2025 INSC 1181

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.4283 OF 2025

[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.4971 OF 2025]

M/S NETSITY SYSTEMS PVT. LTD. …APPELLANT

VERSUS

THE STATE GOVT. OF NCT OF DELHI & ANR. …RESPONDENTS

R1: THE STATE GOVT. OF NCT OF DELHI

R2: DHARAM PAL SINGH RATHORE

WITH

CRIMINAL APPEAL NO.4284 OF 2025

[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.7587 OF 2025]

M/S NETSITY SYSTEMS PVT. LTD. …APPELLANT

VERSUS

THE STATE NCT OF DELHI & ANR. …RESPONDENTS

R1: THE STATE NCT OF DELHI

R2: SHIKSHA RATHORE

J U D G M E N T

Heard learned senior counsel and/or counsel for the parties.

2. Leave granted in both petitions.

THE IMPUGNED ORDER:

3. These twin appeals are directed against the common Impugned Final Order dated 18.11.2024 passed by a learned Single Judge of the High Court of Delhi at New Delhi (hereinafter referred to as the 'High Court') in Crl. M. C. Nos.8956/2024 and 8957/2024 by which the petitions filed by the appellant against the Order dated 16.08.2024 passed by the learned Additional Sessions Judge (ASJ)-2/Special Judge (NDPS), East, Karkardooma Courts, Delhi (hereinafter referred to as the 'Sessions Judge'), upholding the grant of bail to the (respective) respondents no.2-accused and his co-accused wife by the learned Additional Chief Metropolitan Magistrate, Karkardooma Courts, East District, Delhi (hereinafter referred to as the 'ACMM'), were dismissed by the High Court.

4. The appellant is the complainant in Complaint Case No.4142/2017 filed before the ACMM.

APPELLANT'S SUBMISSIONS:

5. Learned senior counsel for the appellant submitted that the accusation against the accused husband and his co-accused wife was that they had taken ₹1,90,00,000/- (Rupees One Crore Ninety Lakhs) and promised to transfer certain land in favour of the appellant. However, it was subsequently discovered that the said land had not only been previously mortgaged but had also been sold to a third-

party. Upon being confronted, the respondents refused to return the money with interest, which the appellant claimed amounted to ₹6,25,00,000/-(Rupees Six Crores Twenty-Five Lakhs). The Order dated 03.04.2018 in Complaint Case No.4142/2017 led to the registration of First Information Report No.81/2018 dated 06.05.2018 at Police Station Preet Vihar, East District, Delhi against the two accused.

6. It was submitted that both the accused had filed pre-arrest bail applications bearing Bail Applications No.2260/2018 and 2261/2018 before the learned Additional Sessions Judge (ASJ-04) (East), Karkardooma Courts, on 10.12.2018. The said applications were dismissed *vide* Order dated 11.12.2018. Thereafter, the private respondents approached the High Court seeking anticipatory bail, which granted them interim protection *vide* Order dated 21.12.2018 in Bail Applications No.3058/2018 and 3068/2018. This interim protection continued for almost four years, during which the matter was referred to mediation. In the course of the mediation proceedings, the private respondents gave an undertaking to pay ₹6,25,00,000/- (Rupees Six Crores Twenty-Five Lakhs) to the appellant. Ultimately, Bail Applications No.3058/2018 and 3068/2018 were rejected by the High Court by Order dated 01.02.2023 [**2023:DHC:747** | **2023 SCC OnLine Del 599**]. While rejecting these applications, the High Court recorded in detail the conduct of the respondents:

> '***11.****As applicants are also previously involved in other cheating cases pertaining to Police Station Preet Vihar, the contention of learned counsel for applicants that since charge-sheet has been filed without arrest, now, no purpose will be served to send the applicants behind the bar is also without merit. In case this plea is accepted, it will amount to giving liberty to an accused in*

economic offences to first appear before the Court, give an undertaking that he will make payment of the amount due before the court of law including this Court and obtain interim protection on that ground and thereafter, after years of enjoying the interim protection, a statement will be made that he will not make the payment being unable to do so and as a matter of right, will ask to be granted bail on the ground that now charge-sheet has been filed and his custody is not required. In this regard, this Court is of the opinion that it would rather amount to giving liberty to an accused to first mislead the Courts by giving an undertaking that payment will be made & thereafter, despite such undertaking for years, as in the present case for more than three years, accused(s), in the meanwhile will wait for the charge-sheet to be filed and enjoy the interim protection and after the charge-sheet is filed, will take a plea that now they are no more required to be sent to judicial custody. This situation will amount to travesty of justice, and taking the court and complainant for a ride.

12. *The present case involves cheating of more than Six Crores by the complainant and this is not the only FIR involving such kind of offence which is pending against the petitioners, but another FIR bearing No. 238/2017 with similar allegations is pending against the petitioners, registered at Police Station Preet Vihar, Delhi for the offences punishable under Section 420 of IPC which shows the previous antecedents of the petitioners.*

13. *Considering the same, especially the conduct of the petitioners before this Court, details of which have been mentioned above in the preceding paras, this Court is of the opinion that the courts have also been taken for a ride by giving false undertakings that the monies of the complainant will be returned, though knowing fully that they would not be in a position to make the payment, conveniently waiting for the charge-sheet to be filed.*'

(emphasis supplied by us)

7. It was submitted that, despite noting the observations in the Order dated 01.02.2023 *supra* by the High Court, the ACMM still proceeded to grant bail only on the basis that the Chargesheet had been filed, and that there was no occasion for the accused persons to tamper with the evidence by Order dated 10.11.2023. Furthermore, the Investigating Officer (hereinafter referred to as the 'IO') of the case

had indicated that custodial interrogation was not required, as the Chargesheet had already been submitted.

8. It was urged that being aggrieved by the grant of bail to the private respondents by the ACMM, the appellant approached the Sessions Judge, which rejected its plea against the Order dated 10.11.2023 by Order dated 16.08.2024. The appellant then approached the High Court impugning the Trial Court's Order dated 16.08.2024. However, the same was rejected by the High Court *vide* the Impugned Order dated 18.11.2024.

9. It was submitted that the Impugned Order goes on the erroneous presumption that the matter was one purely relating to cancellation of bail, whereas the issue essentially related to the conduct of the private respondents. It was pointed out that, in the earlier round before the High Court, the accused had undertaken to repay the amount. However, while enjoying interim protection for almost four years, they attempted to play smart with the High Court by later resiling from their earlier undertaking to the Court representing that they would abide by the same, on the pretext that as the Chargesheet had been filed, no purpose would be served by keeping them behind the bars and pressed for grant of anticipatory bail, which, however, were dismissed under Order dated 01.02.2023. Thereafter, when they approached the ACMM seeking regular bail, they failed to disclose the fact that their anticipatory bail applications had been rejected by the High Court, thereby concealing material facts from the said Court.

10. It was further submitted that the bail granted is unsustainable not only due to

their conduct, as taken note of in the Order dated 01.02.2023 *supra*, but also in view of the fact that several other cases of similar nature are pending against them, numbering more than half a dozen. In the above view, it was prayed that the appeals be allowed and the bail granted to the private respondents be set aside.

RESPONDENT NO.1-NCT OF DELHI'S SUBMISSIONS:

11. Learned Additional Solicitor General appeared for the respondent-National Capital Territory of Delhi and supported the appellant's submissions. It was highlighted that the accused are habitual offenders and have been repeatedly indulging in fraudulent activities, especially of the type involved herein. It was pointed out that in two cases, the accused have already been convicted, and as on date, there are six other cases of similar nature pending against them. It was further submitted that the approach adopted by the ACMM, the Sessions Judge and the High Court, with respect, in the matters, was erroneous, as the grant of bail was based on considerations applicable to cases where conduct of the accused is otherwise above board, whereas the prayer for setting aside/cancellation of bail in the present case was rooted in the respondents' past conduct, which was highly relevant and should have been duly considered, as noted while rejecting their applications for anticipatory bail on 01.02.2023.

SUBMISSIONS BY THE ACCUSED-RESPONDENTS NO.2:

12. Learned Senior Counsel for the private respondents-accused submitted, *per contra*, that they had been targeted for oblique reasons. It was contended that they

had made a genuine attempt to repay the amount, but due to circumstances beyond their control, they were unable to do so. Thereafter, once the Chargesheet was filed, they were well within their rights to assert that their anticipatory bail applications be considered on merits, and upon the same being rejected, choosing to present themselves before the ACMM and seek regular bail. It was further submitted that the accused couple, in fact, duly appeared before the ACMM and filed bail applications, on which, after hearing the prosecution as well as the appellant, the ACMM passed Order dated 10.11.2023 granting bail. He also supported the Sessions Judge's Order dated 16.08.2024 which declined to interfere with the bail granted to the accused.

13. It was further submitted that the consistent view of the Courts has been that, once bail has been granted, the aspect of why it has been granted goes into the background, and the primary consideration becomes whether the conditions for cancellation of bail, as clearly laid down in various judicial precedents, are satisfied. It was pointed out that the Impugned Order itself refers to a relevant precedent, and in addition, learned Senior Counsel for the respondents-accused, relied upon the decision of this Court rendered in ***Sanjay Chandra v Central Bureau of Investigation*****, (2012) 1 SCC 40**, particularly Paragraphs 21 and 46:

> '***21.*** *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 is 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.*

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46. *We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI.*'

(emphasis supplied by learned senior counsel for the accused)

14. He further submitted that the conduct of the accused cannot be faulted, as they were merely availing legal remedies available to any citizen, which, in itself, cannot be construed as misconduct. He summed up arguments by submitting that the appellant does not merit indulgence, and therefore, the prayers made in the present cases ought to be rejected *in toto*.

15. It was lastly submitted by learned Senior Counsel that, since the two appeals pertain to the husband and wife, the Court, if inclined to interfere, may consider taking a lenient view, at least with respect to the wife.

ANALYSIS, REASONING AND CONCLUSION:

16. Having examined the matter *in extenso* and taking into account the totality of the circumstances of the present cases, we are of the considered opinion that the Impugned Order, the Sessions Judge's Order dated 16.08.2024 as also the ACMM's Order dated 10.11.2023 cannot be sustained.

17. The first and foremost reason which has persuaded this Court to interfere is the conduct of the accused before the High Court in the first round of litigation, when their applications for grant of anticipatory bail were being considered. In those proceedings, the private respondents were granted interim protection on 21.12.2018. On 09.04.2019, the following Order was passed in Bail Applications No.3058/2018 and 3068/2018:

> '*Counsel for complainant submits that interest @1.80% per month since March, 2012 is yet to be paid by petitioners. This is disputed by counsel for petitioners who submits that to show bona fides, petitioners are ready to deposit interest at the aforesaid rate from March, 2017 till March, 2019 with the Registrar General of this Court within six weeks.*
>
> *Counsel representing both the sides submit that without prejudice to their rights, parties are ready and willing to explore possibility of settlement in these cases and for this purpose, parties or their authorized representatives would be appearing before Delhi High Court Mediation and Conciliation Centre on 23rd April, 2019 at 2:30 p.m. and thereafter, as and when required.*
>
> *Let parties appear before Delhi High Court Mediation and Conciliation Centre on 23rd April, 2019 at 2:30 p.m. and thereafter, as and when called to explore possibility of settlement.*
>
> *Interim order of 21st December, 2018 to continue. It is made clear that in case petitioners fail to deposit the aforesaid interest amount with the Registrar General of this Court within the time stipulated, then the interim order shall be deemed to be vacated.*'
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> (emphasis supplied)

18. It cannot be lost sight of that the Order dated 09.04.2019 *supra* was based on the submission by the accused that they were willing to settle and/or compromise the matter and would pay an amount, as might be determined in mediation. However, despite the lapse of close to four years, no fruitful result emerged from the

mediation process, and in the end, after the Chargesheet was submitted, the anticipatory bail applications were dismissed. After 09.04.2019, the interim orders were specifically continued, by Orders dated 31.07.2019, 31.01.2020 and 11.10.2022.

19. We note that the Order dated 01.02.2023 dismissing the anticipatory bail applications detailed the conduct of the accused and thereafter, considered and dismissed the said petitions on merits. We find the reasoning employed in Order dated 01.02.2023, as recorded by us above, is fully justified in the facts and circumstances. In this backdrop, the ACMM, despite being made aware of the High Court's Order dated 01.02.2023 and even noting the same, proceeded on the simplistic premise that since the Chargesheet had been submitted, no useful purpose would be served by taking the accused into custody, particularly as the stand taken by the IO was that custodial interrogation was not required. Such reasoning, in our view, is untenable, inasmuch as the same glossed over the private respondents' conduct, including undertakings made before a higher Court *viz*. the High Court.

20. We have deliberately adopted a mild mannerism in describing the ACMM's Order dated 10.11.2023, even as the consideration adopted therein borders on the perversity. Bail matters are primarily to be adjudicated on the facts and circumstances, before applying any principle of law. In light of the glaring factual matrix, bail ought not to have been granted. ***Sanjay Chandra*** (*supra*)[1] itself says,

[1] '***40.*** *The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the*

and rightly so, that grant or denial of bail is regulated by the accompanying facts and circumstances.

21. Our observations herein are not whittling down pro-liberty principles but merely reiterating that the Courts below need to be cognisant of applying the same to the facts of the specific cases before them. No precedent operates in a vacuum and must be co-related to the extant facts. The law with regard to interference with an Impugned Order of the nature and like herein stands already dealt with, *inter alia*, in decisions of recent vintage *viz*. ***Ajwar v Waseem*, (2024) 10 SCC 768**; ***Manik Madhukar Sarve v Vitthal Damuji Meher*, (2024) 10 SCC 753**; ***Shabeen Ahmad v State of Uttar Pradesh*, (2025) 4 SCC 172**; ***State of Rajasthan v Indraj Singh*, 2025 SCC OnLine SC 518**; ***Victim 'X' v State of Bihar*, 2025 SCC OnLine SC 1490**; ***Ajwar v Waseem*, 2025 SCC OnLine SC 1742**, and; ***State of Andhra Pradesh v N Sanjay*, 2025 SCC OnLine SC 1747**, to name a few. There can be no quarrel with regard to the settled parameters as to the relevant factors for considering setting aside grant of or cancellation of bail. That apart, in ***Rahul Gupta v State of Rajasthan*, (2023) 7 SCC 781**, it was opined as follows:

> '***4.*** *When the accused are charge-sheeted after the investigation, the High Court ought to have taken note of and/or considered the material collected during the investigation even to find out whether there is any material collected during the investigation involving the accused for the serious offence under Section 302IPC and therefore, whether it is a fit case to enlarge the accused on bail or not. Under the circumstances, the impugned order [Sunil Gupta v. State of Rajasthan Crl. Misc Bail Appln. No. 10068 of 2022, order dated 18-7-2022 (Raj)] passed by the High Court is unsustainable and the same deserves to be quashed and set aside and the matter is*

State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.'

(emphasis supplied)

required to be remitted back to the High Court to decide the bail applications afresh.'

(emphasis supplied)

22. Without becoming verbose, we would like to refer to two recent pronouncements of this Court i.e., ***Ashok Dhankad v State of NCT of Delhi*, 2025 SCC OnLine SC 1690** (delivered on 13.08.2025) and ***State of Karnataka v Sri Darshan*, 2025 SCC OnLine SC 1702** (delivered on 14.08.2025). In ***Ashok Dhankad*** (*supra*), it was stated thus:

'***19.*** *The principles which emerge as a result of the above discussion are as follows:*

(i) An appeal against grant of bail cannot be considered to be on the same footing as an application for cancellation of bail;

(ii) The Court concerned must not venture into a threadbare analysis of the evidence adduced by prosecution. The merits of such evidence must not be adjudicated at the stage of bail;

(iii) An order granting bail must reflect application of mind and assessment of the relevant factors for grant of bail that have been elucidated by this Court. [See: Y v. State of Rajasthan (Supra)[2]; Jaibunisha v. Meherban[3] and Bhagwan Singh v. Dilip Kumar @ Deepu[4]]

(iv) An appeal against grant of bail may be entertained by a superior Court on grounds such as perversity; illegality; inconsistency with law; relevant factors not been taken into consideration including gravity of the offence and impact of the crime;

(v) However, the Court may not take the conduct of an accused subsequent to the grant bail into consideration while considering an appeal against the grant of such bail. Such grounds must be taken in an application for cancellation of bail; and

(vi) An appeal against grant of bail must not be allowed to be used as a retaliatory measure. Such an appeal must be confined only to the grounds discussed above.'

(emphasis supplied)

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[2] **(2022) 9 SCC 269**.
[3] **(2022) 5 SCC 465**.
[4] **(2023) 13 SCC 549**.

23. In ***Sri Darshan*** (*supra*), the Court, upon examining the law, observed:

> '*20.1. Delay in furnishing the grounds of arrest cannot, by itself, constitute a valid ground for grant of bail.*
>
> xxx
>
> *20.2. Courts are not expected to render findings on the merits of the case at the bail stage.*
>
> xxx
>
> *20.3. Appreciation of evidence at the bail stage is impermissible.*
>
> xxx
>
> *20.4. Filing of charge sheet or lengthy list of witnesses does not justify grant of bail.*
>
> xxx
>
> *20.5. Post-bail good conduct of the accused, while relevant to the question of continuation of bail, cannot retrospectively validate an otherwise unsustainable order.*'
>
> (emphasis supplied)

24. Interestingly, the ACMM in Order dated 10.11.2023 noted as under:

> '***8.*** *The peculiarity in the facts of the present case is evident that the said anticipatory bail applications have been dismissed by the Hon'ble Delhi High Court after the filing of the present chargesheet and the accused persons have been chargesheeted for offences under Section 420/34 IPC without arrest. In such circumstances, the bail applications under Section 437 of CrPC of the accused persons are not to be allowed mechanically and the Court is bound to weigh the material collected by the I.O. during investigation and rule out any grounds for dismissal of their bail applications (under Sections 437 of CrPC). The grounds for considering an anticipatory bail application under Section 438 of CrPC and a bail application under Section 437 of CrPC are different. What weighs heavily with the Court at this stage is mainly whether there is any chance of the accused persons absconding or tampering with evidence or influencing the witnesses. In the present case as per the contents of the chargesheet, no further investigation is pending. There are no circumstances indicated on behalf of the complainant or the State which may give rise to even a slightest apprehension that the accused persons are likely to abscond or not join the trial proceedings before the Court. Further, no such material or evidence has been pointed out on behalf of the complainant or the APP or the I.O. that may be tampered or destroyed by the*

accused persons during the trial proceedings. It is important to mention here that from the time of registration of the FIR till date, there has been no such complaint made by the complainant that he or any other witness in this case had been threatened by the accused persons or any attempt had been made by the accused persons to influence the complainant or other persons acquainted with the facts of this case.

9. *The role of both the accused persons in the alleged incident of cheating has been clearly delineated in the chargesheet. The Court is not oblivious to the fact that the complainant has been cheated of a huge amount running in crores, however, that solely cannot be a reason for taking the accused persons in custody for the entire trial proceedings. This is a criminal case and not civil recovery proceedings. The complainant has already filed an application for further investigation and in case there is any requirement for custodial interrogation of the accused persons in future or the accused persons misuse the conditions of their bail, the complainant would have recourse to apply for cancellation of their bail. The decisions in Jainam's case (supra) and Shiv Lingam's case (supra) do not squarely apply to the facts and circumstances of the present case.*'

(emphasis supplied)

25. When the ACMM had noted '*peculiarity*' in the case, and that the bail applications '*are not to be allowed mechanically*' as also that the material collected by the IO had during investigation had to be weighed, it is surprising how the Order dated 10.11.2023 is completely bereft of any examination of the material available in the Chargesheet against the accused, despite itself noting that the '*role of both the accused persons in the alleged incident of cheating has been clearly delineated in the chargesheet.*' Further, the observation to the effect that '*The grounds for considering an anticipatory bail application under Section 438 of CrPC and a bail application under Section 437 of CrPC are different.*' is *ex-facie* not totally correct in light of what a 3-Judge Bench has observed in ***Satender Kumar Antil v Central Bureau of Investigation*****, 2023 SCC OnLine SC 452**:

> '***11.*** *Learned counsel submits that though there is observation qua the correctness of the practice to be tested in an appropriate case, this case itself is the appropriate case as directions have already been passed and somehow they have been understood as if they will apply to cases for regular bail and not to anticipatory bail. We would like to clarify that what we have enunciated qua bail would equally apply to anticipatory bail cases. Anticipatory bail after all is one of the species of a bail.*'
>
> (emphasis supplied)[5]

26. We have held in ***State of Haryana v Dharamraj*****, (2023) 17 SCC 510**:

> '***11.*** *Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative, and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits. In Vipan Kumar Dhir v. State of Punjab [Vipan Kumar Dhir v. State of Punjab, (2021) 15 SCC 518] , taking note of Dolat Ram [Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237] and X v. State of Telangana [X v. State of Telangana, (2018) 16 SCC 511: (2020) 1 SCC (Cri) 902], the Court cancelled the anticipatory bail granted to the accused therein. Keeping all the aforesaid in mind, we turn our attention to the facts in praesenti.*'
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> (emphasis supplied)

27. The Sessions Judge's Order dated 16.08.2024, impugned before the High Court, took note of a judgment passed by a learned Division Bench of the High Court in ***Court on its Own Motion v State*****, 2018 SCC OnLine Del 12306**, the relevant paragraph wherefrom reads as under:

> '***37.*** *While considering the regular bail application of the accused under Section 437(1) Cr PC, the factum of the rejection or acceptance of the anticipatory bail application, by itself, is not germane. However, the factors which weighed with the court while either rejecting or granting anticipatory bail to the accused, or such of them - as are relevant post the filing of the charge sheet, may be looked at by the Court while dealing with the bail application of the accused under Section 437(1) Cr*

[5] Reiterated by another 3-Judge Bench in **Order dated 22.11.2023** in **SLP (Crl.) 4496/2023**.

> *PC. Since the court is seized of the final report/charge sheet while dealing with the bail application under Section 437(1) Cr PC, it would be in a position to make a better assessment and it should not get influenced by the conclusions drawn by the court while - either accepting, or rejecting the anticipatory bail of the accused. We have already discussed the limitations on the power of the court (which is not the Court of Sessions or the High Court) to grant bail placed by clause (i) and (ii) of section 437(1) and the aspects that the court would take into consideration while considering the regular bail application of the accused under Section 437(1) Cr PC. Question (A) is answered accordingly.*'
>
> (emphasis supplied)

28. Even on the anvil of ***Court on its Own Motion*** (*supra*)[6], the Orders dated 10.11.2023 (ACMM) and 16.08.2024 (Sessions Judge) are unable to pass muster, inasmuch as they ignored the conduct of the accused in securing interim protection as also failed to discuss, even in brief, what had emerged in the investigation, as would reflect from the Chargesheet. The Sessions Judge concluded, ultimately:

> '***25.*** *In the present case, there is nothing on record to suggest that accused persons are flight risks or that he may temper with the evidence or influence the witnesses. Further it has not been argued that the accused persons have violated any of the conditions of bail. It is settled law that bail cannot be withheld as punishment as the culpability of the accused is to be proved during trial. The Ld. Trial Court after due consideration of the fact and circumstances of the fact has granted bail in the present matter and same cannot be said to be in contravention of the observations made by the Hon'ble High Court. Further I do not deem it fit to deal with the grounds urged in the present applications that the I0 has not carried out proper investigation in the matter as applicant has already filed an application for further investigation before the Ld. Trial Court, which is pending consideration.*'
> (sic)
>
> (emphasis supplied)

[6] Taken note of in ***Siddharth v State of Uttar Pradesh*****, (2022) 1 SCC 676**.

29. The Sessions Judge, thus, as clear from the observation '*… it has not been argued that the accused persons have violated any of the conditions of bail.*', fell in error by looking to uphold the ACMM's Order dated 10.11.2023 by examining the post-bail conduct of the accused rather than testing whether the Order dated 10.11.2023 by itself commended acceptance or not. Nothing further need be said.

30. The manner in which bail was granted also reveals certain procedural irregularities at the grassroots level of the judiciary, which we should not ignore. Cognizance was taken by the ACMM *vide* Order dated 28.03.2023 (12.20 pm) and summons were issued to the accused. On 09.08.2023, the accused sought, and were granted time to file bail applications. accused duo, it is stated, appeared before the ACMM on 18.10.2023 with pleas for grant of bail. Thus, technically, once the bail applications were taken up for hearing and the accused had appeared before the Court, they were deemed to be in the custody of the Court concerned, unless a specific order was passed directing their release – either on regular basis or in the interim. In the present circumstances, it is not disputed that no such interim release order was passed, yet the private respondents were not taken into custody. Orders were subsequently passed by the ACMM on 18.10.2023, 30.10.2023, 01.11.2023, 04.11.2023, 06.11.2023 and 09.11.2023. Bail was eventually granted only *vide* the ACMM's Order dated 10.11.2023.

31. This fact is evident from the very Order dated 10.11.2023, which itself records that bail was to be granted upon the furnishing of bail bonds for a sum of ₹3,00,000/- (Rupees Three Lakhs) with one surety of like amount, subject to conditions mentioned therein. Clearly, Order dated 10.11.2023 was the first

occasion on which bail was actually granted to the accused. There is no indication forthcoming from the record that, upon their appearance before the Court, the couple were granted liberty till the final Order came to be passed/pronounced. We are unable to comprehend how, having formally surrendered before the Court, the accused were permitted to leave the Court without any formal order of release. On perusal of Orders passed by the ACMM between 18.10.2023 to 10.11.2023 (enumerated *supra*), we do not see any order of release or of even a bond having been taken under Section 88 of the Code of Criminal Procedure, 1973.

32. We are also constrained to observe that the High Court ought to have appreciated the background facts and not treated the matter merely as one seeking setting aside of/cancellation of bail *simpliciter*. ***Himanshu Sharma v State of Madhya Pradesh*, 2024 INSC 139** has been cited in the Impugned Order, however, without discussing its applicability to the case before the High Court. The Impugned Order also omits any reference to the conceded factum of other similar cases pending against the accused, and the observation that '*… the bail bonds were filed under Section 88 of the CrPC.*' does not appear to be borne out from the records.

33. Under ordinary circumstances, where bail has been granted in the absence of glaring facts such as those recorded above, the matter may not warrant reconsideration in light of judicial precedents. However, as the preceding analysis would demonstrate, the case at hand exhibits an exceptional factual prism, impelling a deeper scrutiny beyond the conventional principles governing the subject. Unfortunately, the High Court while passing the Impugned Order also overlooked the germane factual position and saw the issue as merely being one of cancellation of

bail.

34. We further observe that a prayer was made before the learned Single Judge by the appellant for the matters to be referred to the same learned Judge who had earlier rejected the anticipatory bail applications. The Court was well within its rights to reject such prayer, and none could have questioned such rejection, as it lay squarely within the discretion of the Court to proceed with the matter, if otherwise, there were no genuine and compelling reasons warranting a different course of action. However, the rejection of such a plea on the ground that the said learned Judge's roster had changed and, on that date, was sitting in a Division Bench appears misplaced. For proper appreciation, we may reproduce the said part of the Impugned Order:

> '***21.*** *The learned counsel for the petitioner submits that the present petitions be transferred to the same Judge who had dismissed the bail applications filed by the respective Respondent Nos. 2 in the present petitions on an earlier occasion.*
>
> ***22.*** *The roster of the predecessor Judge has been changed. The Hon'ble Judge is today sitting in a Division Bench.*
>
> ***23.*** *Considering the above, this Court does not consider it apposite to accede to the request made by the learned counsel for the petitioner.*'
>
> (emphasis supplied)

35. The rejection of the plea of transfer on the apparent reasoning that the learned Single Judge's roster had changed and was sitting in a Division Bench on that date was not proper. Recording such reason(s) gives the impression that had the learned Judge (who dismissed the anticipatory bail applications) not undergone a change of roster or not been part of a Division Bench on that date, the matters

might have been referred to the said Judge. We further observe that it is not for any Court, while referring a matter to a co-ordinate Bench, to consider the composition in which that Bench is sitting, at the relevant time. That is the sole prerogative of the learned Chief Justice of the Court concerned, in whom, alone, rests and vests the power of constituting Benches, whether by way of a special order or in regular course. Even otherwise, *de hors*, whether or not an order of transfer is passed by any Judge other than the concerned Chief Justice, the Registry of that Court shall not give effect to the same, till suitable/appropriate orders are passed by the Chief Justice. As and when any order of transfer is placed before the learned Chief Justice, it is for him/her to determine the appropriate Bench, either by treating the matter as a special case or by assigning it in accordance with the prevailing roster, or even re-allocating the case to the same Bench which had referred it. We have gone through the observations made by a Coordinate Bench in **Order dated 07.02.2025** in **Writ Petition (Crl.) 55/2025**:

> '***6.*** *What this Court meant in passing the order dated 31.07.2023 was that when the bail matters are assigned to different Benches and when those bail applications arise out of the same FIR and if such application are heard by different Benches, it leads to an anomalous situation, inasmuch as some of the benches grant bail whereas some of them take a different view.*
>
> ***7.*** *However, it is to be noted that in many High Courts, the roster system is followed.*
>
> ***8.*** *After a particular period, the assignment of the learned Judges change. It is also quite possible that the learned Single Judge, who was earlier taking up the assignment of bail matters may in the subsequent roster be a part of the Division bench.*
>
> ***9.*** *We are, therefore, of the view that if the aforesaid direction is followed universally, it may lead to disruption of benches inasmuch as the learned judge who had initially heard the bail application of one of the accused, may have become a part of some Division Bench when a bail application arising out of the same FIR is filed by another accused.*

> ***10.*** *We, therefore, clarify that if in a particular High Court, the bail applications are assigned to different single Judge/Bench, in that event, all the applications arising out of same FIR should be placed before one learned Judge.*
>
> ***11.*** *This would ensure that there is a consistency in the views taken by the learned judge in different bail applications arising out of the same FIR.*
>
> ***12.*** *However, if on account of change of the roster, the learned judge who was earlier dealing with the bail matters is not taking up the bail matters, the aforesaid directions would not be applicable.*
>
> ***13.*** *Further, we expect that in order to maintain consistency in the views taken by the Court, the learned judge, who will hear the subsequent applications filed for bail, may give due weightage to the views taken by the earlier judge, who had dealt with the bail applications arising out of the same FIR.*
>
> ***14.*** *We find that if this is not followed and if the judges siting in the Division Bench or thereafter taking up different assignments are required to take up the applications arising out of the same FIR, it may further delay the decisions in the bail matters*.'
>
> (emphasis supplied)

36. For the moment, we rest our observations on this issue here, noting that the above observations do not take away a learned Judge's power to refer the matter to the earlier Judge, if so warranted – subject to orders of the learned Chief Justice.

37. Accordingly, in view of the discussions made hereinabove and on an overall conspectus, the ACMM's Order dated 10.11.2023, the Sessions Judge's Order dated 16.08.2024, as well as the Impugned Order dated 18.11.2024 passed by the High Court, are hereby quashed and set aside. We are not inclined to go down the route in ***Rahul Gupta*** (*supra*) and do not propose to remit the matters for being decided afresh. As such, the private respondents are directed to surrender before the ACMM within two weeks from today positively.

38. Before parting, we would be failing in our duty if we turned a blind eye to the manner in which the ACMM granted bail to the accused and the Sessions Judge refused to interfere with such grant of bail. In the facts herein, we deem it appropriate that the Judicial Officers who passed the Orders dated 10.11.2023 and 16.08.2024 shall undergo special judicial training for a period of at least seven days. The learned Chief Justice, Delhi High Court, is requested to make appropriate arrangements for such training at the Delhi Judicial Academy, with particular focus on sensitizing the Judicial Officers on how to conduct judicial proceedings, particularly in matters where decisions of Superior Courts are involved and the level of weightage to be accorded thereto. The learned Judge chairing the Judicial Education & Training Programme Committee, Delhi High Court be also apprised of this Judgment.

39. We would not shut our eyes to the role(s) played by the IOs either. The stand(s) taken by them before the Court(s) below speak volumes. Accordingly, the Commissioner of Police, Delhi, is directed to personally conduct an enquiry into the conduct of the IOs and take appropriate action, as deemed necessary. Needful be done on a priority basis.

40. The ACMM shall proceed to conduct the trial and endeavour to bring it to conclusion with expedition.

41. The appeals stand allowed in the aforesaid terms. Pending applications stand closed.

42. Registry is directed to communicate this Judgment to the Registrar General, Delhi High Court, for being placed before the learned Chief Justice and the learned Chairperson, Judicial Education & Training Programme Committee, forthwith.

43. After the Judgment was dictated, learned Senior Counsel for the accused drew our attention to the judgment in ***Satender Kumar Antil v Central Bureau of Investigation*****, (2022) 10 SCC 51** (hereinafter referred to as '***Antil-I***') and prayed that observations with regard to the grant of bail may be suitably modified. We have bestowed anxious consideration to the request made.

44. Having perused ***Antil-I***, we do not find any reason to do so. Detailed reasons for passing the present Judgment have already been spelt out above, which stands on a distinct factual footing. In any event, we have considered the entire gamut of the *lis*.

…….....J.
[AHSANUDDIN AMANULLAH]

…….....J.
[S.V.N. BHATTI]

NEW DELHI
25TH SEPTEMBER, 2025