

IN THE COURT OF HARINDER SIDHU, SPECIAL JUDGE
CBI PUNJAB, SAS NAGAR, MOHALI

Bail Application No.3084/2022
CNR No.PBSA01-010989-2022
Decided on: 30.11.2022

Anurag Garg Vs. Central Bureau of Investigation

**ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C
IN RC005202020A0009 DATED 30.06.2020 REGISTERED
UNDER SECTIONS 120-B READ WITH SECTION 403,
406, 409, 420 IPC AND SUBSTANTIVE OFFENCE
THEREOF AND ALSO UNDER SECTION 13 (2) READ
WITH SECTION, 13 (1) (D) OF THE PC ACT, 1988
PERTAINING TO PS CBI, ACB, CHG.**

Present Sh. K.P. Singh Advocate, learned counsel for the
applicant/accused Anurag Garg.
Sh. Gurvinderjit Singh, learned Public Prosecutor for the
CBI.

ORDER:

1. This order disposes of the application for bail under section 438 Cr.P.C. filed by applicant/accused Anurag Garg in FIR No.RC005202020A0009 dated 30.06.2020 registered under sections 120-B read with section 403, 406, 409, 420 IPC and substantive offence thereof and also under section 13 (2) read with section 13 (1) (d) of Prevention of Corruption Act, 1988, Police Station CBI, ACB, CHG.

(Harinder Sidhu)
Special Judge, CBI, Punjab,
SAS Nagar, Mohali/30.11.2022
(UID PB0130)

2. It is mentioned in the application that the present case has been registered on 30.06.2020 and under sections 120-B read with section 420, 406, 409 IPC and 13 (2) read with section 13 (1) (d) of the PC Act, 1988 on the basis of a written complaint dated 06.06.2020 received from Navjinder Singh, Chief Manager, Punjab National Bank, Main Bazaar, Faridkot (Punjab) against **M/s Amayra Food Private Limited** through its Directors Rajeev Singh Samra, Bhupinder Kaur, Sukhveer Singh Samra and Shabdeep Kaur, Samra Industries, Sadiq road Faridkot, Punjab, **Rajveer Singh Samra** S/o Harjinderjit Singh Samra R/o Samra Industries Sadiq road Faridkot, **Sukhveer Singh Samra** S/o Harjinderjit Singh Samra R/o Samra Industries Sadiq road Faridkot, Punjab, **Harminder Kaur** W/o Karamjit Singh R/o House No.464, Phase-1, Urban Estate, Patiala, Punjab, **Shabdeep Kaur** W/o Rajveer Singh Samra R/o Samra Industries Sadiq road Faridkot, Punjab, **Karnail Singh** S/o Balwinder Singh R/o village Sangat Kalan District Bathinda, Punjab, **Bipan Pal Singh** S/o Karamjeet Singh R/o village Middu Khera District Mukatsar, Punjab, **Amanveer Kaur** W/o Rushnil Singh Chahal R/o House No.1564, Sector 36-D, Chandigarh, **M/s Samra Co-owners**, Samra Industries, Sadiq road, Faridkot, Punjab, **Parminder Kaur** W/o Gursewak Singh R/o village Jand Sahib District Faridkot Punjab, **Jagjit Kaur** W/o Jashwinder Singh R/o Ghuduwala village Jand Sahib District Mukatsar, Punjab, **Ninderpal Kaur**

W/o Partap Singh R/o House No.5, Police lines, Faridkot, Punjab, **M/s Star Agri Warehousing and Collateral Management Ltd.** R/o Second Floor B Wing, Litoliers Chambers Andheri-Kurla road, Marol Naka Andheri (East) Mumbai (Maharashtra) and at plot No.29, G-102 Molshree residency, mission compound, Ajmer road, Jaipur, **Amit Khandelwal**, Director of Star Agri Warehousing and Collateral Management Ltd., SCF 25, first floor, model town, phase-1 near TV tower Bhatinda, Punjab and unknown public servants. Further, the allegations of the charge-sheet have been narrated in detail and it is stated that the allegations themselves reveal that the present applicant Anurag Garg had not committed any offence and he has become scape goat in the hands of investigating agency, without any fault on his part. Accused/applicant is innocent and having no connection whatsoever with the alleged crime and is victim of false accusation by complainant and tainted investigation in the hands of CBI. The applicant/accused had fully co-operated during investigation and joined the investigation as and when summoned by the I.O. His captivity in judicial custody will not serve any purpose as charge sheet had already been filed by investigating agency and cognizance had already been taken by the Hon'ble Court vide its order dated 03.11.2022, rather the same would amount to pre-trial punishment for him. As investigation had already been concluded as charge sheet had already

(Harinder Sidhu)
Special Judge, CBI, Punjab,
SAS Nagar, Mohali/30.11.2022
(UID PB0130)

been filed by investigating agency and cognizance has been taken by this court on 03.11.2022 and termination of trial is likely to take a considerable time, hence, the applicant/accused is entitled for anticipatory bail. There is no allegation till now that applicant has in any way tampered the evidences or influenced any witness or in any way impeded the investigation. The applicant has deep roots in society and there is no reasonable basis for apprehending that applicant would flee from justice or otherwise attempts to evade the process of law. Applicant had fully cooperated during investigation and undertakes to continue doing the same in future also. No reasonable or credible grounds exist for apprehending that a full and fair investigation/trial cannot be carried out in the event that applicant is enlarged on bail. Furthermore, no useful purpose would be served by the incarceration of the applicant. To the contrary, the applicant's custody will only worsen his physical and mental health, adversely effect his family as well as his potential to mount an effective legal defence against the allegations levelled by CBI. Grave prejudice and irreparable hardship shall be caused to the applicant as well as his family if the present application is not allowed as prayed for. No prejudice shall be caused to the investigating agency or any other person if applicant is enlarged on anticipatory bail. Hence, the prayer for pre

arrest bail. The application is supported by an affidavit of the bail applicant/accused.

3. Notice of the application was served upon the CBI. A written reply has been filed by the CBI narrating at the outset the factual matrix of the case and it is specifically mentioned that the balance sheets of M/s Amyra Foods Pvt. Ltd, for the financial year 2015-16 were audited by accused-applicant Anurag Garg, CA in the capacity of partner of M/s ARGR & Co. In addition to this the accused-applicant Anurag Garg issued provisional balance sheet as on 21.01.2017, in which an unsecured loan of Rs. 1.53 crores from M/s Samra Enterprises has been shown. In this certificate an amount of Rs. 21623075/- was classified as under the head “unsecured loans” instead of “ sundry Creditors”, which was shown with an intention to fulfill margin requirements of the bank for release of credit facilities and to avail benefit of higher credit facilities from the bank. Accused-applicant Anurag Garg intentionally mentioned an amount of Rs. 21623075/- as unsecured loan in the Trial Balance submitted by the company at the time of audit, which was actually amount of Trade Payables/Sundry Creditors. It is further submitted that an aggregate amount of Rs. 21,40,000/- from bank account of M/s Amyra Foods Pvt. Ltd and Rs. 11,50,000/- from its associates concern M/s Golden Agrarian Pvt. Ltd., was transferred in the personal account of accused-applicant. It

(Harinder Sidhu)
Special Judge, CBI, Punjab,
SAS Nagar, Mohali/30.11.2022
(UID PB0130)

is further submitted that as per audited balance sheets accused-applicant charged audit fees of M/s. Amyra Foods Pvt. Ltd., amounting to Rs. 11,000/- only for financial year 2015-16 and Rs. 1,75,000/- for the financial year 2016-17 respectively. It is also mentioned that there is sufficient documentary and oral evidence on record, which proves the involvement of the accused in the present case. It is further mentioned that there is reasonable apprehension that if the accused/applicant is granted anticipatory bail, he may not cooperate in the proceedings of the trial and the trial may be delayed unnecessarily. There is sufficient oral and documentary evidence against the accused and the allegations against the accused fall in the category of economic offences. Hence, the prayer for dismissal of the application.

4. I have heard Sh. K.P. Singh Advocate, learned counsel for the applicant/accused Anrag Garg as well as Sh. Gurvinderjit Singh, learned Public Prosecutor for the CBI and record has been perused. Sh. K.P. Singh Advocate, learned counsel for the applicant/accused opening his arguments, contended that the the accused was innocent. He had no role in the allegations mentioned in the charge-sheet. Investigating agency after completion of the investigation, submitted the final report and in the course of the investigation, the accused/applicant Anurag Garg appeared before the investigating agency as and when required and cooperated

accordingly. The investigating agency has not sought the custody of the accused/applicant during investigation and during the course of investigation spanning over two/three years, the accused/applicant was never arrested and his custodial interrogation was never required. He contended that the bail applicant has deep-roots in the society and there is no possibility of his absconding from the process of law. The learned counsel in order to support his arguments referred to the observation of the Hon'ble Apex Court in **Sanjay Chandra Vs. CBI reported in (2012) 1 SCC 40**, in which the Hon'ble Apex Court held that:-

‘In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in

custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for

the purpose of giving him a taste of imprisonment as a lesson’.

5. He further referred to the guidelines issued by the Hon’ble Apex Court in **Satender Kumar Antil Vs. Central Bureau of Investigation and Others: (2021) 10 SCC 773** as well as to the observations of the Hon’ble Apex Court in **Aman Preet Singh Vs. CBI through Director: 2021 SCC Online SC 941** and **Siddharath Vs. State of U.P. 2021 SCC online SC 615**. He also referred to the guidelines issued to the criminal courts on the matter of bails by the Hon’ble Delhi High Court in **Court on its own motion Vs. CBI reported in (2004) 72 DRJ629**. Emphasizing on the aspect of the accused not having been taken into custody during the trial and his custodial interrogation not being required, the learned counsel prayed for grant of pre-arrest bail to the accused.

6. On the other hand, the learned Public Prosecutor for the CBI Sh. Gurvinderjit Singh, opposing the bail application, argued that the mere fact that the investigating officer had not arrested the accused during investigation, does not give the accused an indefeasible right to claim the concession of pre-arrest bail. The learned Public Prosecutor for the CBI would vehemently contend that the accused/applicant has been summoned to face trial after the court took cognizance upon filing of the charge-sheet but instead of putting in appearance and joining the trial, which otherwise

is being delayed due to non-appearance of accused, the accused/applicant has chosen an approach to obtain cover of pre-arrest bail rather than surrendering before the court and seek regular bail. He prayed for dismissal of the bail application.

7. On appreciating the contentions raised by the learned counsel for the accused/applicant in support of his prayer for granting concession of bail to the accused/applicant as well as the arguments opposing the bail application put forth by the CBI, it transpires that the main grounds on which the accused/applicant has sought the concession of anticipatory bail is that he is innocent and that he was not arrested during the investigation and he joined the investigation when called upon by the investigating officer and even on his appearance before the investigating officer at no point of time was he arrested. The learned counsel for the accused/applicant claims that the applicant/accused cooperated in the investigation and this would merit his entitlement to the concession of bail. The plea of the learned counsel put forth on behalf of accused/applicant that he was not arrested during the investigation and was hence entitled to bail, is without any merit since the mere fact that the investigating officer had not arrested the accused during the investigation is ipso facto no ground to exclude the discretion of the court in the matter of grant of bail. Our own Hon'ble High Court in the case **Jainam Rathod**

Vs. State of Haryana' (P&H) reported in 2020(1) RCR (Criminal) 241, has held that *".....such an argument not only tends to make discretion of the court subservient to the discretion of the Investigation Officer in the matter of bail to the accused, but also is in direct negation of language of section 436 and 437 of the Cr.P.C., 1973 Only section 439 contemplates a person being arrested and being in custody for being considered for grant of bail by a Sessions Court or High Court. However, even this section provides that even if such a person is released on bail, these courts can order such a person to be taken into custody again, depending upon the facts and circumstances of the case. Hence mere fact that a person was not arrested during the investigation, in itself, is totally irrelevant so far as a claim of the accused to get bail in a particular case, as a matter of right, is concerned, although this fact may have some relevance qua some other factors which may be relevant for exercise of discretion by the court for granting bail to such a person"*.

8. Thus, the accused/applicant cannot claim pre-arrest bail as a matter of right, if he was not arrested during the investigation, since it is not mandatory for the investigating officer to arrest the accused in the course of investigation and the entitlement of the accused/applicant to the concession of bail is to be considered on the basis of the available material and the facts of the particular case, the nature and gravity of the

accusations and the exact role of the accused which is to be properly comprehended. The accusations against the accused/applicant are that the balance sheets of M/s Amyra Foods Pvt. Ltd, for the financial year 2015-16 were audited by accused-applicant Anurag Garg, CA in the capacity of partner of M/s ARGR & Co. In addition to this the accused-applicant Anurag Garg issued provisional balance sheet as on 21.01.2017, in which an unsecured loan of Rs. 1.53 crores from M/s Samra Enterprises has been shown. In this certificate an amount of Rs. 21623075/- was classified as under the head “unsecured loans” instead of “ sundry Creditors”, which was shown with an intention to fulfill margin requirements of the bank for release of credit facilities and to avail benefit of higher credit facilities from the bank. Accused-applicant Anurag Garg intentionally mentioned an amount of Rs. 21623075/- as unsecured loan in the Trial Balance submitted by the company at the time of audit, which was actually amount of Trade Payables/Sundry Creditors. It is further submitted that an aggregate amount of Rs. 21,40,000/- from bank account of M/s Amyra Foods Pvt. Ltd and Rs. 11,50,000/- from its associates concern M/s Golden Agrarian Pvt. Ltd., was transferred in the personal account of accused-applicant. It is further submitted that as per audited balance sheets accused-applicant charged audit fees of M/s. Amyra Foods Pvt. Ltd., amounting to Rs. 11,000/- only for financial year 2015-16 and Rs.

1,75,000/- for the financial year 2016-17 respectively. These allegations and the defence pleaded at this stage, cannot be looked into and would be appreciated during the trial.

9. Upon culmination of investigation, charge-sheet has been presented in the court and after taking cognizance, the accused have been summoned to face trial. The accused/applicant rather than putting in appearance in the court and joining the trial has chosen to file the application for pre arrest bail. The accused has not put in appearance in the court till date nor joined the trial. The accused/applicant cannot merely presume that on his appearance, he would be arrested and sent to custody. As stated above, the matter of concession of bail is to be considered on the basis of available material and the facts of each case and the magnitude, nature and gravity of the accusations in as much as the conduct of the accused. The Hon'ble Delhi High Court has issued directions to criminal courts in the matter of bail in the case **"Court on its own motion Vs. State"** reported in 2017(243) DLT 313 and the relevant portion is reproduced hereunder for ready reference:-

Directions for criminal courts:-

- (i) *****
- (ii) *****
- (iii) *****
- (iv) *****

(Harinder Sidhu)
Special Judge, CBI, Punjab,
SAS Nagar, Mohali/30.11.2022
(UID PB0130)

- (v) *The court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating agency during investigation nor produced in custody as envisaged in Section 170 Cr.P.C.,1973 call upon the accused to move a bail application in the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is sample. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge sheet has been filed is against the basis principles governing grant or refusal of bail.*

10. The Hon'ble Delhi High Court has directed the criminal courts that on '**appearance of an accused**' in a non-bailable offence, the court shall consider his being released on bail if he has not been arrested during the investigation or he has not been produced in custody as envisaged under section 170 Cr.P.C. Here in the present case, the accused/applicant has not put in appearance nor joined the trial, had the accused surrendered in the court or appeared to join the trial, the matter would have been otherwise. Hence, in the light of the above facts, this court is not inclined to accept the prayer for grant of pre-arrest bail and

the bail application filed under section 438 Cr.P.C. is accordingly dismissed.

Dated: 30.11.2022

Aarti Sharma

(Harinder Sidhu)
Special Judge, CBI, Punjab
SAS Nagar, Mohali
UID No.PB0130

(Harinder Sidhu)
Special Judge, CBI, Punjab,
SAS Nagar, Mohali/30.11.2022
(UID PB0130)

Anurag Garg Vs. Central Bureau of Investigation BA 3084-2022

Present Sh. K.P. Singh Advocate, learned counsel for the
applicant/accused-Anurag Garg.
Sh. Gurvinderjit Singh, learned Public Prosecutor for the
CBI.

The case is fixed for consideration on the bail application.

Arguments on the bail application have been heard. Vide my separate
detailed order of even date, the bail application has been disposed of. The
present bail application be attached with the main file.

(Harinder Sidhu)
Special Judge, CBI, Punjab,
SAS Nagar, Mohali
(UID No. PB0130)

Date of order: 30.11.2022

LR Bali, JW

(Harinder Sidhu)
Special Judge, CBI, Punjab,
SAS Nagar, Mohali/30.11.2022
(UID PB0130)