

**HIGH COURT OF DELHI**

**Bench: HON'BLE MR. JUSTICE AMIT SHARMA**

**Date of Decision: 20 October 2023**

BAIL APPLN. 3366/2022

SHASHI KANT GUPTA ..... Petitioner

versus

STATE THROUGH INCHARGE ECONOMIC OFFICE WING

SECTION VII ..... Respondent

BAIL APPLN. 926/2023

AKSHY GUPTA ..... Petitioner

versus

STATE THROUGH INCHARGE ECONOMIC OFFENCE WING

..... Respondent

**Sections, Acts, Rules, and Article:**

Section 160, 438 of the Code of Criminal Procedure, 1973 (CrPC)

Sections 419, 420, 467, 468, 471, 120B of the Indian Penal Code, 1860 (IPC)

Section 19, 132 of the GST Act

Article 20(3) of the Constitution

**Subject:** Anticipatory Bail Application in a case involving charges under various sections of the IPC, including fraud and conspiracy, in connection with the registration and business transactions of a firm.

**Headnotes:**

*Anticipatory Bail – FIR registered under Sections 419, 420, 467, 468, 471, 120B of IPC - Applicants sought anticipatory bail - Applicants claimed no direct or indirect allegations against them in the FIR - Contradictory and evasive stands taken by applicants - Custodial interrogation necessary to unearth transactions linked with the accused firm at the behest of the present applicants and entities under their control - Applications for anticipatory bail dismissed. [Para 1-18]*

*Custodial Interrogation - Importance of custodial interrogation in certain cases for eliciting information and materials - Protection of suspects through pre-arrest bail orders may reduce the effectiveness of interrogation - Responsible conduct of police officers presumed during custodial interrogation. [Para 14-15]*

**Referred Cases:**

- Criminal Appeal Nos. 3051-3052 of 2023 titled 'Pankaj Bansal v. Union of Indian and Ors' (2023INSC866)
- State Rep. by the C.B.I. v. Anil Sharma, (1997) 7 SCC 187

**Representing Advocates:**

Mr. Rakesh Kumar Khanna, Senior Advocate with Mr. V.K. Sharma, Mr. Aditya Kumar Archiya, Ms. Sakshi Sharma, and Dr. Vikas Pahal, Advocates, representing the Petitioners (Applicants).

Mr. Aman Usman, APP for the State with Insp. Dharmendra Kumar, EOW, Mandir Marg, Delhi, representing the Respondent (State).

\*\*\*\*\*

**JUDGMENT**

**AMIT SHARMA, J.**

1. The present applications under Section 438 of the Code of Criminal Procedure, 1973 („CrPC“) seek anticipatory bail in case FIR No. 142/2021, under Sections 419/420/467/468/471/120B of the Indian Penal Code, 1860 („IPC“), registered at P.S. Economic Offences Wing, Mandir Marg, Delhi.
2. The facts of the case, common to the present applications, as per status report 12.05.2023, authored by Mr. Ghanshyam, Asst. Commissioner of Police, Sector-VII/EOW, filed in BAIL APPLN. 926/2023, are as under:
  - “1. Briefly stated facts of the case are that complainant Sh. Rajiv Jain S/o Shri Srichand Jain, R/o 201, Prakash House, 4379/4B, Ansari Road, Darya Ganj, New Delhi had filed a complaint at EOW alleging therein that he is a Chartered accountant by profession and when he downloaded his form 26AS from Income Tax portal, he came to know that a GST number has fraudulently been generated in the name of M/s Madhu Enterprises using his PAN number. The complainant further alleged that using this fraudulently obtained GST number, the accused shown the transactions worth Rs. 14.80 Crores in the short duration of July 2019 to November 2019. Present case was registered and investigation was taken up.
  2. During the course of investigation, it is found that for the purpose of registration of GST, the address of the firm is mentioned as 3703/03, Near S.D. Mandir, Ambala Cantt, Ambala, Haryana. Landlord of this premise has been examined who stated that he has never lent his property to any one as on the ground floor he is running medicine shop

for decades and on the first floor of the said premises he is residing with his family members.

3. During the course of investigation, documents/information were obtained from the GST department. Mobile number and email ID used in registration of the alleged GST number 06AAHPJ723SK1ZJ using fraudulent means were procured through the said reply obtained from the GST department. Ownership/CAF of the said mobile number 9899022917 which is mentioned in the registration certificate of the alleged GST number was obtained and it was found that said number was activated on 01.07.2019 and was registered in the name of one Mr. Surjeet Singh Gusain S/o B.S. Gusain.
4. Further, Mr. Surjeet Singh Gusain was interrogated in the case. During interrogation, he revealed that he was working as security guard in the family-owned firm/companies of the applicant. The Security guard was interrogated in detail who revealed that copies of Identity-related documents in the name of opening of bank account for credit of salary in the account were obtained from him. During further interrogation, it has been revealed by the said employee that though the documents were obtained in the name of opening of bank account, however, he has never been informed regarding the bank accounts opened if any, in his name.
5. During further course of investigation, Mr. Sanjay Singh who was the personal security officer (PSO) of Mr. Shashi Kant Gupta (father of the present applicant) was also interrogated in this case. During interrogation Mr. Sanjay Singh stated that Shashi Kant Gupta had registered the firms in the name of his employees namely Rajesh, Rawat, Ashish, Sourabh, Mohit, Surjeet, Raju, Umesh. He further stated that he also came to know that Shashi Kant Gupta had got opened the bank accounts in the name of his employees in Bandhan Bank.
6. Further, concerned relationship manager namely Adesh Kumar of Bandhan Bank was also examined in this matter and his statement was recorded. During examination Mr. Adesh Kumar stated that while working with Bandhan Bank he met with Akshay Gupta and his father Shashi Kant Gupta. They had shown their willingness for opening accounts in the bank in their own name and in the name of their firms/companies and also in the name of some other persons namely Surjeet Singh Gusain, Ashutosh Kumar Thakur, Ashish Kumar, Saurabh Kumar, Gaurav Kumar, Rajesh Thakur, Rawat ji. Akshay Gupta and Shashi Kant Gupta further misrepresented about the above said persons that they are their business associates and their accounts are also to be opened. These persons informed regarding the firms namely (1) Verizon Enterprises (2) Impact Enterprises (3) Gupta Traders (4) Hira Plastics (5) Glencore enterprises (6) Parafait Dealers (7) Atlas Sales Traders (8) Banke Bihari Traders (9) Divyanshi Enterprises (10) Global Traders (11) Chaudhary Plastics. This establishes active role played by present applicant and his father Shashi Kant Gupta in opening the bank accounts for fraudulent transactions.
7. Further, on the basis of suspected PAN numbers linked with GST registrations of the firms and mobile numbers surfaced during investigation, details of Bank accounts opened with Bandhan Bank has also been procured and we have received the information regarding nine such accounts opened in the name of different persons/entities with

Bandhan Bank. Original account opening forms along with KYC documents have been obtained from Bandhan Bank.

8. Further, on perusal of the bank account of Mis Shashi Plast Pvt. Ltd. maintained with Bandhan Bank, it has been found that an amount of Rs. 3.00 crore (Approx) has been transferred in the accounts of suspected firms namely Global Traders, Parfait Dealers. It is worth mentioning that Shashi Plast Pvt. Ltd., Global Traders and Parfait Dealers are the firms/companies with whom lots of business transactions with the subject firm namely Madhu Enterprises, has been found. In Shashi Plast Pvt. Ltd. Mr. Shashi Kant Gupta and present applicant Mr. Akshay Gupta are the Directors. On the other hand, in M/s Global Traders and Parfait dealers Surjeet Singh Gusain is one of the partners. Crores of rupees have also been found transferred from this account to many other firms named by the employee of Bandhan Bank as mentioned above.

Further, on analysis of replies/documents received from GST department, details of purchasers of articles who purchased the goods/articles from the accused firm namely M/s Madhu Enterprises during the entire period of commission of offence has been found as under:

Sr. No.	Name of firm/company	Directors/proprietor partners	Goods sold by accused company
1.	AUD Enterprises	Ram Kanwar Yadav (Proprietor)	3,28,64,475/-
2.	Soami Enterprises	Dheerendra Kumar (Proprietor)	56,37,450/-
3.	Delight Poly Plast	<b>Shashi Kant Gupta (Partner)</b> <b>Akshay Gupta (Partner)</b>	45,31,200/-
4.	Global Traders	Surjeet Singh Gusain (Partner) Rajesh Kumar (Partner)	45,21,760/-
5.	Shashi Plast Pvt. Ltd.	<b>Shashi Kant Gupta (Director)</b> <b>Akshay Gupta (Director)</b>	22,65,600/-
6.	Parfait Dealers	Surjeet Singh Gusain (Partner) Ashutosh Kumar Thakur (Partner)	7,91,30,800/-

7.	Delight Plastics	<b>Akshay Gupta (Proprietor)</b>	7,91,30,800/-
8.	Ashish Enterprises	Bhawan Kumar (Proprietor)	50,59,250/-

9. From the above table, it is found that the accused firm M/s Madhu Enterprises, which was fraudulently registered using the PAN number of the complainant, has shown the selling of goods/article worth Rs. 2.27 5 crore (approx) to M/s Delight Poly Plast, Shashi Plast Pvt. Ltd. and Delight Plastics which were controlled/owned by the accused Akshay Gupta and his father Mr. Shashi Kant Gupta. Further, Mr. Surjeet Singh Gusain who was working as security guard with the present applicant, and with whose particulars, the firm namely M/s Madhu Enterprises is registered, further sold the articles/goods worth Rs. 8.37 crore to the firms namely Parfait Dealers and Global Traders in which Surjeet Singh Gusain himself is one of the partners...”

\*\*\*

\*\*\*

\*\*\*

(emphasis

supplied)

3. Learned Senior Counsel appearing on behalf of applicants submitted that there are no direct or indirect allegations against the applicants in the instant FIR. It was further submitted that the applicants have always joined the investigation in compliance of notice issued under Section 160 of the CrPC. It was further submitted that in pursuance to the interim protection granted by this Court, the applicants have joined the investigation and have produced all the documents in their possession to the Investigating Officer.

4. Learned Senior Counsel for the applicants has filed objections to the status report as well as additional status report filed before this Court stating that the claim of the Investigating Officer that the present applicants are not co-operating with the investigation is false. In the objections dated 10.03.2023 on behalf of Shashi Kant Gupta, filed to the status report before this Court, the stand of the applicant is *“It is humbly submitted that the applicant and/or his firms ever dealt in any manner whatsoever with M/s Madhu Enterprises, the same is matter of records. The said records must be available with the GST Department, Jamshedpur who conducted the raid at both the office premises of the firms maintained by the applicant and his son”*. It was further submitted that income tax returns of the firms for 2018-2019 and 2019-2020 have been provided to the Investigating Officer. It was further pointed out that all the documents which were seized from the office of the applicants, as pointed out hereinabove, are with the GST Department, Jamshedpur and the

Investigating Officer has not made any efforts to obtain them from the said department.

5. Learned Senior Counsel relied upon the judgment dated 03.10.2023 in **Criminal Appeal Nos. 3051-3052 of 2023** titled '**Pankaj Bansal v. Union of Indian and Ors**' (2023INSC866) passed by the Hon<sup>ble</sup> Supreme Court and in particular, the following paragraph thereof:

"25. We may also note that the failure of the appellants to respond to the questions put to them by the ED would not be sufficient in itself for the Investigating Officer to opine that they were liable to be arrested under Section 19, as that provision specifically requires him to find reason to believe that they were guilty of an offence under the Act of 2002. Mere non-cooperation of a witness in response to the summons issued under Section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under Section 19. As per its replies, it is the claim of the ED that Pankaj Bansal was evasive in providing relevant information. It was however not brought out as to why Pankaj Bansal's replies were categorized as „evasive" and that record is not placed before us for verification. In any event, it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an „evasive reply". In Santosh S/o Dwarkadas Fafat vs. State of Maharashtra, this Court noted that custodial interrogation is not for the purpose of „confession" as the right against self-incrimination is provided by Article 20(3) of the Constitution. It was held that merely because an accused did not confess, it cannot be said that he was not co-operating with the investigation. Similarly, the absence of either or both of the appellants during the search operations, when their presence was not insisted upon, cannot be held against them."

6. *Per contra* learned APP for the State submitted that during the course of the investigation, records of business transactions relating to the firm namely M/s Madhu Enterprises were obtained from the GST Department, Jamshedpur. It was found that the said fraudulently opened firm had made transactions worth crores of rupees with eight firms registered with the GST Departments in Delhi and Uttarakhand. As per the investigation, these eight firms were in direct control of the present applicants and it was revealed that the said alleged fraudulent firm M/s Madhu Enterprises had shown goods and articles worth 2.27 Crores sold to three of the aforesaid eight firms of which the applicants herein are directors. It was also pointed out that Mr. Sujeet Singh Hussain, in whose name the aforesaid M/s Madhu Enterprises was registered, has given statements to the effect that he was working as a security guard in the office of present applicants, who got his signatures for opening the bank account and fraudulently got the firm registered in his name as well as other employees.

7. Learned APP for the State, on the instructions of the Investigating Officer, submitted that despite interim protection granted to the present applicants, they did not provide details of the payment against the purchase from the said fraudulent firm and did not even provide the contact number of the persons with whom they dealt with in the said company while purchasing the goods/articles worth approximately Rs. 2.27 Crores. It was further stated that during the course of the investigation, several bank accounts have been identified which were opened in a particular bank branch in the name of suspect entities/firms with whom the present applicants have direct business relations. It was further pointed out that another case bearing FIR No. 647/2020, under Sections 467/468/471/120B of the IPC and Section 132 of the GST Act had been registered at P.S. Sonipat, Haryana, against the present applicants.

8. Learned APP for the State relied upon the portion of the additional status report filed by the Investigating Officer, which reads as under:

“8. That the applicant on being asked about details of business transactions of his firms/companies with the suspected firms/companies, the applicant simply stated that he did not remember anything as the documents have been seized by GST Jamshedpur. It is pertinent to mention here that search was conducted by GST Jamshedpur on 22.04.2019 at 02 premises of the applicant whereas the transaction of the applicants firms/companies with the suspected firm M/S Madhu Enterprises ranges from July 2019 to November 2019.

9. That the applicant when questioned and confronted with records and statements gathered during investigation, gave no reply and rather stated that he did not remember anything. Some of the relevant questions and their replies given by the applicant are reproduced below-

<b>Ques.</b>	<p>Under-mentioned are the names of few persons. Do you know any of them? Does any of these persons is associated with you or with any of your companies/firms etc.</p> <p>Rajiv Jain, Bhawan Kumar, Gaurav, Ashutosh Kumar Thakur, Surjeet Singh Gosain, Aashish Kumar, Rajesh Kumar, Saurabh, Rakesh, Umesh Goyal, Sanjay Singh, Vinod, Mukesh, Mohit Kumar, Govind, Sonu, Harish Rawat (Rawat Ji).</p>
--------------	---

<b>Ans.</b>	I remember that I sold my company namely Shashi Flex Pvt. Ltd. to Mohit Kumar. Apart from it, I don't have any information regarding Mohit Kumar. I sold the company 2-3 years ago. Apart from Mohit Kumar, I don't remember any other person whose name IS mentioned in the question. Apart from Mohit Kumar I don't Know any of the above mentioned person.
<b>Ques.</b>	By the examination of the bank account statements of companies/firms namely Parfait Dealers, Hira Plastic Bhandar, Global Traders, Impact Enterprises, Verizon Traders, Atlas Sales Corporation, Madhu Enterprises it was found that the afore-mentioned companies/firms are having a lot of money transactions with your compames namely Delight Poly Plast, Delight Plastics, Poonam Polyplast, Shashi Plast Private Limited, Shashi Flex Pvt. Ltd.



	On 29/05/2023 you were asked to give explanations regarding these money transactions and in reply you stated that you will provide your business transactions documents and will provide the information. Kindly give explanations for these transactions.
<b>Ans.</b>	I have sent a letter to Jamshedpur GST to provide all documents related to my companies. On receipt of documents I will provide you all information regarding my business with above companies.
<b>Ques.</b>	You have submitted Income Tax Returns of year 2018-19, 2019-20 and 2020-21 of companies/firms namely Poonam Poly Plast and Delight Poly Plast and the afore-mentioned income tax returns clearly shows that you had done business transactions with the companies namely Global Traders, Parfait Dealers, Verizon Traders, Divyanshi Enterprises, Atlas Sales Corporation, Gupta Trading Company. Kindly explain the reasons of such huge money transactions. Give complete details.
<b>Ans.</b>	I might have done business with the above mentioned companies but I will tell you the details after receiving documents from GST Jamshedpur.
<b>Ques.</b>	Have you ever opened any bank account in Bandhan Bank?
<b>Ans.</b>	Currently I don't remember anything about opening bank account in Bandhan Bank. I will check my record and provide you all information.
<b>Ques.</b>	Adesh Kumar of Bandhan Bank categorically mentioned in his statement that you and your son Akshay Gupta introduced Surjeet Singh Gusain, Ashutosh Kumar Thakur, Ashish Kumar, Saurabh Kumar, Gaurav Kumar, Rajesh Thakur, Rawat ji and facilitated in opening the bank accounts. You introduced them as your business associate and told him that they are running the firms namely (1) Verizon Enterprises (2) Impact Enterprises (3) Gupta Traders (4) Hira Plastics (5) Glencore enterprises (6) Paralait Dealers (7) Atlas Sales Traders (8) Banke Bihari Traders (9) Divyanshi Enterprises (10) Global Traders (11) Chaudhary Plastics. What you want to say regarding this?
<b>Ans.</b>	I don't remember anything about it.

<b>Ques.</b>	Who is Sanjay Singh? Does anyone by the name of Sanjay Singh ever worked for you or your companies?
<b>Ans.</b>	I don't know any Sanjay Singh. No Sanjay Singh ever worked for me or any of my company
<b>Ques.</b>	In his statement Sanjay Singh stated that he worked as your personal security officer (PSO). He also mentioned that, Shashikant Gupta registered various firms in the name of Rajesh, Ashish, Sourabh, Mohit, Surjeet, Ramesh, Umesh. What was the purpose of registration of these firms in the name of the afore-mentioned persons?
<b>Ans.</b>	I don't remember any Sanjay Singh as my PSO. No, I have never opened any firm, company in name of above persons.
<b>Ques.</b>	On 22.04.2019, your office at Kanti Nagar was searched by officials of GST Jamshedpur. As per the panchnama prepared by officials of GST, one Rajesh Kumar was found present at your office. kindly provide the details of said Rajesh Kumar.
<b>Ans.</b>	I do not remember now. I have been shown the copy of Panchnama but I do not remember as to how many days Rajesh worked and in what capacity. I don't even recall his age.

10. That from the above submissions, it is evident that the applicant has not co-operated during investigation. For most of the questions asked about his business transaction with suspected firm/companies, the applicant took the plea that he did not remember as the officials of GST Jamshedpur have seized all the records. However the plea is not tenable as search was conducted by GST Jamshedpur on 22.04.2019 at 02 premises of the applicant whereas the suspected transactions of the applicants firms/companies ranges from July 2019 to November 2019. For other general questions about his employees/persons associated with him, the applicant replied that he did not remember anything.”

9. Heard learned counsel for the parties and perused the record.
10. Learned Senior Counsel for the applicant has vehemently argued that the contents of the status report filed by the Investigating Officer are *mala fide*. It is stated that in the objections filed to the aforesaid status reports, it has been stated that the requisite documents have been provided. However, it is pertinent to note that in the application for bail as well as in the objections filed to the status report, the stand of the applicants are contradictory with regard to the dealings with M/s Madhu Enterprises. They have also further denied

any involvement with Sanjay Kumar, whose statement was recorded by the Investigating Officer.

11. It is pertinent to note that as per investigation, the mobile number with which the said M/s Madhu Enterprises was registered with the GST Department belonged to the aforesaid Sanjay Kumar, who is stated to be a security guard of the applicants. The investigation from the GST Department has also revealed that the aforesaid M/s Madhu Enterprises made business transactions worth crores of rupees with three entities of which the present applicants were director and despite that said fact, the applicants have been evading from giving details of the said transaction.
12. The ratio of the judgment of Hon<sup>ble</sup> Supreme Court in **Pankaj Bansal (supra)** relied upon by the learned Senior Counsel for the applicants has no application to the facts of the present case as the answers being given during investigation of the case, are on the face of it, totally evasive.
13. The change in the stance of the present applicants is apparent from the following chart:

<b>Grounds taken in Shashi Kant Gupta's Bail Application No. 3366/2022 filed on 10.11.2022</b>	<b>Grounds taken in Akshy Gupta's Bail Application No. 926/2023 filed on 20.03.2023</b>
Ground B - "...that there were no direct or indirect allegations against the applicant in the instant FIR nor	Ground B - "...that there were no direct or indirect allegations against the applicant in the instance FIR nor
there was any business transactions of the applicant with M/s. Madhu Enterprises..."	there was any <b>fake</b> business transactions of the applicant with M/s Madhu Enterprises. Therefore, the Impugned Order is contrary to the facts of the case..."

<p>Ground D - "...that the prosecution in its reply to the bail application miserably failed and neglected to link the applicant with M/s. Madhu Enterprises in any manner whatsoever..."</p>	<p>Ground D - "...the prosecution in its reply connected the firms of the applicant with the business link of M/ s. Madhu Enterprises, but could not appreciate that the applicant firms got suspicious about the business manner of the aforesaid firm and therefore, <b>immediately stopped dealings with the said firm. Thereafter, the firms of the applicant never dealt with the aforesaid M/s. Madhu Enterprises except sometimes in July or August, 2021...</b>"</p>
---	--

Subsequently, in the objections dated 10.03.2023, filed to the status report before this Court, the stand of the applicant Shashi Kant Gupta is *"It is humbly submitted that the applicant and/or his firms ever dealt in any manner whatsoever with M/s Madhu Enterprises, the same is matter of records. The said records must be available with the GST Department, Jamshedpur who conducted the raid at both the office premises of the firms maintained by the applicant and his son"*. The aforesaid stands taken by the applicants are contradictory and evasive. Although the stand of the applicants is that the documents are with the GST Department, Jamshedpur, it is difficult to believe that the applicants are not able to give the details of contact persons of the aforesaid M/s Madhu Enterprises with whom they have entered into transactions worth crores.

14. The Hon<sup>ble</sup> Supreme Court, in **State Rep. by the C.B.I. v. Anil Sharma, (1997) 7 SCC 187**, while dealing with a plea for anticipatory bail, observed and held as under:

**"6.** We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person

knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

15. In view of the aforesaid circumstances, this Court is of the considered opinion that custodial interrogation of the applicants is necessary to unearth entire chain of transactions linked with M/s Madhu Enterprise at the behest of the present applicants and the entities in their control.
16. The present applications are accordingly dismissed at this stage and disposed of accordingly.
17. Pending applications, if any, also stand disposed of.
18. The interim protection granted to Shashi Kant Gupta (applicant in BAIL APPLN. 3366/2022) *vide* order dated 14.11.2022 and Akshy Gupta (applicant in BAIL APPLN. 926/2023) *vide* order dated 21.03.2023, is withdrawn.
19. Needless to state, nothing stated hereinabove is an opinion on the merits of the case and is only for the purpose of the present applications.
20. Judgment be uploaded on the website of this Court, *forthwith*.

© All Rights Reserved @ LAWYER E NEWS

\*Disclaimer: Always compare with the original copy of judgment from the official website.