

Nafees Ahmad Siddiqui And Ors. vs State on 19 April, 1999

Equivalent citations: 1999(49)DRJ569A

Author: J.B. Goel

Bench: J.B. Goel

JUDGMENT

J.B. Goel, J.

1. By this order two applications being CrI.M.(M) 4699/98 under Section 439 of the Code of Criminal Procedure (for short 'the Code') filed by Nafees Ahmad Siddiqui (for short 'Nafees') for bail and the other being CrI. M.(M) 654/99 under Section 482 of the Code filed by the complainant Shri P.D. Lakhani for setting aside the order dated 20.2.1999 passed by the learned Addl. Sessions Judge admitting respondents No. 2 to 5, namely, Shadab Ahmed Siddiqui, Nadeem Ahmed Siddiqui, Shailender Dixit and Waseem Faridi (for short Shabad, Nadeem, Dixit and Waseem) to anticipatory bail.

2. Nafees alongwith Brij Mohan Sharma, Santosh Kumar Sharma, Ram Kishan Chauhan (for short Brij, Santosh and Chauhan) has been chargesheeted for offences under Sections 386/506/120-B IPC. Whereas aforesaid four others who had been absconding have been shown in column No. 2 of the report. Proceedings under Sections 82 and 83 were initiated against these four persons and in the meantime the learned Addl. Session Judge has admitted them to anticipatory bail.

3. Since arguments have been addressed at length in both these cases it would be proper to refer to the facts and circumstances of the case in some details.

4. P.D. Lakhani and his brother Kailash Chand Lakhani (K.C Lakhani) are businessmen and Directors of the company known as M/s. Lucksons Footwear Company Pvt. Ltd., Okhla Indus. Area, New Delhi.

5. P.D. Lakhani complainant had lodged a report on 23.7.1998 with the Deputy Commissioner of Police (Crimes & Railways) alleging that since September- October, 1997 he had been receiving threatening calls on telephones demanding Rs. 5 crores otherwise he and members of his family will be killed. Due to these threats and fear of being killed, he did not inform the police about it and paid Rs. 15 lakhs in January 1998 near Ranjit Hotel, flyover, New Delhi and another sum of Rs. 20 lakhs was delivered on the telephonic instructions of the extortionist to Inland Courier, Sadar Bazar, Delhi

on 30th April, 1998. His brother Shri K.C. Lakhani had also been receiving similar calls at Faridabad and money had been extorted from him also. His brother-in-law Shri Mukund Lal Madan was kidnapped on 3rd May, 1998 and was murdered. He also alleged that he had received calls for further demands through phone No. 98110-06708 on his mobile phone No. 98110-84130 on 13th June, 1998 and again demand of Rs. 30 lakhs more was made on 16th July, 1998 at 10.30 p.m. On this FIR No. 520/98 was registered at Police Station Okhla Industrial Area under Section 386/506 IPC.

6. On the basis of this information record of calls of the mobile phone No. 9811006708 for the period 12th June to 23rd July, 1998 was collected which disclosed that inter alia several telephone calls had been received on telephone No. 01191285010, 9811081430, 0113222173 and Pager No. 9832146663, phone No. 285010 and mobile No. 98110 84130 belong to complainant whereas phone No. 3222173 has been traced in the name of Waseem who is brother-in-law of Nafees, installed at Delhi. Pager No. 9832146663 is registered in the name of one Ms. Indu Saini at Faridabad.

7. Amount of Rs. 20 lakhs delivered in the office of Inland Couriers, Sadar Bazar, Delhi on 30.4.1998, was received by accused Brij who has been identified by Shri P.D. Lakhani and his companion Shri A.S. Sharma. Brij was working in M/s. Inland Courier and also for another company Mercury Courier of Sadar Bazar, Delhi and he had taken the money on the basis of a given code being the number of a hundred rupee currency note as told by the extortionist. Brij was arrested and he admitted having received this money against said code number and having sent the same to their office at Kanpur as per instructions received on phone. At Kanpur accused Santosh another employee of the courier company had received it. Santosh was also arrested and he also admitted having received this money from their Delhi Office (in Hawala) and having delivered it on the basis of the said Code number to the person (identified as Nafees) on 1.5.1998.

8. K.C. Lakhani in his statement under Section 161 made on 24.7.1998 has also stated having received threatening calls and under those threats he had paid Rs. 50 lakhs on 15.10.1997 and another sum of Rs. 1 crore on 16.10.97, to the caller near Ranjit Hotel Flyover. Description of two persons who had collected the money were also given by both the brothers who have been identified as Nafees and Chauhan.

9. The amounts of Rs. 15 lakhs and Rs. 50 lakhs were handed over to the extortionist in two bags whereas Rs. one crore was given in a bag and an Aristocrat briefcase. These 3 bags and brief case have been recovered at the instance of Nafees.

10. Nafees was arrested from Kanpur on 5.8.1998 and was brought to Delhi. He had made four disclosure statements on 5.8.1998, 7.8.98, 13.8.98 and 16.8.1998. In his disclosure statements he had provided the relevant information about his antecedents, his being in financial distress, his planning of earning easy money by resorting to exploitation, blackmail and extortion by use of the name of Abu Saleem of notorious Dawood outfit; his having extorted Rs. 50 lakhs on 15.10.1997 and Rs. 1 crores on 16.10.1997 from K.C. Lakhani, Rs. 15 lakhs in January, 1998 and Rs. 20 lakhs on 1.5.1998 from P.D. Lakhani, the first three amounts near Ranjit Hotel flyover, Delhi and the fourth amount at Kanpur from Santosh through courier. He also disclosed about his accomplices and also

where and how he had planned, how he has extorted and where he had invested and spent the extorted money.

11. Co-accused Chauhan @ Munna who was the driver of his car was arrested on 31.8.1998. He also made disclosure statement about his antecedents, his association as driver of Nafees, about the planning of blackmailing various persons, of extortion from the two Lakhani brothers and also confessed that a small part of the extorted money was given to him by Nafees.

12. During investigation statement of one Ms. Indu Saini, a journalist located at Faridabad who was Incharge of the Magazine published by Nafees from Kanpur was also recorded. She has also stated about her association with Nafees, activities of Nafees, his publishing a magazine under the name of Swatantra Media having office at Kanpur and her being employed at Faridabad office by Nafees. She also stated that Nafees had been trying in vain to obtain advertisements for his magazines from Lakhani brothers which they had not subscribed inspite of the influence brought on them from some local officers, Nafees then having published derogatory articles against them, which had given rise to a dispute between Nafees and the Lakhani brothers which was later on compromised through her intervention. She also disclosed about the adverse financial condition of Nafees, unable to pay even her salary and about his nefarious plans. The investigation has also revealed that Nafees was not in good financial condition, had only small amounts in his 2/3 bank accounts, was unable to pay monthly rent of his residence/office at Kanpur and several cheques given by him towards rent having been dishonoured.

13. Two amounts of Rs. 1.5 crores from K.C. Lakhani and Rs. 35 lakhs from P.D. Lakhani have thus been extorted. The investigation carried out has brought out that after 15.10.1997 new accounts have been opened in several banks under various names and inter alia the following amounts have been deposited in various banks during 17.10.97 to 29.7.1998:-

Name of the Bank Amount deposited

1. Hongkong Bank, Delhi Rs. 8 lakhs
2. Standard Chartered Bank, Delhi Rs. 10 lakhs
3. Bank of America, Delhi Rs. 50,000/-
4. Bombay Mercantile Coop. Bank, Delhi Rs. 73 lakhs
5. City Bank, Delhi Rs. 19,16,000
6. Standard Chartered Bank, Kanpur Rs.25,75,000
7. Punjab National Bank, Kanpur Rs. 28,73,700
8. Stale Bank of India, Kanpur Rs.1.5 lakhs

9. ANZ Grindlays Bank, Kanpur Rs.50,000/-

14. The amounts had been deposited in the following names :-

(i) Nafees Ahmed Siddiqui Rs. 28.14 lakhs

(ii) Swatantra Media Rs. 39.65 lakhs

(iii) Charam Kala A.U.S.S. Ltd. (Charam Kala Audyogik Utpadan Sahakari Samiti Ltd. having Rs. 73 lakhs Regd. office at 92/108, Hira Manpuria, Kanpur)

(iv) Media India Mass Communications Network Ltd. (having Regd. Office at 117/111 C-5, Sarvodaya Nagar, Kanpur, incorporated on 25.5.1998 with the Registrar of Companies, Uttar Pradesh, Kanpur) Rs. 4.60 lakhs

15. Following amounts have also been deposited in the names of near relations of Nafees during 1.7.1998 to 5.8.1998:-

Name Account No. Bank Amount Resham Jahan SB 20293 PNB, Kanpur 2,25,500/-

Tasneem Afreen SB 20294

-do-

1,17,800/-

Urooj Afreen SB 20295

- do -

1,30,800/-

Feroz Siddiqui SB 20296

-do-

1,32,000/-

Masood Ahmed.

SB 20297

-do-

2,14,000/-

Nadeem Ahmed SB 20298

-do-

1,32,700/-

Wasim Siddiqui CA 20301

-do-

2,11,400/-

Shadab Ahmed CA 20221

-do-

4,49,500/-

16. Account Number 09407 in Bombay Mercantile Cooperative Bank Ltd., Darya Ganj, Delhi in the name of M/s. Charam Kala A.USS Ltd. has been opened through Waseem Faridi and Mustqum Faridi as President and Manager respectively and is being operated by Waseem (as per statement of Shri Shakil Hyder, Branch Manager recorded on 27.7.1998).

17. Nafees is the sole proprietor of Swatantra Media. Media India Mass Communications Network Ltd. having registered office at 117/111 C-5, Sarvodaya Nagar, Kanpur) was incorporated on 25.5.1998 comprising of the following :-

Nafees Ahmed Siddiqui Chairman-cum-Managing Director Wasim Ahmed Siddiqui Director Nadeem Ahmed Siddiqui Director Shadab Ahmed Siddiqui Director and has Bank Account No. 014/40/64759 with Standard Chartered Bank, Kanpur. Some other money has also been traced as under:-

(1) Nafees occupies premises No. 117/111 C-5, Sarvodaya Nagar, Kanpur as tenant under Shri Srikant Pandey at a monthly rent of Rs. 9,000/-. He was unable to pay the rent of the premises and most of the cheques given by him had bounced. He has made payments of Rs. 1,35,000/- after 15.10.1997 to his said landlord by means of cheques as under :-

(i) November 19, 1997-Rs. 54,000/-, (ii) December 24, 1997 - Rs. 18,000/- (iii) January 21, 1998 - Rs. 9,000/- (iv) May 13, 1998 - Rs. 27,000/- (v) May 22,1998-Rs. 9,000/- and (vi)July 17,1998 - Rs. 18,000/-.

(2) Rs. 7 lakhs paid to M/s. Printer House Ltd., Scindia House, Connaught Place, New Delhi by means of Bank Draft dated 15.4.1998 of City Bank for purchase of printing machinery (as part payment), (3) Rs. 5,07,500 paid to M/s. N.R. Investments Pvt. Ltd. (represented by Shri Arvind Jain, Director) on 15.7.1998 towards repayment of loan of Rs. 5 lakhs taken by Dixit at Kanpur on 22.6.1998, (4) Rs. one lakh paid by means of Cheque No. 149816 of Hongkong and Shanghai Bank on 19.5.1998 to M/s. DCM Financial Services Ltd., Kanpur towards arrears of instalments of Omni Maruti Van purchased by him on hire purchase basis on 3.3.1997. (A Maruti Omni van bearing registration No. UP-78-S-5075, chasis No. 227411 and engine No. 157571 registered in the name of Nafees was seized from his house No. 117/111 C-5, Sarvodaya Nagar, Kanpur on 7.8.1998), (5) Rs. 4,69,570.60 paid towards purchase of house No. 89/194, Bans Mandi, Kanpur in April, 1998 to Suresh Shankar Malhotra. The sale deed could not be registered perhaps for want of income-tax 'No objection', (6) Rs. 5 lakhs paid by means of a Pay Order of Punjab National Bank to Johri Mal Jain of Lucknow as earnest/advance towards purchase of latter's house No. B-16, Sarvodaya Nagar, Kanpur against total consideration of Rs. 58 lakhs in June, 1998 (per statement of Shri Johri mal Jain dated 22.9.1998), (7) Rs. 5 lakhs paid in cash on 20.7.1998 to Girdhari Lal Dua as earnest/advance towards purchase of latter's house No. 90/165 Iftikabad, Kanpur against sale consideration of Rs. 58 lakhs, (8) Rs. 2.40 lakhs paid to Uday Shankar by means of three Pay Orders dated 6.2.1998 as advance/earnest money towards purchase of latter's house No. 89/193, Bans Mandi, Kanpur, (8). Rs. 5 lakhs paid by Bank Pay Order No. 030031 dated 19.11.1997 issued by Standard Chartered Bank, Kanpur to Shri P.C. Saharya as advance/earnest money for purchase of latter's house No. 117/111, C-4, Sarvodaya Nagar, Kanpur against agreement to sell dated 19.11.1997 for Rs. 31.75 lakhs, (9) Rs. 5 lakhs paid in cash to Shri N.C. Bansal, Chartered Accountant of Dev Nagar, Delhi in July, 1998 for investment in shares on his behalf (this amount of Rs. 5 lakhs was handed over to the police by Shri N.C. Bansal as Nafees's money on 17.8.1998).

18. Besides these some goods/articles like Computer, accessories, air conditioner, a Bullet motorcycle, TV stabilizer, Hero Honda motorcycle, bank deposit slips and various other incriminating articles were also seized from the house/office of Nafees situated at 117/111 C-5, Sarvodaya Nagar, Kanpur in his presence.

19. Three hand bags and one Aristocrat brief case with two stickers of KL on it were got recovered by Nafees from his house/office at 117/111 C-5, Sarvodaya Nagar, Kanpur to the police during investigation on 15.8.1998. In TIP one of the bag has been identified by Shri P.D. Lakhani in which Rs. 15 lakhs were given by him in January, 1998, and other two bags and the Aristocrat briefcase/suit case have been identified by K.C. Lakhani. In one of the bags Rs. 50 lakhs on 15.10.1997 and in the third bag and the brief case Rs. 1 crore were given on 16.10.1997.

20. Nafees and Chauhan have been otherwise also identified by P.D. Lakhani and his brother K.C. Lakhani, as the persons to whom the cash amounts of Rs. 15 lakhs, Rs. 50 lakhs and Rs. one crore were handed over near Ranjit Hotel flyover, New Delhi.

21. I have heard Shri P.N. Lekhi, learned Senior Advocate for Nafees and Shri Raman Sawhney, Advocate for the State in the first case. Shri Lekhi has contended that the case was registered on 24.7.1998 whereas before its registration on 23.7.1998 itself when record of use of mobile phone No. 98110 06708 was collected from the company which course before start of investigation was improper and not warranted by law; the prosecution case is false, and not believable and no case under Section 386 IPC is made out. He has also contended that no proof about the source of the amounts of Rs. 1.5 crores and Rs. 35 lakhs alleged to have been paid by the two brothers is available; the recovery of three handbags and a briefcase is highly un-reliable, there are contradictions about the description of the Aristocrat bag, the bag recovered is not the briefcase as stated by K.C. Lakhani but a big suitcase, most of the money allegedly given bore the initials of their accountant on bundles but none of the amounts recovered bears such signatures, that accountant has also not been examined by the prosecution. The TIP of the three bags is also not proper, is doubtful as P.D. Lakhani could not identify the bags and the suit case in which his brother K.C. Lakhani is alleged to have given the money. The TIP of Nafees was not held, Chauhan was also not put to proper TIP, That it is also unbelievable that the two brothers would have given exactly the same description of the accused in their statements, that except the petitioner other accused have been admitted to bail. Lastly, he contended that the prosecution case is a fictional story having no reality and is false and fabricated. These contentions have been refuted by the learned counsel for the State who has contended that the material prima facie shows involvement not only of the petitioner but discloses a big conspiracy involving other persons also; there is no illegality in the investigation carried out and the material collected is reliable and cannot be doubted at this stage, that investigation has not yet been fully completed in the absence of other persons who are absconding, if the petitioner is released on bail there is every possibility of the witnesses being tampered with and also that he will not be available during trial. Even otherwise nature and gravity of the offence has created panic in the business community, it is not in public interest to release the petitioner on bail and that the role of three other co-accused who have been admitted to bail is not that grave and that in itself would not justify grant of bail to the petitioner. Any preliminary steps taken would not vitiate the investigation. Merit of the case would be gone into at the time of trial and not at this stage. Material on record justify an inference about the involvement of the petitioner. Records of various bank accounts where huge amounts had been deposited in various names in new bank accounts show apparently that extorted money has been traced had been deposited in those bank accounts in the names of the petitioner, his near relations or their companies.

22. The offence seems to be the result of well conceived, planned, engineered and executed conspiracy. Some of the suspected persons have not yet been arrested and to that extent the investigation is incomplete, and there is possibility of the evidence being tampered with, that will cause prejudice to the investigation and prosecution case; whole of the amounts alleged to have been extorted have not been traced/realised. Substantial amount of the extorted money appears to have been invested in the names of the absconding accused or their companies and relations. It is in the interest of prosecution that the matter should be thoroughly and completely investigated unhampered by Courts. The offence of extortion is grave and serious and this type of crime of late has increased enormously and would have created panic among public especially business community. It affects the safety and security of the life and property of an individual and shakes faith of the public in the State and its functionaries responsible for law and order. This crime needs

to be dealt with sternly and culprits brought to book expeditiously. Malady of delay in trial has also been noticed by the Supreme Court in Krishnan v. Krishnaveni 1997 SCC (Cri) 544 as under :-

"The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before memory of the witness fades out. The recent trend is to delay the trial and threaten the witnesses or to win over the witness by pressure or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously."

23. Offences like robbery, dacoity, kidnapping, extortion are grave and serious and generally are committed by desperate and hardened criminals, who threaten or otherwise eliminate the witnesses. Courts should not be too liberal in such cases which adversely affect the administration of justice.

24. The offence thus being grave and serious, it is neither in the interest of the public nor of the State nor in proper administration of criminal justice to release the petitioner on bail.

25. Learned counsel for the petitioner has also contended that all other accused persons have been released on bail. Three of the accused namely, Brij, Santosh and Chauhan were released on bail. Roles of Brij and Santosh in conspiracy and extortion does not seem to have been proved satisfactorily. Against Chauhan the learned M.M. has not found good case of conspiracy. However, I refrain from saying anything on that aspect. A sum of Rs. 2 lakhs appears to have been deposited in his name along with Nafees which was apparently part of extorted money and he has also been identified by Lakhanis'. Obviously the learned MM has not considered the material and circumstances properly. As regards four other accused they have been ordered to be admitted to anticipatory bail but because of stay by this Court they have not been actually released on bail. Application for cancellation of their bail is being considered here in below.

CrI.M.(M) 4699/98

26. For all these reasons it is neither fit and proper, nor in the interest of justice to admit the petitioner on bail. This bail application is accordingly dismissed.

CrI.M. (M) 654/99:

27. The petitioner in this case (P.D. Lakhani) is the complainant. He has sought cancellation of anticipatory bails granted to respondents No. 2 to 5, namely, Shahdab, Nadeem, Dixit and Waseem under Section 438 of the Code.

28. Learned counsel for the petitioner has contended that the learned Addl. Sessions Judge has acted illegally, arbitrarily and improperly in admitting the four accused persons to anticipatory bail ignoring the nature, gravity and seriousness of the offence, the material and circumstances of the case and the fact that they had been absconding, avoiding investigation and were not available in spite of proceedings under Section 82/83 of the Code initiated against them; that Ld. Addl. Sessions Judge has completely ignored the legal principles governing the grant of anticipatory bail

especially in such cases and has strenuously contended that grant of bail is wholly unreasonable and unjustified. He has relied on certain case law. Shri Raman Sawhney, learned counsel for the respondent-State has supported the petitioner. On inquiry as to why the State has not come for cancellation of the bail, he has contended that due to procedural formality it would have taken time in obtaining permission of the competent authority for approaching this Court for cancellation of the bail and in the meantime complainant has already approached this Court. He contends that the State does not support the impugned order dated 20.2.1999, is also aggrieved and it supports the petitioner and joins him for cancellation of the bail and also contends that in the circumstances of the case the learned Addl. Sessions Judge has acted illegally, arbitrarily and unreasonably in admitting the respondents No. 2 to 5 on bail. That order will prejudice the incomplete investigation and the prosecution case.

29. Whereas Shri J.K. Dass, learned counsel for the respondents No. 2, 3 and 5 has contended that the petitioner has no locus standi; grant of bail is discretionary and discretion exercised is proper, reasonable and justified and the discretion so exercised could not be interfered with by this Court; material available does not prove the involvement of the respondents as co-conspirators or as party to the alleged transactions of extortion nor that they have derived any benefit out of the alleged transactions. He also contends that the bail once granted could be cancelled under Section 439(2) of the Code for valid grounds and in the present case no such circumstances warranting cancellation of bail are made out. Ms. Swaran Mahajan, learned counsel for the respondent No. 4 has adopted the contentions raised by Shri Dass.

30. Facts of the case have already been noticed above. Huge amounts of Rs. 1 crore and 85 lakhs have been extorted from two brothers by extending anonymous threats of killing. The crime is the result of well conceived, planned, engineered conspiracy and executed with ingenuity. The accused Nafees and Chauhan in their disclosure statements have named Shahdab and Waseem as two of their accomplices. Involvement of an accused could be ascertained only after proper and complete investigation. Nafees, Chauhan and Shadab are residents of Kanpur whereas Waseem is brother-in-law of Nafees and resides at Delhi. After arriving at Delhi from Kanpur Nafees and Chauhan had extorted Rs. 50 lakhs on 15.10.1997 and Rs. 1 crore on 16.10.1997 from K.C. Lakhani. Huge amounts have been deposited in the Bombay Mercantile Cooperative Bank Ltd., Darya Ganj, Delhi on 17.10.1997 in the names of Charamkala A.USS Ltd. (for short 'Charamkala') and Media India Mass Communications Ltd. (for short 'Media India'). Charamkala appears to be a society having its registered office at 92/108, Hiranagar, Kanpur and the account in Bombay Mercantile Cooperative Bank Ltd. was opened by Waseem Faridi and Mustqum Faridi as President and Manager of the Society and huge amount of Rs. 73 lakhs have been deposited in that account after 16.10.1997. It could be ascertained on proper investigation whether Waseem was not involved or concerned in these transactions. It requires proper investigation and his interrogation effectively to ascertain his role fully.

Shadab:

31. It appears that Shahdab had opened two-in-one Savings account No. 015/29/8894 in Standard Chartered Bank, New Delhi main branch and Rs. 5 lakhs, Rs. 5 lakhs and Rs. 1.5 lakhs have been

deposited in his name on 17.10.1997, 25.10.1997 and 29.10.1997 respectively in that account and this account has also been operated thereafter.

32. Term Deposit Account No. 54276-542200 had also been opened where a sum of Rs. 50,000/- was deposited on 1.2.11.1997 in Standard Chartered Bank, New Delhi.

33. He has a credit balance of Rs. 4,49,500/- in C.A. No. 20221 in Punjab National Bank, Kanpur in his name being the deposits made during 1.7.1998 to 5.8.1998. He is brother of Nafees perhaps living in the same house with him. There is no material available at this stage that he is man of such means and lawful resources.

Nadeem:

34. There is a credit balance of Rs. 1,32,700/- in the name of Nadeem in the savings bank account NO. 20298 in Punjab National Bank, Kanpur being the deposits made during 1.7.1998 to 5.8.1998 in his name.

35. Nadeem and Shadab are two of the Directors of Media India. A new bank account NO. 014/40/64759 was opened in the name of this company with Standard Chartered Bank, Kanpur on the basis of a Resolution passed by all the four members of the Board of the company in June, 1998 and amounts of Rs. 5 lakhs, 3 lakhs and Rs. 1.60 lakhs have been deposited on 2.7.1998, 28.7.1998 and 29.7.1998 in this account. This account had also been operated thereafter. Relevant information about their complicity could be elicited on their effective custodial interrogation.

36. Prima facie it cannot be said that the material available would not suggest complicity/involvement of Waseem, Nadeem and Shadab also.

37. As regards, Dixit no amount appears to have been deposited in his name and his involvement is not shown prima facie.

38. Learned Addl. Sessions Judge in his order dated 20.2.1998 while granting anticipatory bail to these four persons has observed that "the present petitioners have been involved in this case only on the basis of the disclosure statement of the co-accused Nafees Ahmed. There is no evidence on the record to suggest that any of the present petitioners conspired with the main accused Nafees or committed extortion except the disclosure statement of co-accused. There is also no evidence on the record to suggest that the amounts which were found to have been deposited in the accounts of the petitioners were having the knowledge that the said amounts have been received by extortion or that the amounts found in the accounts of the petitioners was in fact the same amount which had been taken by extortion by co-accused Nafees Ahmed".

39. The learned Addl. Session Judge has dealt with the matter as if he was holding a trial at this stage. Conspiracy is hatched in secrecy and is generally a matter of inferences deduced from acts and conduct of the accused. It is generally not possible to establish it by direct evidence that the accused person(s) did enter into such an agreement.

40. For investigation of an offence disclosure statement of the co-accused disclosing relevant facts showing involvement of himself and his co-accused persons would be relevant to proceed further with the investigation against those other persons, and that could not be brushed aside lightly. Apart from the disclosure statements there is material showing opening of fresh accounts in various banks in the names of these accused or in the names of the companies/societies with whom they were intimately associated, deposits of huge amounts in quick successions in those accounts and operating those accounts and also deposits of huge amounts in names of their family members. This coupled with time and place after the crime is committed would be a relevant factor, to give rise to an inference depending upon the circumstances as provided in Illustration(a) to Section 114 Indian Evidence. Act. Wherefrom the various amounts were deposited in the aforesaid banks and how amounts deposited in those accounts have been dealt with could be known if proper interrogation of the accused persons is carried out. They are absconding. By admitting the accused to anticipatory bail the possibility of unearthing relevant information which could be elicited on custodial interrogation stands, foreclosed. That will harm the investigation and the prosecution case.

41. The relevant considerations governing the discretion in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation is made (Pokar Rarn v. State of Rajasthan , State (Thru CBI) v. Anil Shanna 1997 SCC (Cri) 1039 arid State of A.P. v. Bimal Krishna Kundu and Anr. 1997 SCC (Cri) 1245). And Section 438 applies to all non-bailable offences.

42. Exercise of power under Section 438 is discretionary. The discretion has to be exercised on sound judicial principles and not arbitrarily and capriciously and the High Court would be justified in interfering in revision if the discretion was exercised capriciously or arbitrarily. A Constitution Bench of the Hon'ble Supreme Court in the case of Gurbax Singh Sibbia v. State of Punjab while emphasising the necessity of exercise of discretion wisely, has observed as under :-

"21.A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail."

43. In State of A.P. v. Bimal Krishna Kundu and Anr. (supra) it was held that "where there is prima facie material showing commission of crime as a result of well orchestrated conspiracy, equipping the accused with a pre-arrest bail order, though subject to some conditions, before they were interrogated by the police would greatly harm the investigation and would impede the prospects of unveiling all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence.". In the said case it was also held that discretion was not properly exercised by the High Court and the order granting anticipatory bail was quashed.

44. Again in Directorate of Enforcement and Anr. v. P. V. Prabhakar Rao 1997 SCC (Cri) 978 which also involved criminal conspiracy thereby siphoning off from the country colossal foreign exchange (in the form of kickbacks) in that case the High Court having observed that the material already collected is stretching an accusing finger towards the respondent/accused, granted anticipatory bail. Disapproving the discretion exercised by the High Court, the Hon'ble Supreme Court held that "it was not at all a proper exercise of the discretion by favouring him with an order of anticipatory bail under Section 438 of the Code." Order granting bail under Section 438 was set aside.

45. In this case it was also held that the fact that some of the co-accused have been admitted to bail in itself will not be a consideration in admitting the other accused to bail.

46. In State (Thru CBI) v. Anil Sharma (supra) the necessity, efficacy, and desirability of custodial interrogation has been emphasised as under :-

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation orientated 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 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 prepares bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual."

47. Quashing the anticipatory bail it was held that the approach of the Court while considering the case for grant of anticipatory bail should not be like that while granting bail after arrest.

48. In view of the facts and circumstances and the legal position noticed above, in my view the learned Addl. Sessions Judge has not exercised discretion under Section 438 on valid judicial principles and thereby has forestalled an effective and purposeful investigation in the matter which was absolutely necessary for unearthing the conspiracy and to locate the huge extorted money good part of which remains un-detected.

49. Now, the question is about the power of this Court.

50. Section 397 gives power to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional powers on the grounds mentioned therein, i.e., to examine the correctness, legality and propriety of any finding, sentence or order, recorded or passed and to the regularity of any proceedings of an inferior court, and to dispose of the revision in the manner indicated under Section 401 of the Code. This revisional power conserves the power in the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or misuse or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice.

51. When the High Court notices that there has been failure of justice or exercise of judicial mechanism or procedures, sentence or order is not correct, it is. but its statutory duty to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrect nesses committed by inferior criminal courts in its juridical process or illegality of sentence or order.

52. In addition, Section 482 saves inherent power of the High Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The object behind criminal law is to maintain law, public order, stability as also peace and progress in the society. Every Court has to act in accordance with the requirement of justice.

53. It is the bounden duty of the High Court to set right any illegality, impropriety in any order or proceedings requiring correctness which comes to its notice at the very inception. (Krishnan and Anr. v. Krishnaveni and Am, 1997 SCC (Cri) 544)

54. Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. (Pepsi Foods Ltd. and Anr. v. Spl. Judicial Magistrate and Ors. 1997 (IV) SVLR (Cri) SC 184).

55. In The Intelligence Officer, DR1 v. Mohd. Abdul Rab @ Babloo and Ors. 1999 (1) Crimes, 422 (Kark.) bail was cancelled under Section 482 for the reasons that the Sessions Court had failed to apply the principle of law and Section 37 NDPS Act was not considered.

56. Section 439(2) is attracted after an accused has been released on bail and generally this power could be exercised if any supervening circumstance has arisen after bail is granted. In Dolat Ram and Ors. v. State of Haryana 1995 SCC (Cri) 237, relied on behalf of the respondents 2 to 5 a dowry death case, bail was granted by the Session Judge to the parents-in-law as they were living separately from the deceased and her husband which was corroborated by the ration card also. The order was upheld by the High Court. Supreme Court did not find it a fit case to cancel the bail. Each case will depend on its own facts. In the present case the very propriety of the order has been challenged and the question is about the legality and correctness of the order passed by the learned Addl. Session Judge which could be set aside in revision under Section 397, Section 401 or under Section 482 of the Code, for valid reasons by this Court. The learned Addl. Session Judge has not exercised the discretion under Section 438 on valid legal principles and this is bound to result in miscarriage of justice.

57. This petition is partly allowed. Order of anticipatory bail of Shahdab Ahmad Siddiqui, Nadeem Ahmad Siddiqui and Waseem Faridi is hereby quashed, but the order so far as Shailender Dixit is concerned calls for no interference. He will be released on bail as ordered by the learned Addl. Session Judge.