

Serious Fraud Investigation Office

v.

Aditya Sarda

(Criminal Appeal No. 1872 of 2025)

09 April 2025

[Bela M. Trivedi* and Prasanna B. Varale, JJ.]

Issue for Consideration

Matter pertains to the sustainability of orders passed by the High Court granting anticipatory bail to respondents accused of serious economic offences, and avoiding execution of summons or warrants, disobeying the orders of the Court.

Headnotes[†]

Code of Criminal Procedure, 1973 – ss.82, 204, 482 – Anticipatory bail – Avoiding execution of summons or warrants – Appellant-SFIO lodged a complaint before the Special Court against the respondents-accused, alleging serious offences under the Companies Act and IPC – Special court took cognizance of offences and summoned the respondents by issuing bailable warrants – Respondents did not allow bailable warrants to be executed on them – Issuance of non-bailable warrants against the respondents by the Special Court and also proclamation of offenders proceedings initiated against some of the respondents – High Court granted anticipatory bail to the respondents – In case of two respondents, High Court rejected petition seeking cancellation of anticipatory bail granted by Special Court – Sustainability:

Held: Orders being perverse and untenable at law, cannot be allowed to be sustained – Respondents avoided the execution of the non-bailable warrants even after their anticipatory bail applications were rejected by Special Court – If accused is creating hindrances in execution of warrants/concealing himself and does not submit to the authority of law, he must not be granted the privilege of anticipatory bail, particularly when court taking cognizance has found him prima facie involved in serious economic offences or heinous offences – High Courts should

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also consider the factum of issuance of non-bailable warrants and initiation of proclamation proceedings seriously and not casually, while considering the anticipatory bail application of such accused – Though the Special Court had taken cognizance of the alleged offences under the Companies Act including u/s.447 and other offences under the IPC, and even though the non-bailable warrants were issued from time to time against the respondents, as also the proclamation proceedings were initiated against them, the High Court passed the impugned orders, in utter disregard of the mandatory conditions contained in s.212(6) and also ignoring the conduct of the respondents – In none of the impugned orders, the High Court bothered to look into the proceedings conducted, and the detailed orders passed by the Special Court for securing the presence of the respondents-accused – Judicial time of every court, even of Magistrate's Court is as precious and valuable as that of the High Courts and the Supreme Court – Accused are duty bound to cooperate the trial courts in proceeding further with the cases and bound to remain present in the Court as and when required by the Court – Not allowing the Courts to proceed further with the cases by avoiding execution of summons or warrants, disobeying the orders of the Court, and trying to delay the proceedings by hook or crook, would certainly amount to interfering with and causing obstruction in the administration of justice – Granting anticipatory bail is certainly not the rule – Respondents who have continuously avoided to follow the due process of law, by avoiding attendance in the Court, by concealing themselves and thereby attempting to derail the proceedings, would not be entitled to the anticipatory bail – Thus, the impugned orders passed by the High Court granting anticipatory bail to the respondents set aside – Companies Act, 2013 – ss.212(6), 447. [Paras 9, 23, 24, 26-30]

Companies Act, 2013 – ss. 212(6), 447 – Investigation into affairs of Company by Serious Fraud Investigation Office – Punishment for fraud – Twin conditions for bail:

Held: As per s.212(6), offence covered u/s.447 has been made cognizable and the person accused of the said offence is not entitled to be released on bail, unless twin conditions mentioned therein are satisfied – Said twin conditions are mandatory in nature that a Public Prosecutor to be given an opportunity to oppose the application for such release; and where the Public Prosecutor opposes the

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application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. [Para 24]

Code of Criminal Procedure, 1973 – s.204 – Issue of process – Summons case – Warrant case – Power of the court to issue bailable or non-bailable warrants:

Held: There cannot be a strait jacket formula that the Court must first issue a summons even in case of a warrant case, irrespective of the gravity or seriousness of the offence – Whether the attendance of the accused can be best secured by issuing a bailable warrant or non-bailable warrant, would be a matter, which entirely rests at the discretion of the court – Although the discretion should be exercised judiciously, diverse considerations such as the nature and seriousness of the offence, the circumstances peculiar to the accused, possibility of his concealing or absconding, larger interest of public and state etc. also must be seriously considered by the court. [Para 28]

Case Law Cited

Inder Mohan Goswami and Another v. State of Uttaranchal and Others [2007] 10 SCR 847 : (2007) 12 SCC 1; *P. Chidambaram v. Directorate of Enforcement* [2019] 12 SCR 172 : (2019) 9 SCC 24; *Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation* [2013] 3 SCR 547 : (2013) 7 SCC 439; *Nimmagadda Prasad v. Central Bureau of Investigation* [2013] 3 SCR 493 : (2013) 7 SCC 466; *Srikant Upadhyay and Others v. State of Bihar and Another* [2024] 3 SCR 421 : (2024) SCC OnLine SC 282; *Prem Shankar Prasad v. State of Bihar and Another* [2021] 6 SCR 1176 : (2022) 14 SCC 516; *Vijay Madanlal Choudhary and Others v. Union of India and Others* [2022] 6 SCR 382 : (2023) 12 SCC 1; *Union of India through Assistant Director v. Kanhaiya Prasad* [2025] 2 SCR 544 : 2025 SCC Online SC 306; *Tarsem Lal v. Directorate of Enforcement Jalandhar Zonal Office* [2024] 6 SCR 864 : (2024) 7 SCC 61 – referred to.

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Companies Act, 2013; Limited Liability Partnership Act, 2008; Prevention of Money Laundering Act, 2002.

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List of Keywords

Serious economic offences; Anticipatory bail; Proclamation order; Loss of public funds; Execution of warrants; Twin conditions of bail; Judicial time of court; Avoiding execution of warrants; Obstruction in administration of justice; Avoiding attendance in court; Summons case; Warrants case; Orders perverse and untenable in law; Serious Fraud Investigation Office; Cognizance of offences; Bailable warrants; Issuance of non-bailable warrants; Proclamation of offenders proceedings; Cancellation of anticipatory bail; Non-bailable warrants; Fraud; Public Prosecutor.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1872 of 2025

From the Judgment and Order dated 20.04.2023 of the High Court of Punjab and Haryana at Chandigarh in CRMM No. 17518 of 2022

With

Criminal Appeal No(s). 1875, 1876, 1878, 1879, 1885, 1886, 1888, 1873, 1874, 1877, 1880, 1881, 1882-1883, 1884 and 1887 of 2025.

Appearances for Parties

Advs. for the Appellant:

Amrish Kumar, Sudarshan Lamba, Padmesh Mishra, Hari Kishan, Abhinav Deshwal, Mt. Vishal Singh.

Advs. for the Respondent:

R. Basant, Sr. Adv., Anirudh Joshi, Umang Shankar, Gautam Awasthi, Aditya Samaddar, Arjun Sharma, Upendra Pratap Singh.

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. Leave granted.
2. This batch of sixteen Appeals being interconnected with each other and arising out of the proceedings being CIS No. COMA/5/2019

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pending before the Special Judge, Gurugram, are being decided by this common judgment.

3. In these cases, there is a brazen attempt made on the part of the respondents-accused to stall the criminal proceedings initiated against them, in respect of the serious economic offences allegedly committed by them, by not respecting the summons/warrants issued by the Special Court from time to time and thereby causing obstruction in the administration of justice. A few basic common facts necessary for deciding the present appeals may be stated as under: -
 - (i) The Appellant i.e. Serious Fraud Investigation Office (SFIO) is a statutory body constituted and established under Section 211 of the Companies Act of 2013. The Ministry of Corporate Affairs (MCA) vide the order dated 20.06.2018 in exercise of its powers conferred under Section 212(1)(c) of the Companies Act, 2013 and Section 43(2) and (3)(c)(i) of Limited Liability Partnership Act, 2008 directed the SFIO to inquire and investigate into the affairs of 125 Companies of Adarsh Group (hereinafter referred to as "CIUs"). On 25.02.2019, the MCA further ordered to investigate into the affairs of 20 other companies and two persons.
 - (ii) On 09.05.2019, the SFIO, on completion of the investigation submitted an Investigation report to the MCA recommending prosecution against the respondents for the various offences under the Companies Act (1956 and 2013) and of the IPC. Accordingly, on 18.05.2019, a Criminal Complaint being COMA/5/2019, came to be filed by the SFIO in the Special Court at Gurugram impleading 181 Accused including the respondents in the instant Appeals, under Section 439(2) read with Section 436(1)(a), (d) and (2) read with Section 212 of the Companies Act, 2013, read with Section 621(1) of the Companies Act, 1956, read with Section 50 of the Limited Liability Partnership Act, 2008, read with Section 193 of the Code of Criminal Procedure, seeking taking of cognizance and prosecution of the Accused named therein for the offences committed by them jointly and severally, under the various provisions of the Companies Act and the Indian Penal Code as mentioned therein.
 - (iii) It has been alleged in the complaint that one Adarsh Credit Cooperative Society Limited (ACCSL) was a Multi-State Credit Cooperative Society, founded by one Mukesh Modi,

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and was managed and controlled by him and his family and his associates.

- (iv) The said society accepted the deposits from its members, who were mostly low to middle income individuals. The ACCSL had 800+ branches, 20 lakhs members, 3.7 lakhs advisors and Rs.9253 crores of outstanding deposits as on 31.05.2018. It is further alleged that the controllers of the Society i.e. Mukesh Modi, Rahul Modi and others got incorporated around 125 companies (Adarsh Group of Companies), and started controlling the said Companies by either becoming themselves as the directors or making their members and associates as the directors of the said Companies. On the completion of the investigation it was found that the funds to the tune of Rs.1700 crores were given by the ACCSL as illegal loans to its own controlled 70 Adarsh Group of Companies (CUIs) and certain other companies belonging to the other groups of persons, contrary to settled the position that a company could not be a member of a multi-state credit cooperative society and therefore loans could not have been given to such companies by the ACCSL. It is further alleged that total amount of Rs.4120 crores were the outstanding balance as on 31.03.2018 against such illegal loans given by the ACCSL.
- (v) It is also further alleged by the SFIO that the illegal loans obtained from ACCSL by the Companies belonging to Adarsh Group and Ridhi Sidhi Group were on the basis of forged financial/loan documents submitted/signed by the directors of the Companies belonging to the Adarsh Group. The said directors had siphoned off the said funds/loans obtained from the ACCSL in connivance of the other accused. The directors had signed off balance sheets of the companies showing the said funds obtained ACCSL as “loans taken from a financial institution”.
- (vi) The Special Court vide the detailed Order dated 03.06.2019 took the cognizance of all the offences alleged against the accused including the respondents, under the Companies Act and under the IPC, and summoned all the accused including the respondents herein by issuing bailable warrants in the sum of Rs.10,000/- with one surety in the like amount with the direction to appear on 30.07.2019.

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- (vii) There being some clerical/typographical errors found in the order dated 03.06.2019, the Special Court corrected the cognizance order vide the order dated 11.07.2019. Since the respondents-accused allegedly did not allow the said bailable warrants issued by the Special Court to be executed on them, by hiding themselves and not making themselves available at the given residential addresses, in collusion with the process servers, the Special Court had to issue non-bailable warrants against the respondents from time to time by passing detailed orders. In some of the cases, the Special Court also initiated proclamation of offenders proceedings against the accused.
4. The details of the status of each of the respondents and the orders passed by the Special Court issuing bailable/non-bailable warrants/ initiating proclamation proceedings against them are tabulated hereunder for the sake of convenience.

ITEM	CASE	WARRANTS (BAILABLE (BW) & NON-BAILABLE (NBW))	PROCLAMATION PROCEEDINGS INITIATED	ANTICIPATORY BAIL (SPECIAL COURT & HIGH COURT)	WHETHER S 447/448/76(A) Companies Act 2013 was invoked for invoking S 212(6) Companies Act
1	<i>SFIO vs. Aditya Sarda, SLP (Cr.) No. 13956/2023</i>	<p>2 BW</p> <p>03.06.2019 30.07.2019</p> <p>[Annexure P17, Page 702 of Main SLP i.e., Aditya Sarda]</p> <p>7 NBW</p> <p>04.09.2019 03.10.2019 24.09.2020 15.01.2021 19.02.2020 04.08.2020 08.09.2021</p> <p>[Annexure P17, Page 702 of Main SLP i.e., Aditya Sarda]</p>	<p>Pro.Order (25.03.2022)</p> <p>[Annexure P17, Page 703 of Main SLP i.e., Aditya Sarda]</p>	<p>Denied by Special Court (08.07.2020)</p> <p>[Annexure P10 of the concerned SLP]</p> <p>Granted by High Court (20.04.2023) CRM-M-17518/2022 (IMPUGNED)</p>	<p>S. 447 (@ Page 577 of Annexure P10 of the concerned SLP)</p>

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2	<i>SFIO vs Abhay K. Shah</i> , S.L.P (Crl) 14033/2023	<p>2 BW</p> <p>03.06.2019 30.07.2019</p> <p>[Annexure P15, Page 628 of the concerned SLP]</p> <p>10 NBW</p> <p>23.09.2019 03.10.2019 19.10.2019 22.11.2019 31.01.2020 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021</p> <p>[Annexure P15, Page 628 of the concerned SLP]</p>	<p>Pro.Order (25.03.2022)</p> <p>[Annexure P15, Page 619 of the concerned SLP]</p>	<p>Denied by Special Court</p> <p>(23.09.2019)</p> <p>[Annexure P5, Page 483 the of the concerned SLP]</p> <p>Granted by High Court</p> <p>(29.03.2023)</p> <p>CRM-M-43219/2019</p> <p>(IMPUGNED)</p>	<p>Ss. 447, 448</p> <p>[Annexure P5, Page 483 of the concerned SLP]</p>
3	<i>SFIO vs. Nazima Khan</i> , SLP (Crl.) No. 15318/2023)	<p>5 BW</p> <p>03.06.2019 30.07.2019 04.09.2019 03.10.2019 19.10.2019</p> <p>[Annexure P13, Page 629 of the concerned SLP]</p> <p>8 NBW</p> <p>02.11.2019 22.11.2019 17.12.2019 31.01.2019 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021</p> <p>[Annexure P13, Page 629 of the concerned SLP]</p>	<p>Pro. Order (25.03.2022)</p> <p>[Annexure P13, Page 629 of the concerned SLP]</p>	<p>Denied by Special Court</p> <p>(11.05.2022)</p> <p>[Annexure P15, Page 651 of concerned SLP]</p> <p>Granted by High Court</p> <p>(29.03.2023)</p> <p>CRM-M-25052/2022</p> <p>(IMPUGNED)</p>	<p>S. 447</p> <p>[Annexure P15, Page 651 of the concerned SLP]</p>

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4	<i>SFIO Vs. Shinder Pal Singh & Gurbir Singh</i> , SLP(Crl.) 15322/2023	<p>2 BW</p> <p>03.06.2019 30.07.2019</p> <p>[Annexure P14, Page 653 of the concerned SLP for Shinder Pal Singh]</p> <p>[Annexure P14, Page 654 of the concerned SLP for Gurbir Singh Sandhu]</p> <p>11 NBW</p> <p>13.09.2019 03.10.2019 19.10.2019 22.11.2019 17.12.2019 31.01.2020 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021</p> <p>[Annexure P14, Page 653 of the concerned SLP for Shinder Pal Singh]</p> <p>[Annexure P14, Page 654 of the concerned SLP for Gurbir Singh Sandhu]</p>	<p>Pro.Order</p> <p>(25.03.2022)</p> <p>[Annexure P14, Page 653 of the concerned SLP for Shinder Pal Singh]</p> <p>[Annexure P14, Page 654 of the concerned SLP for Gurbir Singh Sandhu of concerned SLP]</p>	<p>Denied by Special Court</p> <p>(13.09.2019)</p> <p>[Annexure P6, Page 543 of the concerned SLP]</p> <p>Granted by High Court</p> <p>(29.03.2023)</p> <p>CRM-M-27845/2022</p> <p>[IMPUGNED]</p>	<p>S. 447</p> <p>[Annexure P6, Page 543 of the concerned SLP]</p>
5	<i>SFIO vs. Deepak Shrimali</i> , SLP (Crl.) No 13960/2023	<p>2 BW</p> <p>03.06.2019 30.07.2019</p> <p>[Annexure P17, Page 693 of Main SLP i.e., Aditya Sarda]</p> <p>11 NBW</p> <p>04.09.2019 03.10.2019 19.10.2019 22.11.2019 17.12.2019 31.01.2020 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021</p> <p>[Annexure P17, Page 693 of Main SLP i.e., Aditya Sarda]</p>	<p>Pro.Order</p> <p>(25.03.2022)</p> <p>[Annexure P17, Page 694 of Main SLP i.e., Aditya Sarda]</p>	<p>Denied by Special Court</p> <p>(25.05.2022)</p> <p>[Annexure P15 of the concerned SLP]</p> <p>Granted by High Court</p> <p>(29.03.2023)</p> <p>CRM-M-25804/2022</p> <p>(IMPUGNED)</p>	<p>S. 447</p> <p>(@ Page 664 of Annexure P15 of the concerned SLP)</p>

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6	<i>SFIO Vs. Mahesh Dutt Sharma</i> , S.L.P (CrI.) No. 15326/2023	2 BW 03.06.2019 30.07.2019 NO NBW	NO PROCLAMATION INITIATED	Denied by Special Court (02.07.2020) [Annexure P8, Page 548 of the concerned SLP] Granted by High Court (29.03.2023) CRM-M-20279 /2020 [IMPUGNED]	S. 447 [Annexure P8, Page 548 of the concerned SLP]
7	<i>SFIO Vs. Nitin Rathore</i> , S.L.P (CrI.) No. 15333/2023	2 BW 03.06.2019 30.07.2019 [Annexure P15, Page 593 of the concerned SLP] 11 NBW 04.09.2019 03.10.2019 19.10.2019 22.11.2019 17.12.2019 31.01.2020 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021 [Annexure P15, Page 593 of the concerned SLP]	Pro.Order (25.03.2019) [Annexure P15, Page 593 of the concerned SLP]	Denied by Special Court (15.11.2019) [Annexure P6, Page 493 of the concerned SLP] Granted by High Court (29.03.2023) CRM-M-51929/2019 (IMPUGNED)	S. 447 [Annexure P6, Page 494 of the concerned SLP]
8	<i>SFIO Vs. Shyam Bihari Gupta</i> , SLP (CrI.) No. 14128/2023	2 BW 03.06.2019 30.07.2019 [Annexure P14, Page 629 of the concerned SLP] 5 NBW 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021 [Annexure P14, Page 629 of the concerned SLP]	Pro.Order (25.03.2022) [Annexure P14, Page 629 of the concerned SLP]	Denied by Special Court (20.08.2020) [Annexure P7, Page 494 of the concerned SLP] Granted by High Court (29.03.2023) CRM-M-17096/2022 (IMPUGNED)	S. 447 [Annexure P7, Page 502 of the concerned SLP]

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9	<i>SFIO vs. Naveen Choudhary</i> , SLP (CrI.) No. 13965/2023	2 BW 03.06.2019 30.07.2019 [Annexure P17, Page 709 of Main SLP i.e., Aditya Sarda] 12 NBW 04.09.2019 03.10.2019 19.10.2019 22.11.2019 17.12.2019 31.01.2020 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021 [Annexure P17, Page 709 of Main SLP i.e., Aditya Sarda]	Pro.Order (25.03.2022) [Annexure P17, Page 710 of Main SLP i.e., Aditya Sarda]	Denied by Special Court (21.12.2019) [Annexure P6 of the concerned SLP] Granted by High Court (29.03.2023) CRM-M-25508/2022 (IMPUGNED)	S. 447 (@ Page 497 Annexure P6 of the concerned SLP)
10	<i>SFIO vs. Manish Chaudhary</i> , SLP (CrI.) No. 13975/2023	2 BW 03.06.2019 30.07.2019 [Annexure P17, Page 691 of Main SLP i.e., Aditya Sarda] 11 NBW 04.09.2019 03.10.2019 19.10.2019 22.11.2019 17.12.2019 31.01.2020 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021 [Annexure P17, Page 691 of Main SLP i.e., Aditya Sarda]	Pro.Order (25.03.2022) [Annexure P17, Page 692 of Main SLP i.e., Aditya Sarda]	Denied by Special Court (13.05.2020) [Annexure P14 of the concerned SLP] Granted by High Court (29.03.2023) CRM-M-27804/2022 (IMPUGNED)	Ss 447/448/76A (@ Page 600, Annexure P14 of the concerned SLP)

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11	<i>SFIO vs. Shabbir Khan</i> , SLP (CrI.) No. 13983/2023	13 BW 30.06.2019 30.07.2019 04.09.2019 03.10.2019 19.10.2019 02.11.2019 22.11.2019 17.12.2019 31.01.2020 24.09.2020 15.01.2021 19.02.2021 04.08.2021 [Annexure P17, Page 706 of Main SLP i.e., Aditya Sarda] 1 NBW 08.09.2021 [Annexure P17, Page 706 of Main SLP i.e., Aditya Sarda]	Pro.Order (25.03.2022) [Annexure P 17, Page 707 of Main SLP i.e., Aditya Sarda]	Denied by Special Court (11.05.2022) [Annexure P14 of the concerned SLP] Granted by High Court (29.03.2023) CRM-M-25054/2022 (IMPUGNED)	Ss 447/448 (@ Page 593, Annexure P14 of the concerned SLP)
12	<i>SFIO vs. Saurabh Tak</i> , SLP (CrI.) No. 13976/2023	2 BW 30.06.2019 30.07.2019 [Annexure P17, Page 713 of Main SLP i.e., Aditya Sarda] 5 NBW 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021 [Annexure P17, Page 713 of Main SLP i.e., Aditya Sarda]	Pro.Order (25.03.2022) [Annexure P17, Page 714 of Main SLP i.e., Aditya Sarda]	Denied by Special Court (20.08.2020) [Annexure P7 of the concerned SLP] Granted by High Court (29.03.2023) CRM-M-242999/ 2022 (IMPUGNED)	Ss 447/448/76A (@ Page 498 Annexure P7 of the concerned SLP)

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13	<i>SFIO vs. Jinendra Vyas,</i> SLP (Crl.) No. 13971/2023	2 BW 03.06.2019 30.07.2019 [Annexure P17, Page 686 of Main SLP i.e., Aditya Sarda] 12 NBW 24.09.2019 03.10.2019 19.10.2019 02.11.2019 22.11.2019 17.12.2019 31.01.2020 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021 [Annexure P17, Page 686 of Main SLP i.e., Aditya Sarda]	Pro.Order (25.03.2022) [Annexure P17, Page 687 of Main SLP i.e., Aditya Sarda]	Denied by Special Court (24.09.2020) [Annexure P5 of the concerned SLP] Granted by High Court (29.03.2023) CRM-M-31742/2021 (IMPUGNED)	Ss 447/448 (Page 488, Annexure P5 of the concerned SLP)
14	<i>SFIO vs. Akshat Singh,</i> SLP (Crl.) No. 13973/2023 WITH	Akshat 2 BW 03.06.2019 30.07.2019 [Annexure P17, Page 697 of Main SLP i.e., Aditya Sarda] Akshat 11 NBW 04.09.2019 03.10.2019 19.10.2019 22.11.2019 17.12.2019 31.01.2020 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021 [Annexure P17, Page 697 of Main SLP i.e., Aditya Sarda]	Akshat Pro.Order (25.03.2022) [Annexure P17, Page 698 of Main SLP i.e., Aditya Sarda]	Akshat Singh withdrew his 1st Anticipatory Bail Application on 15.12.2021 [Annexure P10 of the concerned SLP] Second Anticipatory Bail Application was allowed to Akshat Singh by Special Court (20.07.2022) [Annexure P19 of the concerned SLP] High Court rejected Petition for Cancellation of Bail granted to Akshat Singh (20.03.2023) CRM-M-40944/2022 (IMPUGNED)	Akshat Ss 447/448/76A [Annexure P19, Page 844 of the concerned SLP]

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	<p><i>SFIO vs. Naveen Kumar</i>, SLP (Cri.) No. 13974/2023</p>	<p>Naveen</p> <p>2 BW</p> <p>03.06.2019 30.07.2019</p> <p>[Annexure P17, Page 701 of Main SLP i.e., Aditya Sarda]</p> <p>Naveen</p> <p>11 BW</p> <p>04.09.2019 03.10.2019 19.10.2019 22.11.2019 17.12.2019 31.01.2020 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021</p> <p>[Annexure P17, Page 701 of Main SLP i.e., Aditya Sarda]</p>	<p>Naveen</p> <p>Pro.Order</p> <p>(25.03.2022)</p> <p>[Annexure P17 Page 701-702 of Main SLP i.e., Aditya Sarda]</p>	<p>Anticipatory Bail granted to Naveen Kumar by Special Court</p> <p>(19.07.2022)</p> <p>High Court rejected Petition for Cancellation of Bail granted to Naveen Kumar (20.03.2023)</p> <p>CRM-M-1180/2023</p> <p>(IMPUGNED)</p>	<p>Naveen</p> <p>Ss 447/6A</p> <p>[Annexure P18, Page 826 of the concerned SLP]</p>
15	<p><i>SFIO Vs. Prakash Chandra Purohit</i> SLP (Cri.) No. 15311/ 2023</p>	<p>2 BW</p> <p>03.6.2019 30.7.2019</p> <p>[Annexure P13, Page 561 of the concerned SLP]</p> <p>11 NBW</p> <p>04.09.2019 03.10.2019 19.10.2019 22.11.2019 17.12.2019 31.01.2020 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021</p> <p>[Annexure P13, Page 561 of the concerned SLP]</p>	<p>Pro.Order</p> <p>(25.03.2022)</p> <p>[Annexure P13, Page 561 of the concerned SLP]</p>	<p>Denied by Special Court</p> <p>(25.05.2022)</p> <p>[Annexure P14, Page 94 of the concerned SLP]</p> <p>Granted by High Court</p> <p>(29.03.2023)</p> <p>CRM-M-25516/2022</p> <p>(IMPUGNED)</p>	<p>S. 447</p> <p>[Annexure P14, Page 594 of concerned SLP]</p>

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16	<i>SFIO vs. Paras Bolia,</i> SLP (Crl.) No. 13978/2023	2 BW 03.06.2019 30.07.2019 [Annexure P16, Page 651 of the concerned SLP] 9 NBW 04.09.2019 03.10.2019 19.10.2019 02.11.2019 24.09.2020 15.01.2021 19.02.2021 04.08.2021 08.09.2021 [Annexure P16, Page 651 of the concerned SLP]	Pro.Order (25.03.2022) [Annexure P16, Page 651 of the concerned SLP]	Denied by Special Court (08.07.2020) [Annexure P8, Page 555 of the concerned SLP] Granted by High Court (29.03.2023) CRM-M-25412/2020 (IMPUGNED)	S. 447 [Annexure P8, Page 555 of the concerned SLP]
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5. If the individual cases of the respondents are taken into consideration, the following facts have emerged as transpiring from the chart tabulated hereinabove read with the order dated 25.03.2022 passed by the Special Court initiating proclamation proceedings under Section 82 of Cr.P.C.
- (i) In case of the respondent Aditya Sarda (Accused No.141), the bailable/non-bailable warrants could not be executed, as he was not available at the last known address. His anticipatory bail application was rejected by the Special Court on 08.07.2020, in which he had mentioned the same address as mentioned in the complaint. The Proclamation Order was passed against him on 25.03.2022. He was granted anticipatory bail by the High Court vide the order dated 20.04.2023 which is impugned herein.
 - (ii) In case of the respondent Abhay K Shah (Accused No.127), the non-bailable warrants issued against him were received back unexecuted with the report that his house was locked since long. His anticipatory bail application was rejected by the Special Court on 23.09.2019, and was granted by the High Court vide the order dated 29.03.2023, which is impugned herein.
 - (iii) In case of the respondent Nazima Khan (Accused No.152), the non-bailable warrants issued against him were received back unexecuted with the report that the accused was not available

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at home. His anticipatory bail application was dismissed by the Special Court on 11.05.2022 and he was granted anticipatory bail by the High Court vide the order dated 29.03.2023, which is impugned herein.

- (iv) In case of the respondent Shinder Pal Singh (Accused No.137), the non-bailable warrants issued against him were received back unexecuted with the report that he had left the house at given address. His anticipatory bail was dismissed by the Special Court on 13.09.2019 and he was granted anticipatory bail by the High Court vide the order dated 29.03.2023, which is impugned herein.
- (v) In case of the respondent Deepak Shrimali (Accused No.129), the non-bailable warrants issued against him were received back unexecuted with the report that as per his mother the accused was not available at home. His anticipatory bail was rejected by the Special Court vide the order dated 25.05.2022 and he was granted anticipatory bail by the High Court on 29.03.2023, which is impugned herein.
- (vi) In case of the respondent Mahesh Dutt Sharma, (Accused no.178), there was no non-bailable warrants issued, nor any proclamation proceedings were initiated against him by the Special Court. His anticipatory bail was rejected by the Special Court vide the order dated 02.07.2020 and he was granted anticipatory bail by the High Court vide the order dated 29.03.2023, which is impugned herein.
- (vii) In case of the respondent Nitin Rathore (Accused No.116), the non-bailable warrants issued against him were received back unexecuted with the report that he had left the house at the given address. His anticipatory bail was rejected by the Special Court vide the order dated 15.11.2019 and he was granted anticipatory bail by the High Court vide the order dated 29.03.2023, which is impugned herein.
- (viii) In case of Shyam Bihari Gupta (Accused No.165), the non-bailable warrants issued against him were received back unexecuted with the report that as per the gardener in his house, he was not available at home. His anticipatory bail was rejected by the Special Court vide the order dated 20.08.2020 and he

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was granted anticipatory bail by the High Court vide the order dated 29.03.2023, which is impugned herein.

- (ix) In case of the respondent Naveen Choudhary (Accused No. 162), the non-bailable warrants issued against him were not received back either executed or unexecuted and as per the public prosecutor appearing in the case, there was no other address available. His anticipatory bail was rejected by the Special Court vide the order dated 21.12.2019 and he was granted anticipatory bail by the High Court vide the order dated 29.03.2023, which is impugned herein.
- (x) In case of the respondent Manish Chaudhary (Accused No. 128), the non-bailable warrants issued against him were received back unexecuted with the report that as per his wife, he was not available at home. His anticipatory bail was rejected by the Special Court vide the order dated 13.05.2020 and he was granted anticipatory bail by the High Court vide the order dated 29.03.2023, which is impugned herein.
- (xi) In case of the respondent Shabbir Khan, (Accused No. 153), the non-bailable warrants issued against him were received back unexecuted with the report that as per the Chowkidar in his house, he was not at home. His anticipatory bail was rejected by the Special Court vide the order dated 11.05.2022 and he was granted anticipatory bail by the High Court vide the order dated 29.03.2023, which is impugned herein.
- (xii) In case of the respondent Saurabh Tak (Accused No. 172), the non-bailable warrants issued against him were received back unexecuted with the report that he had left the house at the given address. His anticipatory bail was rejected by the Special Court vide the order dated 20.08.2020 and he was granted anticipatory bail by the High Court vide the order dated 29.03.2023, which is impugned herein.
- (xiii) In case of the respondent Jinender Vyas (Accused No. 118), the non-bailable warrants issued against him were received back unexecuted with the report that he had left the house at the given address. His anticipatory bail was rejected by the Special Court vide the order dated 24.09.2020 and he was granted anticipatory bail by the High Court vide the order dated

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29.03.2023, which is impugned herein.

- (xiv) In case of the respondent Akshat Singh (Accused No. 136), the non-bailable warrants issued against him were received back unexecuted with the report that he had left the house at the given address. His first anticipatory bail application was dismissed as withdrawn by the Special Court vide the order dated 15.12.2021, however his second anticipatory bail application was granted by the Special Court vide the order dated 20.07.2022. It appears that a Petition seeking cancellation of his bail was rejected by the High Court vide the order dated 20.03.2023 which is impugned herein. Similarly, in case of the respondent Naveen Kumar (Accused No. 139), the non-bailable warrants issued against him were received back unexecuted with the report that no such person resided at the given address. However, it appears that his anticipatory bail application was granted by the Special Court vide the order dated 19.07.2022 and the High Court rejected the Petition filed by the SFIO seeking cancellation of his bail, vide the order dated 20.03.2023, which is impugned herein.
- (xv) In case of the respondent Prakash Chandra Purohit (Accused No.133), the non-bailable warrants issued against him were received back unexecuted with the report that the house was locked since long. His anticipatory bail application was rejected by the Special Court vide the order dated 25.05.2022 and he was granted anticipatory bail by the High Court vide the order dated 29.03.2023, which is impugned herein.
- (xvi) In case of the respondent Paras Bolia (Accused No. 121), the non-bailable warrants issued against him were received back unexecuted with the report that he had left the house at the given address. His anticipatory bail was rejected by the Special Court on 08.07.2020 and he was granted anticipatory bail by the High Court vide the order dated 29.03.2023, which is impugned herein.

6. **APPEALS ARISING OUT OF SLP (CRL.) NO.13973-13974/2023 AND SLP (CRL.) NO.15326/2023:** - Heard learned Advocate Mr. Padmesh Mishra for the Appellant SFIO and the learned Senior Advocates Mr. Siddharth Luthra, Mr. Nadkarni, and Mr. Somayajulu for the respondents in these appeals.

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7. At the outset, the learned Advocate Mr. Padmesh Mishra appearing for the Appellant SFIO, had fairly conceded that there was no non-bailable warrant issued against the respondent Mahesh Dutt Sharma (SLP CrI. No.15326/2023) by the Special Court, nor any proclamation proceedings were initiated against him. He also did not dispute that in cases of respondent Akshat Singh and respondent Naveen Kumar (SLP CrI. Nos.13973/2023 and 13974/2023), the Special Court itself had granted the anticipatory bail to them, and that the petitions filed by the SFIO against the said orders were dismissed by the High Court. Under the circumstances, we do not propose to entertain the Appeals arising out of SLP (CrI.) Nos.13973-13974/2023 and SLP (CrI.) No.15326/2023, and the same are dismissed.
8. **APPEALS IN OTHER CASES:** - Heard the learned Advocates Mr. Padmesh Mishra for the Appellant - SFIO, and the learned Senior Advocates Mr. Siddharth Dave, Mr. Basant, Mr. Nagamuthu, Ms. Meenakshi Arora, Mr. Gautam Awasthi, Mr. Rudreshwar Singh, Mr. Devesh Bhatia, Mr. Abhishek Singh, Mr. Vivek Soni, Mr. Arjun Sharma and Mr. Aniruddh Joshi, for the respondents in these appeals.
9. The facts that have emerged from the record, clearly demonstrate the respondents in this set of appeals had avoided the execution of the non-bailable warrants even after their anticipatory bail applications were rejected in 2019-2020-2022 by the Special Court. Though it was contended by the learned Advocates appearing for the respondents that the respondents were not aware about the proceedings, the same cannot be accepted. The very fact of their filing anticipatory bail applications before the Special Court, falsifies the submissions made on behalf of the learned counsels for the said respondents that the respondents were not aware of the complaint proceedings filed by the SFIO in the Special Court. There is no justification coming forth from the said respondents as to why after the rejection of their anticipatory bail applications by the Special Court, they did not appear before the Special Court and made themselves unavailable at the given addresses furnished by them during the course of the investigation by the SFIO. It may be noted that the anticipatory bail applications, of the said respondents were allowed by the High Court only in March-April 2023. Since, the said respondents had concealed themselves and avoided to remain present before the Special Court despite they having the knowledge about the pendency of the complaint proceedings, the

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Special Court was perfectly justified in initiating the proclamation proceedings against the said respondents.

LEGAL PROVISIONS:

10. At this juncture, it would be beneficial to reproduce some of the provisions of the Companies Act as also the Code of Criminal Procedure.
11. Section 212 of the Companies Act, 2013 pertains to the “Investigation into the affairs of Company by Serious Fraud Investigation Office”. The relevant part thereof is reproduced below:

“212. Investigation into affairs of Company by Serious Fraud Investigation Office. —

(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

(a) on receipt of a report of the Registrar or inspector under Section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) to (5).....

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), offence covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

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(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this subsection except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) to (17).....”

12. Section 447 of the Companies Act, 2013 pertains to the “Punishment for fraud” which reads as under: -

“447. Punishment for fraud. —

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, 1 [involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower] shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

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Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

Explanation. —For the purposes of this section—

- (i) “fraud”, in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.”

13. Section 82 of Cr.P.C., 1973 pertains to the “Proclamation for person absconding”, relevant part thereof reads as under: -

“82. Proclamation for person absconding. —

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) to (5).....”

14. Section 204 of Cr.P.C., 1973 pertains to the “Issue of process”, relevant part thereof reads as under: -

Serious Fraud Investigation Office v. Aditya Sarda**“204. Issue of process. —**

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) to (5).....”

15. Section 438 of Cr.P.C., 1973 pertains to the “Direction for grant of bail to person apprehending arrest”, relevant part thereof reads as under: -

“438. Direction for grant of bail to person apprehending arrest. —

When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail; and that Court may, after taking into consideration, *inter alia*, the following factors, namely:-

(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) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

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either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under sub-section(1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) to (4).....”

LEGAL POSITION:

16. Now, as explicitly clear from the bare reading of Section 204 of the Code, when the Court taking cognizance of an offence, is of the opinion that there is sufficient ground for proceeding with the complaint, and the case appears to be a warrant case, the Court has a discretion either to issue a warrant, or, summons for causing the accused to be brought or to appear at a certain time before the Court (if the Court does not have the jurisdiction, to appear before the Court having jurisdiction). It is well settled proposition of law that in complaint cases, when a warrant or summons issued by the Court for bringing the accused before it, is not executed, and if the Court is satisfied that the person will not voluntarily appear in the Court; or the police authorities are unable to find the person to serve

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him with a summons; or when it is considered that the person could harm someone if not placed into custody immediately, the concerned Court could issue non-bailable warrant to bring him to the Court.

17. A very pertinent discussion and observations made by a three Judge Bench of this Court in the case of ***Inder Mohan Goswami and Another vs. State of Uttaranchal and Others***,¹ in this regard may be reproduced hereinbelow: -

“49. In *State of U.P. v. Poosu* [(1976) 3 SCC 1: 1976 SCC (Cri) 368] at SCC p. 5, para 13 the Court observed:

“13. ... Whether in the circumstances of the case, the attendance of the accused-respondent can be best secured by issuing a bailable warrant or non-bailable warrant, is a matter which rests entirely in the discretion of the Court. Although, the discretion is exercised judicially, it is not possible to computerise and reduce into immutable formulae the diverse considerations on the basis of which this discretion is exercised. Broadly speaking, the court would take into account the various factors such as,

the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and State. [See *State v. Capt. Jagjit Singh*, AIR 1962 SC 253 at p. 255, para 3.]

50 & 51.....

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

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When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.”

18. Now, so far as anticipatory bail is concerned, this Court has consistently emphasized that anticipatory bail should not be granted as a matter of routine, particularly in serious economic offences, involving large scale fraud, public money or complex financial crimes. In ***P. Chidambaram vs. Directorate of Enforcement***,² it was observed as under: -

“Grant of anticipatory bail in exceptional cases

69. 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 CrPC 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 discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail....

70.

71. Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to procedure prescribed by law. However, the power conferred by Article 21 of the Constitution of India is not unfettered and is qualified by the later part of the

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Article i.e. "...except according to a procedure prescribed by law". In *State of M.P. v. Ram Kishna Balothia* [*State of M.P. v. Ram Kishna Balothia*, (1995) 3 SCC 221: 1995 SCC (Cri) 439], the Supreme Court held that the right of anticipatory bail is not a part of Article 21 of the Constitution of India and held as under: (SCC p. 226, para 7)

"7. ... We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed:

'We agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised.'

In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. *Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21.*

(emphasis supplied)

72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be

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established between the two rights—safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

73. to 76.....

77. After referring to *Siddharam Satlingappa Mhetre* [*Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in *Jai Prakash Singh v. State of Bihar* [*Jai Prakash Singh v. State of Bihar*, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468], the Supreme Court held as under: (SCC p. 386, para 19)

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See *D.K. Ganesh Babu v. P.T. Manokaran* [*D.K. Ganesh Babu v. P.T. Manokaran*, (2007) 4 SCC 434: (2007) 2 SCC (Cri) 345], *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* [*State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain*, (2008) 1 SCC 213: (2008) 1 SCC (Cri) 176] and *Union of India v. Padam Narain Aggarwal* [*Union of India v. Padam Narain Aggarwal*, (2008) 13 SCC 305: (2009) 1 SCC (Cri) 1].)”

Economic offences

78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In *Directorate of Enforcement v. Ashok Kumar Jain* [*Directorate of Enforcement v. Ashok Kumar Jain*,

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(1998) 2 SCC 105: 1998 SCC (Cri) 510], it was held that in economic offences, the accused is not entitled to anticipatory bail."

19. In ***Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation***,³ it was observed as under: -

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

20. In ***Nimmagadda Prasad vs. Central Bureau of Investigation***,⁴ it was observed as under: -

"23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In *State of Gujarat v. Mohanlal Jitmalji Porwal* [(1987) 2 SCC 364: 1987 SCC (Cri) 364] this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under: (SCC p. 371, para 5)

3 (2013) 7 SCC 439

4 (2013) 7 SCC 466

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“5. ... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.””

21. Recently in ***Srikant Upadhyay and Others vs. State of Bihar and Another***,⁵ a very pertinent observations have been made with regard to the powers of the Court to grant anticipatory bail under Section 438 of CrPC. It has been observed that -

“9. It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under Section 438, Cr. PC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in HDFC Bank Ltd. v. J.J.Mannan & Anr.4).

10. When a Court grants anticipatory bail what it actually does is only to make an order that in the event of arrest, the arrestee shall be released on bail, subject to the terms

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and conditions. Taking note of the fact the said power is to be exercised in exceptional circumstances and that it may cause some hinderance to the normal flow of investigation method when called upon to exercise the power under Section 438, Cr.PC, courts must keep reminded of the position that law aides only the abiding and certainly not its resistant. By saying so, we mean that a person, having subjected to investigation on a serious offence and upon making out a case, is included in a charge sheet or even after filing of a refer report, later, in accordance with law, the Court issues a summons to a person, he is bound to submit himself to the authority of law. It only means that though he will still be at liberty, rather, in his right, to take recourse to the legal remedies available only in accordance with law, but not in its defiance. We will dilate this discussion with reference to the factual matrix of this case. However, we think that before dealing with the same, a small deviation to have a glance at the scope and application of the provisions under Section 82, Cr.PC will not be inappropriate.

11 to 24.....

25. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any

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rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant."

22. In ***Prem Shankar Prasad vs. State of Bihar and Another***,⁶ this Court, disapproving the Order passed by the High Court granting anticipatory bail to the accused though the proceedings under Section 82/83 CrPC were initiated, observed as under: -

"10.....

10.1.....

10.2. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that Respondent 2-accused is absconding and even the proceedings under Sections 82/83CrPC have been initiated as far back as on 10-1-2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to Respondent 2-accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc. which came to be considered by the learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under Sections 82/83CrPC by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

10.3.....

11. Thus, the High Court has committed an error in granting anticipatory bail to Respondent 2-accused ignoring the proceedings under Sections 82/83 CrPC."

Serious Fraud Investigation Office v. Aditya Sarda**ANALYSIS:**

23. In view of the above settled legal position, it is no more *res integra* that economic offences constitute a class apart, as they have deep rooted conspiracies involving huge loss of public funds, and therefore such offences need to be viewed seriously. They are considered as grave and serious offences affecting the economy of the country as a whole and thereby posing serious threats to the financial health of the country. The law aids only the abiding and certainly not its resistants. When after the investigation, a chargesheet is submitted in the court, or in a complaint case, summons or warrant is issued to the accused, he is bound to submit himself to the authority of law. If he is creating hindrances in the execution of warrants or is concealing himself and does not submit to the authority of law, he must not be granted the privilege of anticipatory bail, particularly when the Court taking cognizance has found him *prima facie* involved in serious economic offences or heinous offences. In such cases when the court has reason to believe that the person against whom the warrant has been issued has absconded or is concealing himself so that warrant could not be executed, the concerned court would be perfectly justified in initiating the proclamation proceedings against him under Section 82 Cr.P.C. The High Courts should also consider the factum of issuance of non-bailable warrants and initiation of proclamation proceedings seriously and not casually, while considering the anticipatory bail application of such accused.
24. In the instant case, as stated earlier, the Ministry of Corporate Affairs had directed the Appellant – SFIO to investigate into the affairs of 125 companies and on the completion of the investigation, the SFIO had lodged the private complaint before the Special Court against the accused including the respondents, alleging various serious offences under the Companies Act including Section 447 thereof and the offences under the IPC. It is pertinent to note that as per sub-section (6) of Section 212 the offence covered under Section 447 of the Companies Act has been made cognizable and the person accused of the said offence is not entitled to be released on bail or on his bond, unless twin conditions mentioned therein are satisfied. The twin conditions are: - (i) that a Public Prosecutor should be given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not

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guilty of such offence and that he is not likely to commit any offence while on bail. These twin conditions are mandatory in nature. A three Judge Bench in case of **Vijay Madanlal Choudhary and Others vs. Union of India and Others**,⁷ while examining the validity of similar conditions contained in Section 45 of the PMLA Act, had held that the restrictive conditions of bail are mandatory in nature. They are applicable even in the anticipatory bail proceedings.

25. In a recent case in **Union of India through Assistant Director vs. Kanhaiya Prasad**,⁸ it has been observed by this Court that cryptic orders granting bail without advertent to the facts or the consideration of such restrictive conditions with regard to the bail are perverse and liable to be set aside.
26. Coming back to the facts of the present case, though the Special Court had taken cognizance of the alleged offences under the Companies Act including under Section 447 and other offences under the IPC, and even though the non-bailable warrants were issued from time to time against the Respondents, and even though the proclamation proceedings were initiated against them, the High Court has passed the impugned orders. The said Orders have been passed in utter disregard of the mandatory conditions contained in Section 212(6) of the Companies Act, and also ignoring the conduct of the respondents-accused. Such orders being in the teeth of the legal position settled by this Court, as also in the teeth of the Section 212(6) of Companies Act, would fall into the category of perverse orders and therefore untenable at law.
27. In none of the impugned orders, the High Court has bothered to look into the proceedings conducted, and the detailed orders passed by the Special Court for securing the presence of the Respondents – Accused. It cannot be gainsaid that the judicial time of every court, even of Magistrate's Court is as precious and valuable as that of the High Courts and the Supreme Court. The accused are duty bound to cooperate the trial courts in proceeding further with the cases and bound to remain present in the Court as and when required by the Court. Not allowing the Courts to proceed further with the cases by avoiding execution of summons or warrants, disobeying the orders

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of the Court, and trying to delay the proceedings by hook or crook, would certainly amount to interfering with and causing obstruction in the administration of justice. As held in **Srikant Upadhyay's** case (supra), when warrant of arrest is issued or proclamation proceedings are initiated, the accused would not be entitled to invoke, except in exceptional cases, the extraordinary power of the court to grant anticipatory bail. Granting anticipatory bail is certainly not the rule. The respondents-accused, who have continuously avoided to follow the due process of law, by avoiding attendance in the Court, by concealing themselves and thereby attempting to derail the proceedings, would not be entitled to the anticipatory bail. If the Rule of Law is to prevail in the society, every person would have to abide by the law, respect the law and follow the due process of law.

28. A faint attempt was made by the learned counsels for the Respondents to rely upon the decision in case of **Tarsem Lal vs. Directorate of Enforcement Jalandhar Zonal Office**,⁹ to submit that if the respondents were not arrested by the SFIO during the course of investigation till the filing of the complaint, the Special Court while taking cognizance of the alleged offences should have issued a summons only to the respondents-accused and not a warrant. The said submission is bereft of merits. As discussed earlier, as per Section 204, Cr.P.C. in a complaint case, which appears to be a warrant case, the Court taking cognizance of the offence, has the discretion to issue warrant or summons as it thinks fit, for causing the accused to be brought or to appear before it. As held by three Judge Bench of this Court in case of **Inder Mohan Goswami and Another** (supra), the Court is empowered to issue even a non-bailable warrant to bring a person to the Court, when it is reasonable for the Court to believe that the person will not voluntarily appear in the Court or the police authorities are unable to find the person to serve him with a summons. There cannot be a strait jacket formula, as sought to be submitted by the learned advocates for the Respondents that the Court must first issue a summons even in case of a warrant case, irrespective of the gravity or seriousness of the offence. As well settled by now, whether the attendance of the accused can be best secured by issuing a bailable warrant or non-bailable warrant, would

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be a matter, which entirely rests at the discretion of the concerned Court.¹⁰ Although the discretion should be exercised judiciously, diverse considerations such as the nature and seriousness of the offence, the circumstances peculiar to the accused, possibility of his concealing or absconding, larger interest of public and state etc. also must be seriously considered by the court.

29. In the instant case, the Special Court considering the seriousness of the alleged offences had initially issued bailable warrants, however, the Respondents kept on avoiding the execution of such warrants and did not appear before the Special Court though fully aware about the pendency of the complaint proceedings against them. The Special Court therefore had to pass detailed orders from time to time for the issuance of non-bailable warrants, and thereafter had also initiated the Proclamation proceedings under Section 82 of the Code, for requiring respondents to appear before it. The High Court however without paying any heed to the proceedings conducted by the Special Court against the respondents, and ignoring the well settled legal position, granted anticipatory bail to the Respondents vide the impugned orders. As discussed earlier, the said Orders being perverse and untenable at law, cannot be allowed to be sustained, and deserve to be set aside.
30. In that view of the matter, the respective impugned orders dated 29.03.2023 and 20.04.2023 passed by the High Court granting anticipatory bail to the concerned accused who are the respondents in these Appeals, are set aside. The respondents-accused are directed to surrender themselves before the Special Court in one week from today. It is needless to mention that their bail applications as and when filed by them shall be decided by the Special Court in accordance with law. We clarify that we have not expressed any opinion on the merits of the case.
31. The Appeals arising out of SLP (Crl.) No.13956/2023, SLP (Crl.) No.14033/2023, SLP (Crl.) No. 15318/2023, SLP (Crl.) No.15322/2023, SLP (Crl.) No.13960/2023, SLP (Crl.) No.15333/2023, SLP (Crl.) No.14128/2023, SLP (Crl.) No.13965/2023, SLP (Crl.) No.13975/2023, SLP (Crl.) No. 13983/2023, SLP (Crl.) No.13976/2023, SLP (Crl.) No.

10 State of U.P. vs. Poosu (1976) 3 SCC 1 (Para-49)

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13971/2023, SLP (Crl.) No. 15311/2023 and SLP (Crl.) No.13978/2023 are allowed. However, the Appeals arising out of SLP (Crl.) No.13973/2023 (Akshat Singh) & SLP (Crl.) No.13974/2023 (Naveen Kumar) and SLP (Crl.) No.15326/2023 (Mahesh Dutt Sharma) are dismissed accordingly.

Result of the case: Appeals disposed of.

[†]Headnotes prepared by: Nidhi Jain