

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL No.5456 OF 2024
(Arising out of SLP(Criminal) No.17504/2024)**

DEEPAK AGGARWAL

APPELLANT(S)

VERSUS

BALWAN SINGH & ANR.

RESPONDENT(S)

**WITH
CRIMINAL APPEAL No.5457 OF 2024
(Arising out of SLP(Crl) No. 16646/2024)**

**WITH
CRIMINAL APPEAL No.5458 OF 2024
(Arising out of SLP(Crl) No. 16837/2024)**

**WITH
CRIMINAL APPEAL No.5459 OF 2024
(Arising out of SLP(Crl) No. 17505/2024)**

O R D E R

1. Since the issues raised in all the captioned petitions are same and they all arise from a self same First Information Report those were taken up for hearing analogously and are being disposed of by this common order.
2. For the sake of convenience, the Special Leave Petition

(Crl.) No.17504 of 2024 is treated as the lead matter. The order passed in this matter shall govern the disposal of the other connected petitions.

3. Leave granted.

4. This appeal arises from the order passed by the High Court of Punjab and Haryana at Chandigarh dated 08.11.2024 in CRM-M No. 52981/2024 by which the High Court in an application seeking anticipatory bail in connection with FIR No. 239 dated 11.07.2024 registered with police station Sohna, District Gurugram, Haryana for the offences punishable under Sections 409, 420, 467, 468, 471 and 120 B of the Indian Penal Code, 1860 and Sections 7 and 13(1) (b) of the Prevention of Corruption Act, 1988 (for short the "1988 Act"), issued notice to the State and in the meantime granted ad interim relief saying that the accused shall join the investigation and in the event of his arrest, he shall be released on interim bail to the satisfaction of the investigation officer subject to the conditions as provided under Section 482(2) of the Bhartiya Nagrik Suraksha Sanhita, 2023 (for short the "BNSS, 2023"),

5. The Original first informant being aggrieved by the grant

of *ad-interim* relief is here before this Court seeking to challenge the impugned order passed by the High Court.

6. This Court issued notice vide order dated 09-12-2024 and stayed the operation of the impugned order passed by the High Court granting ad-interim protection to the accused.

7. We have heard Mr. Neeraj Kishan Kaul and Mr. Naveen Pahwa, the learned senior counsel appearing for the appellant(original first informant/complainant). On the other hand, we have heard Mr.Paramjit Singh Patwalia, Mr. Sham Diwan, Ms. Vibha Dutta Makhija and Mr. Atmaram NS Nadkarni, the learned senior counsel appearing for the respondents (accused persons).

8. It appears that a first information report came to be lodged at the police station, referred to above for the offences as alleged. It also appears that some public servants have also been arrayed as accused in the F.I.R. We do not propose to look into the nature of the allegations levelled in the FIR or to put in other words even the exact case of the prosecution as the matter is at large before the High Court.

9. At the same time, we should also not overlook the fact

that there are allegations of criminal misappropriation, cheating and forgery.

10. The matter seems to be at the stage of investigation. As the accused persons named in the F.I.R. apprehended arrest, they all prayed for anticipatory bail first before the Sessions Court and on being denied anticipatory bail, they are now before the High Court.

11. The High Court has issued notice to the State and has passed an ad-interim order which reads thus"-

"In the meantime, the petitioner is directed to join the investigation. In the event of arrest, he shall be on ad interim bail to the satisfaction of the arresting/investigating officer subject to the conditions as provided under Section 482(2) of the BNNS, 2023."

12. We take notice of the fact that in all other connected matters the High Court has said that till the anticipatory bail applications are decided the accused persons shall not be arrested.

13. What weighed with us in issuing notice and staying the operation of the impugned order referred to above was the nature of the ad interim relief the High Court thought fit to grant.

14. Ordinarily, when the High Court takes up anticipatory bail application for hearing it has three options. Either it may reject it on the very first day or it may issue notice to the State but would not grant any *ad-interim* protection or in a given case may issue notice and may even deem fit to grant appropriate protection. The aforesaid is of course the discretion of the Court concerned having regard to the merits of the matter. However, what we disapprove in the present case is the nature of the *ad-interim* relief granted. The same is practically in the nature of granting the final relief.

15. There is no point in asking the accused to go before the investigating officer pending the final disposal of the anticipatory bail application before the High Court and further saying that in the event of arrest he shall be released on *ad-interim* bail. Such *ad-interim* reliefs have their own legal implications.

16. We may remind the High Court of what this Court observed in the case of *Srikant Upadhyay & Ors. v. State of Bihar & Anr.*, reported in 2024 INSC 202. We quote the relevant observations as under:

"... A bare perusal of Section 438(1), Cr.PC, would reveal that taking into consideration the factors enumerated thereunder the Court may either reject the application forthwith or issue an interim order for the grant of anticipatory bail. The proviso thereunder would reveal that if the High Court or, the Court of Sessions, as the case may be, did not pass an interim order under this 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 the person concerned without warrant, on the basis of the accusation apprehended in such application. In view of the proviso under Section 438(1), Cr.PC, it cannot be contended that if, at the stage of taking up the matter for consideration, the Court is not rejecting the application, it is bound to pass an interim order for the grant of anticipatory bail. In short, nothing prevents the court from adjourning such an application without passing an interim order. This question was considered in detail by a Single Bench of the High Court of Bombay, in the decision in Shrenik Jayantilal Jain and Anr. v. State of Maharashtra through EOW Unit II, Mumbai 2014 SCC Online Bom 549 and answered as above and we are in agreement with the view that in such cases, there will be no statutory inhibition for arrest. Hence, the appellants cannot be heard to contend that the application for anticipatory bail filed in November, 2022 could not have been adjourned without passing interim order...."

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 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. ..."

(Emphasis supplied)

17. Having said the aforesaid, we would like to dispose of all the appeals in the following terms:-

(i) The High Court shall pre-pone the hearing of all the bail applications to 7th January, 2025.

(ii) On the date of hearing of all the anticipatory bail applications, the respective applicants (original accused persons) shall personally remain present before the High Court. Upon conclusion of the hearing of all the anticipatory bail applications, if the High

Court deems fit to reserve the order then till the pronouncement of the order that the Court may pass the accused persons shall not be arrested.

(iii) We clarify that we have otherwise not expressed any opinion worth the name on the merits of the case of the prosecution. We had to intervene only because of the peculiar nature of the ad-interim protection which the High Court thought fit to grant.

(iv) All the anticipatory bail applications shall be decided by the Court on their own merits without being influenced by any of the developments that have taken place between the date of grant of the ad-interim relief and the date of passing of this order by this Court.

(v) In the event, if the accused persons seeking anticipatory bail do not remain present personally before the High Court, their applications shall not be taken up for hearing

and it shall be open to the Investigating Officer to proceed to arrest the accused persons.

18. With the aforesaid, all the appeals stand disposed of.

19. Pending application(s), if any, stand disposed of.

.....J.
[J.B. PARDIWALA]

.....J.
[R. MAHADEVAN]

New Delhi
18th December, 2024.

ITEM NO.42

COURT NO.14

SECTION II-B

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

Petition for Special Leave to Appeal (Crl.) No. 17504/2024

[Arising out of impugned final judgment and order dated 08-11-2024 in CRM-M No. 52981/2024 passed by the High Court of Punjab & Haryana at Chandigarh]

DEEPAK AGGARWAL

Petitioner(s)

VERSUS

BALWAN SINGH & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.274459/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.274460/2024-EXEMPTION FROM FILING O.T.)

WITH

SLP(Crl) No. 16646/2024 (II-B)

(IA No.275814/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(Crl) No. 16837/2024 (II-B)

(IA No.278481/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(Crl) No. 17505/2024 (II-B)

(FOR ADMISSION and I.R. and IA No.276346/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.276347/2024-EXEMPTION FROM FILING O.T.)

Date : 18-12-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) **Mr. Neeraj Kishan Kaul, Sr. Adv.**
 Mr. Naveen Pahwa, Sr. Adv.
 Mr. Mahesh Agarwal, Adv.
 Mr. Rishi Agrawala, Adv.
 Mr. Parminder Singh, Adv.

Mr. Aroon Menon, Adv.
Mr. Rajesh Kumar, Adv.
Ms. Manavi Agarwal, Adv.
Mr. Nilay Gupta, Adv.
Mr. Varun Tyagi, Adv.
Mr. Toshiv Goyal, Adv.
Mr. Ritwik Mohapatra, Adv.
Mr. E. C. Agrawala, AOR

For Respondent(s) Mr. Sham Diwan, Sr. Adv.
Mr. Anil Airi, Sr. Adv.
Ms. Tanvi Dubey, Adv.
Mr. Raghav Sabharwal, AOR
Mr. Yash Dubey, Adv.
Mr. Mekala Ganesh Kumar Reddy, Adv.
Mr. Aditya Nema, Adv.

Mr. Paramjit Singh Patwalia, Sr. Adv.
Mr. Saifuddin Shams, Adv.
Ms. Tanya Srivastava, AOR
Mr. Anmol Kheta, Adv.
Ms. Shabnam Shams, Adv.
Mr. Anup Kumar Pandey, Adv.

Ms. Vibha Dutta Makhija, Sr. Adv.
Mr. Rakesh Dahiya, AOR
Mr. Aakash Dahiya, Adv.
Mr. Praveen Kumar Jain, Adv.
Mr. Aditya Dahiya, Adv.
Mr. Rn Mahalawat, Adv.

Mr. Atmaram N S Nadkarni, Sr. Adv.
Mr. Sandeep Choudhary, AOR
Ms. S.s. Rebello, Adv.
Ms. Deepti Arya, Adv.
Ms. Arzu Paul, Adv.
Ms. Manisha Gupta, Adv.
Ms. Himanshi Nagpal, Adv.
Mr. Rishikesh Haridas, Adv.
Mr. Gaurav Dahiya, Adv.
Mrs. Manita Mahlawat, Adv.

Mr. Vishal Mahajan, A.A.G.
Mr. Samar Vijay Singh, AOR
Ms. Sabarni Som, Adv.
Mr. Fateh Singh, Adv.
Dr. Sukhdev Sharma, Adv.
Mr. Venkatesh Rajput, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The relevant portion of the order reads thus:-

(I) The High Court shall pre-pone the hearing of all the bail applications to 7th January, 2025.

(ii) On the date of hearing of all the anticipatory bail applications, the respective applicants (original accused persons) shall personally remain present before the High Court. Upon conclusion of the hearing of all the anticipatory bail applications, if the High Court deems fit to reserve the order then till the pronouncement of the order that the Court may pass the accused persons shall not be arrested.

(iii) We clarify that we have otherwise not expressed any opinion worth the name on the merits of the case of the prosecution. We had to intervene only because of the peculiar nature of the ad-interim protection which the High Court thought fit to grant.

(iv) All the anticipatory bail applications shall be decided by the Court on their own merits without being influenced by any of the developments that have taken place between the date of grant of the ad-interim relief and the date of passing of this order by this Court.

(v) In the event, if the accused persons seeking anticipatory bail do not remain present personally before the High Court, their applications shall not be taken up for hearing and it shall be open to the Investigating Officer to proceed to arrest the accused persons."

3. The Appeals are disposed of in terms of the signed order.

4. Pending application(s), if any, stand disposed of.

(CHANDRESH)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)

(Signed order is placed on the file)