 Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] 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;

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(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 overimplication 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."

12. In *Sudhir v. The State of Maharashtra and Another*, CRL.A. 1286- 87/2015, decided on 01.10.2015, the Supreme Court declined to grant pre- arrest bail to the Applicant and observed as under:-

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"13. Having considered the submissions made by learned counsel for the parties, and after considering the gravity of the offence, circumstances of the case, particularly, the allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the appellants and the fact that the investigation is held up as the custodial interrogation of the appellants could not be done due to the anticipatory bail, we are of the opinion that the High Court has rightly cancelled the anticipatory bail granted to the appellants by the Additional Sessions Judge, Jalgaon. Therefore, we are not inclined to disturb the same."

13. In the aforesaid judgment, the Supreme Court placed reliance on an earlier decision in *State of A.P. v. Bimal Krishna Kundu and Another*, (1997) 8 SCC 104, wherein the Supreme Court observed:

"12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order."

14. Coming to the present FIR, the allegations against the Applicants are grave and serious. Investigation thus far has revealed that documents such as GPAs, Agreements to Sell, receipts, etc. in respect of the questioned properties were prima facie executed in favour of Sunny Puri by Anil Sharma and this has been verified by the notary Surender Kumar, who identified his signatures and stamps on the property documents, regarding This is a digitally signed order.

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"29. Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance-free status. Organised criminal networks often plan and This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/03/2024 at 22:08:49 execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation or threats to force them to vacate their properties. These land scams not only result in financial losses for individuals and investors but also disrupt development projects, erode public trust, and hinder socio-economic progress."

15. In *P. Chidambaram (supra)*, (2019) 9 SCC 24, the Supreme Court held that in economic offences, etc. anticipatory bail can be granted only in exceptional circumstances. Relevant passage from the judgment is as follows:-

"83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to

have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."

16. It was vehemently argued by counsel for the Applicants that there has been an inordinate delay in lodging the FIR since the alleged transaction is of the year 2016. In my view, mere delay in registering an FIR cannot, by itself, be a ground to grant bail to the Applicants in the facts of this case and in this context, I may allude to the judgment of the Supreme Court in *Edmund S. Lyngdoh v. State of Meghalaya*, (2016) 15 SCC 572, wherein the Supreme Court observed that mere delay in FIR cannot raise doubts on the genuineness of the case of the prosecution. In fact, this contention was negated by this Court also while declining the anticipatory bail in *Trilok Chand Chaudhary v. State*, 2023 SCC OnLine Del 6503. In any case, the Complainant has urged that there is no delay inasmuch as it was only on 17.08.2022 that an unknown person, namely, Virender Hooda This is a digitally signed order.

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17. Learned counsel also urges that no custodial interrogation is required as evidence is purely documentary. In the present case it is the stand of the State that custodial interrogation is required to unearth the scam. Even otherwise the position in law is clear that anticipatory bail cannot be granted only because of a singular factor that custody is not required. In *Sumitha Pradeep* (supra), the Supreme Court observed that there is a misconception of law that only because no case for custodial interrogation is made out by the prosecution, anticipatory bail ought to be granted. Relevant passage from the judgment is as follows:-

"16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be

ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial This is a digitally signed order.

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18. In fact, in Anil Sharma (supra), the Supreme Court emphasized that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 Cr.P.C., relevant paragraph is as follows:-

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

19. Significantly, in P. Chidambaram (supra), the Supreme Court observed that grant of anticipatory bail at the stage of investigation may frustrate the Investigating Agency in interrogating the Accused and in collecting useful information and material which might have been concealed.

20. Considering the overall facts and circumstances, in my considered view, grant of anticipatory bails to the Applicants would hamper and prejudice the investigation in this case. Whether or not the Complainant has a civil remedy can be of no consequence in the given facts of the case, as the This is a digitally signed order.

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21. Accordingly, the applications are dismissed and the interim orders are vacated. Needless to state, the observations made in the present order are only for the purpose of adjudicating the present applications and shall not be construed as an expression on the merits of the matter.

JYOTI SINGH, J MARCH 14, 2024 B.S. Rohella This is a digitally signed order.

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