IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) Nos. 103, 509, 579 and 611 of 2025

Reserved on: 08.04.2026

Date of Decision: 13.05.2026

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1. Cr. MP (M) No. 103 of 2025

Yudh Chand Bains ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

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2. Cr. MP (M) No. 509 of 2025

Satvir Minhas ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

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3. Cr.MP(M) No.579 of 2025

Ashok Kumar Puri ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

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4. Cr.MP(M) No. 611 of 2025

Harish Chand .... Petitioner

Versus

State of Himachal Pradesh ...Respondent

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Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

For the Petitioner(s)	:	Mr. N.S. Chandel and Mr Ankush Dass Sood, Senior Advocates, with M/s Sidharth Satija, Shwetima Dogra and Ankit Dhiman, Advocate, for the petitioner(s), in Cr.MP(M) Nos. 103 and 611 of 2025 and Mr Umesh Kanwar, Advocate, for the petitioner(s), in Cr.MP(M) Nos. 509 and 579 of 2025.
For the Respondent/ State.	:	Mr Naveen Pahwa, Senior Advocate, with M/s Vaibhav Shrivastva and Lokender Kutlehria, Additional Advocates General, assisted by Additional Superintendent of Police Narvir Singh Rathore, SV&ACB (SIU)

Rakesh Kainthla, Judge

The petitioners have filed the bail petitions seeking pre-arrest bail in FIR No. 2 of 2025 dated 08.01.2025 registered at Police Station State Vigilance and Anti-Corruption Bureau (SV & ACB), Una, District Una, H.P. for the commission of offences punishable under Sections 420, 468, and 471 and 120-B of Indian Penal Code (IPC) and Section 13(1) (a) & 13 (1) (2) of Prevention of Corruption (PC) Act. Since all the petitions pertain

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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to the same FIR, therefore, they are being taken up together for disposal.

2. Briefly stated, the facts giving rise to the present petitions are that a complaint was received from the Secretary, Cooperation to the Government of Himachal Pradesh, along with a report of the Managing Director of Kangra Central Cooperative Bank Ltd. (KCCB) regarding fraud in the bank accounts of M/s. Himalaya Snow Village and M/s. Hotel Lake Palace, properties of petitioner Yudh Chand Bains. Yudh Chand Bains had taken multiple loans from KCC Bank, which were advanced in violation of the Bank's lending policies and the guidelines of the Reserve Bank of India (RBI) and the National Bank for Agriculture and Rural Development (NABARD). Police conducted an inquiry and found that a utilisation certificate dated 30.6.2019, stated to have been issued by Future Craft Palampur to Himalaya Snow Village, was forged. Future Craft clarified that it is an architectural firm that can only issue structural stability certificates and building drawings. The Bank had approved petitioner Yudh Chand Bains' loan requests unconditionally. His investment from personal resources was not verified. Family members who were already guarantors in another loan were

again included as guarantors. No monitoring of fund utilisation was conducted. The loans were granted despite several accounts being in default. Post-loan fund utilisation monitoring was completely ignored. Reports by a Chartered Accountant and an Additional Registrar, Cooperative Societies declared the loan as fraudulent. The Branch Manager of KCCB Bank, Government College, Una, also informed that a loan account was maintained in the Bank in the name of Hotel Himalaya Snow Village, Manali. ₹16 crores were disbursed on 11.7.2019 and ₹4 crores were disbursed on 27.7.2019. Petitioner Yudh Chand Bains transferred the money to another account in the name of Himachal Home Furnishing and Hotel through RTGS. The money was transferred to various accounts, and further investigation is required. The Board of Directors relaxed the terms and conditions mentioned in the sanction letter. Project Monitoring and Loan Disbursement Committee (PMLDC) recommended reconsideration of the relaxations granted to the petitioner, but the loan was disbursed despite this recommendation. The police registered an FIR after receipt of the preliminary inquiry report.

3. The petitioner, Yudh Chand Bains, filed a bail petition asserting that he is a reputed person in society and has

been falsely implicated. The prosecution's case is based on a totally absurd, baseless, and imaginary story. There is nothing on record to connect the petitioner to the commission of a crime. The investigating agency is compelling the petitioner to withdraw his complaint. The petitioner is a permanent resident of District Mandi. He would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

4. The petitioner, Harish Chand, filed a bail petition asserting that he is a reputed person in society and has been falsely implicated. The prosecution's case is based on a totally absurd, baseless and imaginary story. There is nothing to connect him to the commission of a crime. His presence is not required for the investigation. He is a permanent resident of District Mandi, and he would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

5. The petitioner Satvir Minhas asserted in his petition that he is a General Manager of the Bank and is not responsible for the action and decision of the Board of Directors of the Bank.

The petitioner is not a member of the Board of Directors. He is not in a position to influence the decisions taken by the Board of Directors. The petitioner is duty-bound to place the loan application before the Board of Directors and arrange for the meeting of the Board of Directors. The petitioner is a Secretary of the Board of Directors, but he had not made any suggestion to the Board. The record does not show that the petitioner had ever favoured the grant of the loan in favour of Yudh Chand Bains. The petitioner had joined the investigation, and his custodial interrogation is not required. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

6. The petitioner Ashok Kumar Puri stated in his petition that he is a retired Deputy General Manager of the Bank and is not responsible for the actions and decisions of the Board of Directors of the Bank. The petitioner was not a member of the Board of Directors. He had an additional charge as General Manager of Banking at the time of the incident. The petitioner was duty-bound to place the loan application before the Board of Directors and to convene the meetings of the Board. There is no record to show that the petitioner had influenced the decision of

the Board of Directors. The petitioner had joined the investigation as per the directions of the Investigating Officer. The custody of the petitioner is not required for further interrogation. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

7. The State has filed multiple status reports in all the bail petitions. In a status report dated 24.01.2025 filed by the State in the petition of Yudh Chand Bains, it was asserted that Yudh Chand Bains had taken multiple loans from Kangra Central Co-operative Bank (KCCB), and the Bank blatantly disregarded its own lending policies and the guidelines of the RBI and NABARD. A vigilance enquiry was conducted by SV&ACB, and it was found that the utilisation certificate dated 30.06.2019, purportedly issued by Future Craft Palampur to Himalaya Snow Village Proprietor Yudh Chand Bains, is forged. The Future Craft clarified vide letter dated 27.05.2022 that it is an architectural firm, and only issues the structural stability certificates and building drawings. It does not issue any utilisation certificate. The enquiry revealed that the bank had approved the loan request of Yudh Chand Bains unconditionally. The borrower's investment from personal resources was not verified. Family

members who were already guarantors in another loan were again included as guarantors. No monitoring of fund utilisation was conducted. The loan was granted despite several accounts already being in default; post-loan fund utilisation monitoring was completely ignored, and reports by the Chartered Accountant and Additional Registrar Co-operative Societies declared the loan as fraudulent. ₹16 crore and ₹ 4 crore were disbursed on 11.07.2019, and 22.07.2019. Yudh Chand Bains transferred the money to Himachal Home Furnishing and Hotel through RTGS. This amount was further transferred to multiple accounts between 11.07.2019 and 16.12.2019. The loan was disbursed contrary to the terms and conditions mentioned in the sanction letter of the loan. The Project Monitoring and Loan Disbursement Committee (PMLDC) recommended the reconsideration of the relaxation, but the loan was disbursed contrary to the recommendation. Yudh Chand Bains has a history of committing similar offences. The petitioner and his family members had taken a loan in the year 2017 and 2018 from Shri Anand and Investment Company Pvt. Limited and The Himachal Pradesh Co-operative Non-agriculture Thrift and Credit Society Ltd, and they defaulted in the repayment of the

loan. The proceedings under Section 138 of the Negotiable Instruments Act are pending against the petitioner and his family members in the Court of the learned Judicial Magistrate First Class, Solan. Chander Pal Aggarwal stated that ₹9.5 crore is to be recovered from the petitioner and his family members. The use of the loan amount is being investigated. The petitioner held a press conference at Una to intimidate the investigation agency while he was on an interim bail. He failed to join the investigation. He failed to abide by the notices issued to him on the pretext that he was summoned by the Enforcement Directorate on 18.01.2025. Therefore, it was prayed that the present petition be dismissed.

8. In a status report dated 06.03.2025, it has been asserted that the petitioner had initially applied for a loan of ₹129.35 crore for constructing Hotel M/s Himalaya Snow at Dharamshala and Manali. The loan proposal was forwarded on 22.02.2017 and was returned on 24.03.2017 due to significant deficiencies, including the lack of Government approval, sale-purchase agreement and unclear source of promoters' contributions. The petitioner requested a loan of ₹ 10.50 crores for land purchase at Manali, which was sanctioned on 15.06.2017

despite existing discrepancies raising serious concerns about procedural lapses. The petitioner sought an enhanced composite loan of ₹6515 lakh on 04.09.2017, which was forwarded by AGM, Zonal Office, Una, on 06.09.2017 without addressing the previous objection. The loan committee sanctioned ₹3967.78 lakhs on 20.09.2017, subject to NABARD approval. The NABARD explicitly refused approval on 05.12.2017, citing a violation of the 2008 circulars. Despite this, the Board of Directors, in its meeting on 14.12.2017, sanctioned ₹6,515/- lakh loan, displaying a clear disregard for regulatory requirements. An Internal Review Committee was formed on 30.01.2018, which concluded that the disbursement was impermissible without RBI/NABARD approval. The petitioner repeatedly attempted to secure an unlawful financial benefit by misleading the banking authority and violating RBI/NABARD Directives. MD, KCC Bank again took up the matter of term loan of ₹3967.78/- lakh with CGM NABARD on the ground that the loan committee had sanctioned and disbursed ₹787.50/- lakh to the petitioner for the purchase of land. The land was also mortgaged in favour of the Bank as security. The petitioner had also approached this Court for a mandamus, but the Court declined to issue any writ of

mandamus and provided liberty to the petitioner to submit a fresh proposal justifying the viability of the project. The Board of Directors resolved to refer the proposal to NABARD on 28.12.2018. A loan of ₹787.50/- lakh had already been disbursed, and no construction was raised. Statement of Sukh Dev Singh was recorded on 03.02.2025, in which he stated that the Board of Directors had relaxed several terms and conditions of the loan vide resolution dated 10.06.2019. Bank officials and members of Board of Directors were fully liable and accountable in advancing the loan to the petitioner. The petitioner had transferred the loan amount to various persons. He transferred the money to Inderjeet Singh (Prop. Pujj Jewellers) for purchasing jewellery. An illegible flowchart was also provided in the status report. The statement of Lok Raj Saini was recorded, in which he stated that petitioner Yudh Chand Bains had purchased land from him and transferred ₹3.25 crore to his account from the SBI account and ₹1.65 crore to HDFC Bank towards the sale consideration. Himachal Home Furnitures, M/s Hotel Furnishing Unit Nalsar Mandi, M/s Bains Trading Company, M/s We Steel Furnitures, M/s Bij Furniture and Hardware, M/s Himalyan Explorer Tourism Private Limited, Hotel Bains Regency, Hotel Lake

Palace, Puran Chand Saw Mill are owned by the petitioner and are located in the shed. These Firms are non-operational. A loan of ₹12 crore was sanctioned to Hotel Lake Palace on 05.07.2016. Sh Karnail Singh Rana, Sh Lekh Raj Kanwar, Sh. Prakash Chand Rana and Smt. Rakhil Kahlon were present in the meeting. A loan of ₹7.87 crore was sanctioned on 15.06.2017, in which Mr Karnail Singh Rana, Mr Jaswant Rana, Mr Parkash Chand Rana, Yograj and Mr P.C. Akela were present. A loan of ₹39.68 crore was sanctioned to Himalaya Snow Village on 20.09.2017. Karnail Singh Rana, Jaswant Rana, Sh. Prakash Chand Rana, Sh. Yograj and Sh. P.C Akela were present in the meeting. A loan of ₹39.68 crore was sanctioned to Hotel Himalaya Snow Village on 25.02.2019. Sh. Rajeev Bhardwaj, Sh. Ranjeet Rana, Sh. Ramesh Kumar, Sh. Sher Singh Chauhan and Sh. Vinay Kumar were present in the meeting. Yudh Chand Bains, Satvir Minhas, Ashok Kumar Puri and Vinay Kumar were interrogated. The investigation revealed that the Board of Directors had waived essential loan conditions and violated NABARD conditions. The investigation in the instant case uncovered grave financial irregularities. The site inspection report revealed that no Hotel building or construction work had been carried out on the site,

and the amount was misappropriated. The documents were forged. The petitioner joined the investigation on 9 days and was exempted on 13 days. The offence is serious. A huge amount has been misappropriated. Documents have been forged, and the evidence has been tampered with. Hence, it was prayed that the interim bail granted to the petitioner be cancelled.

9. In the status report filed in the petition of Harish Chand dated 25.03.2025, it was asserted that an amount of ₹20 crore was directly credited to the current account of petitioner Yudh Chand Bains, who diverted it to another account in Punjab & Sindh Bank. Crucial conditions were waived by the Board of Directors. Petitioner Harish Chand is a direct beneficiary of the embezzled amount. He is not cooperating with the investigation and has deliberately withheld crucial material information for unearthing the entire conspiracy. His custodial interrogation is necessary to unearth the nature of the crime. Hence, it was prayed that the interim bail granted in his favour be cancelled.

10. In the status report filed in the case of Ashok Kumar, dated 25.03.2025, it was asserted that petitioner Ashok Kumar Puri was serving in the capacity of General Manager Banking. He

played a pivotal role in facilitating, processing, presenting and securing the sanction of the aforementioned loan proposals. He actively participated in the loan committee meetings held on 20.05.2016 and 05.07.2016. He recommended the NABCONS appraisal report and ensured the loan sanction despite the serious financial risks involved. A sanction letter dated 08.07.2016 was issued. He facilitated the irregular release of ₹5 crore directly to BK traders through RTGS, which was subsequently regularised ex *post facto*. He had placed the loan proposal before the loan committee on 28.02.2017, 10.03.2017, 22.03.2017, 15.06.2017 and 20.09.2017. He was instrumental in securing the sanction of a term loan of ₹7.875 crore, which was later enhanced to ₹39.67 crore by clubbing various facilities. He attended several Board of Directors meetings held at the bank's Head Office and was responsible for presenting the interests of the Bank before the Board of Directors. He facilitated the disbursement of the loan, knowing of the clear violation of the banking guidelines. He had also sanctioned the loan in favour of Indu Wali and her husband Ram Prakash Singh, amounting to ₹3 crore and had misused his official position. Hence, it was prayed that the pre-arrest bail petition of the petitioner be dismissed.

11. In the status report dated 25.03.2025 and 17.03.2025 in the petition of Satvir Minhas, it was asserted that Satvir Minhas was directly involved at every stage of loan processing from sanction to utilisation. He had taken different stances in the final PMLDC meeting, suggesting that he might have had an intention to extend undue benefits to the loanee. He was appointed as the Chairman of the Project Management and Loan Disbursement Committee. He organised four meetings of the committee. He expressed viewpoints different from those of other committee members, which showed his intention to provide undue benefit to the borrower. He was present in various meetings of the Board of Directors and was responsible for presenting the case before the Board of Directors. He misused his official position. Hence, it was prayed that his pre-arrest bail petition be dismissed.

12. This Court allowed the bail petitions on 24.04.2025. The matter was carried to the Hon'ble Supreme Court of India, and the Hon'ble Supreme Court of India was pleased to set aside the order passed by this Court and direct that the bail petitions would be listed before this Court for a fresh consideration on

merits, including interim bail. Consequently, the bail petitions were listed before this Court.

13. I have heard Mr N.S. Chandel and Mr Ankush Dass Sood, learned Senior Advocates, assisted by M/s Sidharth Satija, Shwetima Dogra and Ankit Dhiman, learned counsel for the petitioners Yudh Chand Bains and Harish Chand and M/s Umesh Kanwar & Isha Thakur, learned counsel for the petitioners Satvir Minhas and Ashok Kumar and Mr Naveen Pahwa, learned Senior Advocate, assisted by M/s Vaibhav Shrivastva, Lokender Kutlehria, and Puneet Rajta, learned Additional Advocate General for the respondent/State.

14. Mr N.S. Chandel, learned Senior Counsel for the petitioner Yudh Chand Bains and Harish Kumar, submitted that the petitioners are innocent and they were falsely implicated. The FIR has been registered for the violation of RBI/NABARD guidelines by the Board of Directors, but no member of the Board of Directors has been arrested so far. Police are seeking the custody of Yudh Chand Bains and his son for ulterior purposes. They had merely taken the loan against the security. The Bank has proceeded against the petitioners for the recovery

as per the law. It was a simple case of loan default, and no criminality is attached to the present case. The petitioner, Yudh Chand Bains, was repeatedly called by the police, and he had joined the investigation. No fruitful purpose would be served by detaining the petitioner in custody. Hence, he prayed that the present petition be allowed and the petitioner be released on pre-arrest bail.

15. Mr Umesh Kanwar, learned counsel for the petitioners Satvir Minhas and Ashok Kumar, submitted that the petitioners have no role in the disbursal of the loan. They had only put the files before the Board of Directors. The members of the Board of Directors have not been arrayed as an accused so far, which shows the *mala fides* of the investigating agency. The custodial interrogation of Satvir Minhas and Ashok Kumar is not required. Hence, he prayed that the present petition be allowed and the petitioners be released on pre-arrest bail.

16. Mr Naveen Pahwa, learned Senior Advocate for the respondents, submitted that the petitioners are involved in a huge financial fraud and are not entitled to pre-arrest bail. The petitioners have not cooperated with the investigation, and their

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custodial interrogation is necessary. Once the investigating agency seeks the police custody, the Court has no option but to allow it. Hence, he prayed that the present petitions be dismissed. He relied upon the judgments of the Hon'ble Supreme Court of India in ***State v Anil Sharma (1997) 7 SCC 187***, ***Sumitha Pradeep v Arun Kumar C.K. and another (2022) 17 SCC 391*** and ***Serious Fraud Investigation Office v. Aditya Sarda, (2025) 256 Comp Cas 395: 2025 SCC OnLine SC 764*** in support of his submissions.

17. I have given considerable thought to the submissions made at the bar and have gone through the records carefully

18. It was laid down by the Hon'ble Supreme Court in ***P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24: (2019) 3 SCC (Cri) 509: 2019 SCC OnLine SC 1143*** that the power of pre-arrest bail is extraordinary and should be exercised sparingly. It was observed:

> "69. Ordinarily, an arrest is a part of the procedure of the investigation to secure not only the presence of the accused but also several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power, and the same has to be exercised sparingly. The privilege of pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the

> nature and gravity of the accusation; the possibility of the applicant fleeing justice and other factors are considered to decide whether it is a fit case for the grant of anticipatory bail. Grant of anticipatory bail to some extent interferes with the sphere of investigation of an offence, and hence, the court must be circumspect while exercising such power for the grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule, and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

19. It was held in ***P Chidambaram*** (supra) that economic offences are to be treated differently from other offences. It was observed:

> ***Economic offences***
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> **78.** Power under Section 438 CrPC, being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of society. In ***Directorate of Enforcement* v. *Ashok Kumar Jain*** **[*Directorate of Enforcement* v. *Ashok Kumar Jain*, *(1998) 2 SCC 105: 1998 SCC (Cri) 510]***, it was held that in economic offences, the accused is not entitled to anticipatory bail.
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> **xxxxxx**
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> **80.** Observing that an economic offence is committed with deliberate design with an eye on personal profit regardless of the consequence to the community, in ***State of Gujarat v. Mohanlal Jitamalji Porwal [State of Gujarat v. Mohanlal Jitamalji Porwal, (1987) 2 SCC 364: 1987 SCC (Cri) 364]***, it was held as under: (SCC p. 371, para 5)
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> > "*5.* ... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the moment, upon

> passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit, regardless of the consequences to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest."

81. Observing that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail, in ***Y.S. Jagan Mohan Reddy v. CBI [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439: (2013) 3 SCC (Cri) 552]***, the Supreme Court held as under: (SCC p. 449, paras 34-35)

> "*34. Economic offences constitute a class apart and need to be viewed with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole, and thereby posing a serious threat to the financial health of the country.*
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> *35.* While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations." (emphasis supplied)

82. Referring to ***Dukhishyam Benupani v. Arun Kumar Bajoria [Dukhishyam Benupani v. Arun Kumar Bajoria,***

> ***(1998) 1 SCC 52: 1998 SCC (Cri) 261***], in ***Directorate of Enforcement v. Bher Chand Tikaji Bora [Directorate of Enforcement v. Bher Chand Tikaji Bora, (1999) 5 SCC 720: 1999 SCC (Cri) 1045]***, while hearing an appeal by the Enforcement Directorate against the order [***Bherchand Tikaji Bora v. State of Maharashtra, Criminal Application No. 2140 of 1998, decided on 21-7-1998 (Bom)***] of the Single Judge of the Bombay High Court granting anticipatory bail to the respondent thereon, the Supreme Court set aside the order of the Single Judge granting anticipatory bail.

20. This position was reiterated in ***Srikant Upadhyay v. State of Bihar, 2024 SCC OnLine SC 282,*** wherein it was held:

> "25. We have already held that the power to grant anticipatory bail is extraordinary. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of the 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 of 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 a 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 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."

21. It was held in ***Pratibha Manchanda v. State of Haryana, (2023) 8 SCC 181: 2023 SCC OnLine SC 785*** that the Courts should

balance individual rights, public interest and fair investigation while considering an application for pre-arrest bail. It was observed:

> "21. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tightrope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each case becomes crucial to ensure a just outcome."

22. A similar view was taken in the ***Serious Fraud Investigation Office*** (supra), wherein it was observed at page 427:

> **23.** In view of the above settled legal position, it is no more res integra that economic offences constitute a class apart, as they have deep-rooted conspiracies involving huge loss of public funds, and therefore such offences need to be viewed seriously. They are considered grave and serious offences affecting the economy of the country as a whole and thereby posing serious threats to the financial health of the country. The law aids only the abiding and certainly not its resistants. When, after the investigation, a charge sheet is submitted in the court, or in a complaint case, a summons or warrant is issued to the accused, he is bound to submit himself to the authority of law. If he is creating hindrances in the execution of warrants or is concealing himself and does

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> not submit to the authority of law, he must not be granted the privilege of anticipatory bail, particularly when the court taking cognisance has found him prima facie involved in serious economic offences or heinous offences. In such cases, when the court has reason to believe that the person against whom the warrant has been issued has absconded or is concealing himself so that the warrant could not be executed, the concerned court would be perfectly justified in initiating the proclamation proceedings against him under section 82 of the Criminal Procedure Code, 1973. The High Courts should also consider the factum of issuance of non-bailable warrants and initiation of proclamation proceedings seriously and not casually, while considering the anticipatory bail application of such an accused.

23. The present petitions have to be decided as per the parameters laid down by the Hon'ble Supreme Court.

24. Mr Naveen Pahwa, learned Senior Counsel, produced the case diaries for the perusal of the Court. It was laid down by the Hon'ble Supreme Court in ***Director, Central Bureau of Investigation v. Niyamavedi*, *(1995) 3 SCC 601,*** that the Court has jurisdiction to go into the contents of the case diary while considering the application for pre-arrest bail, but should refrain from quoting the case diary or making any comment to delay the investigation and demoralise the Investigating Officer. It was observed:

> "4. The petitioners had, as directed by the Division Bench, produced for perusal of the Court case diaries of

the Kerala State Police as well as of the CBI relating to the investigations carried out in respect of the said crimes, including the statements recorded in the course of investigation and certain video cassettes in that connection. These were perused by the Division Bench in chambers. However, a reference at some length has been made in the course of the judgment to the material disclosed in the course of investigation, presumably, in order to examine the contention relating to the alleged involvement of the first respondent in the crimes in question. Clearly, under the Code of Criminal Procedure, 1973, only a very limited use can be made of the statements to the police and police diaries, even in the course of the trial, as set out in Sections 162 and 172 of the Code of Criminal Procedure. The Division Bench, therefore, should have refrained from disclosing in its order material contained in these diaries and statements, especially when the investigation in the very case was in progress. It should also have refrained from making any comments on the manner in which the investigation was being conducted by the CBI, looking to the fact that the investigation was far from complete. Any observations which may amount to interference in the investigation should not be made. Ordinarily, the Court should refrain from interfering at a premature stage of the investigation, as that may derail the investigation and demoralise the investigation. Of late, the tendency to interfere in the investigation is on the increase, and courts should be wary of its possible consequences. We say no more. However, we clarify that certain directions given to the Director of CBI in regard to the investigation matters do not meet with our approval and may be ignored. In short, the adverse comments against the CBI were, to say the least, premature and could have been avoided. Ignoring the innuendos, the court was, however, right in expressing a general view that the investigating agency is expected to act in an efficient and vigilant manner without being pressurised and in dismissing the appeal."

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25. A similar view was taken in ***P. Chidambaram v. Directorate of Enforcement*, *(2019) 9 SCC 24***, wherein it was observed:

> "**54.** It is well settled that the court can peruse the case diary/materials collected during investigation by the prosecution even before the commencement of the trial, inter alia, in circumstances like:
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> (*i*) to satisfy its conscience as to whether the investigation is proceeding in the right direction;
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> (*ii*) to satisfy itself that the investigation has been conducted in the right lines and that there is no misuse or abuse of process in the investigation;
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> (*iii*) whether regular or anticipatory bail is to be granted to the accused or not;
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> (*iv*) whether any further custody of the accused is required for the prosecution;
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> (*v*) to satisfy itself as to the correctness of the decision of the High Court/trial court which is under challenge.
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> The above instances are only illustrative and not exhaustive. Where the interest of justice requires, the court has the power to receive the case diary/materials collected during the investigation. As held in ***Mukund Lal [Mukund Lal v. Union of India, 1989 Supp (1) SCC 622: 1989 SCC (Cri) 606***], ultimately, there can be no better custodian or guardian of the interest of justice than the court trying the case. Needless to point out that when the Court has received and perused the documents/materials, it is only for the purpose of satisfaction of the court's conscience. In the initial stages of investigation, the Court may not extract or verbatim refer to the materials which the Court has perused (as has been done in this case by the learned Single Judge) and make observations which

> might cause serious prejudice to the accused in trial and other proceedings resulting in miscarriage of justice.
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> *****
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> **56.** Of course, while considering the request for anticipatory bail and while perusing the materials/notes produced by the Enforcement Directorate/CBI, the learned Single Judge could have satisfied his conscience to hold that it is not a fit case for the grant of anticipatory bail. On the other hand, the learned Single Judge has verbatim quoted the note produced by the respondent Enforcement Directorate. *The learned Single Judge was not right in extracting the note produced by the Enforcement Directorate/CBI, which, in our view, is not a correct approach for the consideration of grant/refusal of anticipatory bail. But such an incorrect approach of the learned Single Judge, in our view, does not affect the correctness of the conclusion in refusing to grant anticipatory bail to the appellant in view of all other aspects considered herein*."

26. Section 192 of Bhartiya Nagrik Suraksha Sanhita (BNSS) deals with the diary of proceedings in the investigation. Section 192 (3) provides that the diary referred to in sub-section 1 shall be a volume and duly paginated. This corresponds to Section 172 (1B) of the Cr.P.C, which also provides that the diary referred to in Sub Section shall be a volume and duly paginated. In the present case, the diary is not a volume; it is not even paginated, but computer-printed on plain paper. It contains multiple entries suffixed with A, B and C. Therefore, *prima facie,* it is not in compliance with the requirement of law.

27. The FIR mentions that the Bank had approved Yudh Chand Bains' loan unconditionally, had not verified the borrower's investment from personal resources, included family members who were already guarantors in another loan, had not monitored the fund utilisation, and granted the loan despite several accounts already being in default. Thus, as per the prosecution, the Bank had violated various conditions and committed serious irregularities while disbursing the loan, which distinguishes the present case from the simple case of the loan default.

28. The status report dated 06.03.2025 filed by the police in the case of petitioner Yudh Chand Bains reads that on 03.02.2025, Sukh Dev Singh made a statement under Section 180 of BNSS, that the Board of Directors had waived off/relaxed several terms and conditions of the loan vide its resolution No. 16 during its meeting dated 10.06.2019. The conditions imposed by the NABARD in the petitioner's loan case were also relaxed/violated by the Board of Directors, and accordingly, the Board of Directors and Bank Officials who have attended the above meeting are fully liable and accountable. The names of the members of the Board of Directors who had attended the

meeting on 10.06.2019 have not been mentioned in the status report. The names of the Board of Directors of 05.07.2016, 15.06.2017, 20.09.2017 and 25.02.2019 have been mentioned as M/s Karnail Singh Rana, Lekh Raj Kanwar, Prakash Chand Rana, Rakhil Kahlon, Jaswant Rana, Yograj, P.C. Akela, Rajeev Bhardwaj, Ranjeet Rana, Ramesh Kumar, Sher Singh Chauhan and Vinay Kumar. The names of Satvir Minhas and Ashok Kumar have not been mentioned as members of the Board of Directors. Therefore, the plea taken by the prosecution that Satvir Minhas and Ashok Kumar were responsible for the sanction of the loan is *prima facie* incorrect.

29. Sher Singh Chauhan, Ramesh Kumar, Ranjeet Singh Rana, Karnail Singh Rana and Jaswant Rana have been released by serving notice upon them under Section 41A of CrPC/35 of BNSS, because the offence is non-bailable but punishable with less than 7 years of imprisonment. The police interrogated and relieved Yog Raj, Vinay Kumar and Prakash Chand Rana. It was noticed on 18.02.2026 that Rajeev Bhardwaj, then Chairman of the Board of Directors, had neither been interrogated nor joined the investigation so far. Hence, a questionnaire was prepared

and forwarded to him but he did not respond to the questionnaire.

30. Therefore, the record shows that the police have released five members of the Board of Directors by serving them notices because the offence alleged against them is non-bailable but punishable with less than 7 years of imprisonment. The police interrogated and relieved some of the members of the Board of Directors. The police have not even interrogated Yog Raj, Lekh Raj, Rajeev Bhardwaj and Rakhil Kahlon. This conduct of the police shows the gravity of the so-called 'economic offence involving the large-scale financial fraud'. As already noticed, the distinguishing feature of this case from a simple loan account gone bad is that, in the present case, as per the prosecution, the Board of Directors had actively violated the RBI guidelines/NABARD guidelines to benefit the petitioner, Yudh Chand Bains. It is not explained that if the offence against the persons who had granted the loan in violation of all the banking norms and the conditions is worth serving notice, how the offence against the borrower, his son and the officials who had put the files before the Board of Directors is serious enough to justify their custodial interrogation. This fortifies the earlier

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conclusion that there is something more in this case than meets the eye, and the police are only bent upon arresting the petitioner, Yudh Chand Bains and his son. It was laid down by the Hon'ble Supreme Court in ***Gurbaksh Singh Sibbia v. State of Punjab*, *(1980) 2 SCC 565: 1980 SCC (Cri) 465: 1980 SCC OnLine SC 125*** that the power to grant pre-arrest bail is conferred to prevent an adversary from social ridicule. It was observed at page 575:

> "**8.** No one can accuse the police of possessing a healing touch, nor indeed does anyone have misgivings in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sang-froid, insofar as the ordinary rut of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate charges brought before them and, broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. *But the crimes, the criminals and even the complainants can occasionally possess extraordinary features. When the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in handcuffs, apparently on the way to a Court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a convic-*

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> *tion is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973.*" (Emphasis supplied)

31. Delhi High Court held in ***Anil Mahajan v. Commissioner of Customs, 2000 SCC OnLine Del 119*** speaking through Cyriac Joseph, J. (as his Lordship then) that personal liberty is too precious a value and its deprivation must be founded on most serious consideration. The bail cannot be denied to a person simply because the prosecution has termed it an economic offence. It was observed:

> "**14.** The legal position emerging from the above discussion can be summarised as follows:
>
> (a) Personal liberty is too precious a value of our Constitutional System recognised under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution.
>
> (b) As a presumably innocent person, the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence. A man on bail has a better chance to prepare and present his case than one remanded in custody. An accused person who enjoys freedom is in a much better position to look after his case and properly defend himself than if he were in custody.

Hence, the grant of bail is the rule and refusal is the exception.

(c) The object of bail is to secure the attendance of the accused at the trial. The principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve a sentence in the event of the Court punishing him with imprisonment.

(d) Bail is not to be withheld as a punishment. Even assuming that the accused is *prima facie* guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted.

(e) Judges have to consider applications for bail, keeping passions and prejudices out of their decisions.

(f) In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in Section 437(1) of the Criminal Procedure Code. But the said discretion should be exercised judiciously.

(g) The powers of the Court of Session or the High Court to grant bail under Section 439(1) of the Criminal Procedure Code are very wide and unrestricted. The restrictions mentioned in Section 437(1) do not apply to the special powers of the High Court or the Court of Session to grant bail under Section 439(1). Unlike under Section 437(1), there is no ban imposed under Section 439(1) against the granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. However, while considering an application for bail under Section 439(1), the High Court or the Court of Session will have to exercise its judicial discretion, also bearing in mind, among other things, the rationale behind

the ban imposed under Section 437(1) against granting bail to persons accused of offences punishable with death or imprisonment for life.

(h) There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. The answer to the question whether to grant bail or not depends upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

(i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage if investigation etc. In view of so many variable factors, the considerations that should weigh with the Court cannot be exhaustively set out. However, the two paramount considerations are (i) the likelihood of the accused fleeing from justice, and (ii) the likelihood of the accused tampering with prosecution evidence. These two considerations, in fact, relate to

ensuring a fair trial of the case in a court of justice, and hence it is essential that due and proper weight should be bestowed on these two factors.

(j) While exercising the power under Section 437 of the Criminal Procedure Code in cases involving non-bailable offences except cases relating to offences punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favour of granting bail, subject to subsection 3 of Section 437 with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.

(k) If the investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be refused in order to ensure a proper and fair investigation.

(l) If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence, he can be refused bail in order to ensure a fair trial of the case.

(m) The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.

(n) For the purpose of granting or refusing bail, there is no classification of the offences except the ban under Section 437(1) of the Criminal Procedure Code against the grant of bail in the case of offences punishable with death or life imprisonment. Hence, there is no statutory support or justification for classifying offences into different categories, such

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as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail, and when there is no statute prescribing a special treatment in the case of a particular offence, the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences, the Court will have to consider the larger interest of the public or the State. Hence, only the considerations that should normally weigh with the Court in the case of other non-bailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences.

(o) Law does not authorise or permit any discrimination between a foreign National and an Indian National in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions which are necessary to ensure that the accused will be available for facing trial. It cannot be said that an accused will not be granted bail because he is a foreign national.

32. In the present case, the police have termed the offence as an economic offence, but their conduct does not justify this inference, and the petitioners cannot be denied pre-arrest bail when other persons accused of committing a graver offence under the Prevention of Corruption Act have been

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released on bail by serving notices upon them or have not even been interrogated.

33. Mr Naveen Pahwa, learned Senior Counsel, submitted that once the prosecution seeks the custodial interrogation of an accused, the Court is bound to grant the custody. This submission is only stated to be rejected. It was laid down in ***Rajani Kanta Meheta v. State of Orissa*, *1974 SCC OnLine Ori 96,*** that the order of custody can be passed only after applying the mind. It was observed:

> "**18.** The Proviso to section 167. Cr. P.C. requires that remand can be permitted when the Magistrate is satisfied that adequate grounds exist for doing so. The petitioner's case is that the case diary was not being produced before the learned Magistrate from day to day when the case was posted, and as such, the learned Magistrate was not in a position to reach his judicial satisfaction that adequate grounds exist for remand. This allegation of the petitioner has not at all been controverted. In the objections filed before the learned Magistrate, this used to be a ground, but the order sheet does not show what exactly the position was. *There can be no doubt that remand to custody pending investigation is not a mechanical act and cannot be granted merely because the Investigating Officer or the Police Officer-in-charge desires that the accused be remanded. The Statute casts a heavy duty on the Magistrate and requires judicial discretion to be exercised, and an order of remand is conditioned upon satisfaction of the learned Magistrate...*" (*Emphasis supplied)*

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34. The Division Bench of Madras High Court also held in ***G.K. Moopanar, MLA and others versus State of Tamil Nadu 1990 Cr. L. J 2685*** that the power of remand can be exercised only after applying the mind and satisfying that there is a justification for the remand. It was observed:

> "16.... When an investigation cannot be completed within the period of 24 hours as provided by S.57 and if it appears to the investigating agency that there are grounds for believing that the accusation or information against the arrested person is well founded, the officer in charge of the police station or the police officer making the investigation should immediately transmit to the nearest judicial Magistrate a copy of the entries made in the diary and forward the accused to such Magistrate as required in S.167(1) which is supplementary to S.57. Therefore, a person arrested by the police has to be produced before a Magistrate within 24 hours for remanding him to judicial custody. *A careful reading of S.167(1), Cr. P.C. would show that an investigating officer can ask for remand only when there are grounds for believing that the accusation or information is well founded and it appears that the investigation cannot be completed within the period of 24 hours fixed by S.57. Therefore, it follows that a remand by a Magistrate is not an automatic one and sufficient grounds must exist for the Magistrates to exercise their powers of remand.* That is the reason why it is required that a copy of the entries in the diary should be forwarded to the Magistrates along with the arrested persons. This is the second stage in remanding the accused persons...."(*Emphasis supplied)*

35. Therefore, the custodial interrogation is not the magic words that would shut the jurisdiction of the Court to

examine the necessity of the interrogation. Accepting the submission advanced by learned Senior Counsel would reduce the Courts to rubber stamps and confer unbridled power upon the police, which is an anathema to a society governed by the rule of law.

36. The status report mentions that the petitioner, Yudh Chand Bains, is to be interrogated to determine the source and destination of the money taken as a loan. The police have already collected the statements of accounts and have interrogated various persons to whom the money was transferred. The police have also called and interrogated the petitioner repeatedly. In the absence of the arrest of the persons who had sanctioned the loan, the custodial interrogation of the petitioner Yudh Chand Bains is not justified.

37. It was submitted that the petitioner, Yudh Chand Bains, has not cooperated with the investigation. However, the nature of cooperation was not specified by the prosecution. The petitioner has a right to silence, and he cannot be compelled to be a witness against himself. It was laid down by the Hon'ble Supreme Court in ***Tusharbhai Rajnikantbhai Shah v. Kamal***

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***Dayani*, *(2025) 1 SCC 753*,** that an accused refusing to confess to the crime does not amount to non-cooperation and any confession made by the accused is inadmissible in evidence. It was observed: -

> "**43.** We are of the firm opinion that non-cooperation by the accused is one matter, and the accused refusing to confess to the crime is another. There would be no obligation upon the accused that, on being interrogated, he must confess to the crime and only thereafter would the investigating officer be satisfied that the accused has cooperated with the investigation. As a matter of fact, any confession made by the accused before a police officer is inadmissible in evidence and cannot even form a part of the record.
>
> **44.** This Court vide order dated 12-7-2024 passed in ***Sanuj Bansal v. State of U.P. [Sanuj Bansal v. State of U.P., 2024 SCC OnLine SC 2335]*** has held that such confessions recorded in the interrogation notes of the accused cannot form part of the charge-sheet."

38. It was held in ***Hemant Kumar vs State of Haryana SLp (Crl) no. 232 of 2024, decided on 06.03.2024,*** that failure to recover the money taken as a bribe does not amount to non-cooperation. It was observed:

> "On going through the materials disclosed, we are of the opinion that custodial interrogation of the appellant is not necessary for the purpose of the ongoing investigation. There is no aggravating factor that would justify the detention of the appellant at the investigation stage. On behalf of the State, it was sought to be argued that the appellant was not cooperating with the

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> investigation. But in response to our query about the nature of such non-cooperation, it was submitted on behalf of the State that the appellant, as an accused, was not helping out for the recovery of the sum allegedly paid to him as a bribe. In our opinion, however, participation in the investigation does not entail making self-incriminating statements, which seems to be the reason for which the State wants him in custody."

39. It was held in ***Bijender vs State of Haryana SLP (Crl) no. 1079 of 2024, decided on 06.03.2024,*** that a person is not expected to make a self-incriminatory statement under the threat that the State shall withdraw the interim protection granted to him. It was observed:

> "An accused, while joining investigation as a condition for remaining enlarged on bail, is not expected to make self-incriminating statements under the threat that the State shall seek withdrawal of such interim protection."

40. It was held by the European Commission of Human Rights in ***John Murray vs. United Kingdom [1996] ECHR 3*** that the right to silence and the right against self-incrimination form the core of the fair procedure. It was observed:

> "Although not specifically mentioned in Article 6 (art. 6) of the Convention, there can be no doubt that the right to remain silent under police questioning and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6 (art. 6) (see the Funke judgment cited above, loc. cit.). By providing the accused with protection against improper compulsion by

> the authorities, these immunities contribute to avoiding miscarriages of justice and to securing the aims of Article 6 (art. 6)."

41. Therefore, the police custody cannot be authorised to compel the petitioner to be a witness against himself.

42. It was submitted that money is to be recovered, and for this purpose, the custodial interrogation is required. The submission is only stated to be rejected. It was laid down by the Hon'ble Supreme Court in ***Ramesh Kumar vs. State NCT of Delhi (2023) 7 SCC 461*** that the bail proceedings cannot be turned into recovery proceedings. It was observed: -

> **23.** In ***Dilip Singh v. State of M.P. [Dilip Singh v. State of M.P., (2021) 2 SCC 779: (2021) 2 SCC (Cri) 106]***, this Court sounded a note of caution in the following words: (SCC p. 780, paras 3-4)
>
> > "3. By imposing the condition of deposit of Rs 41 lakhs, the High Court has, in an application for pre-arrest bail under Section 438 of the Criminal Procedure Code, virtually issued directions in the nature of recovery in a civil suit.
> >
> > 4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for the realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of the accusation and the severity of the punishment in the case of conviction and the nature of the materials relied

upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; the reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial."

24. Yet again in ***Bimla Tiwari v. State of Bihar [Bimla Tiwari v. State of Bihar, (2023) 11 SCC 607: 2023 SCC OnLine SC 51]***, this is what the Court said : (SCC paras 9-11)

"*9*. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings, but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined, and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could

be granted irrespective of any payment or any offer of payment.

11. We would further emphasise that, ordinarily, there is no justification in adopting such a course that, for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings."

25. Law regarding the exercise of discretion while granting a prayer for bail under Section 438CrPC having been authoritatively laid down by this Court, we cannot but disapprove the imposition of a condition of the nature under challenge. Assuming that there is substance in the allegation of the complainants that the appellant (either in connivance with the builder or even in the absence of any such connivance) has cheated the complainants, the investigation is yet to result in a charge sheet being filed under Section 173(2)CrPC, not to speak of the alleged offence being proved before the competent trial court in accordance with the settled procedures and the applicable laws. Sub-section (2) of Section 438CrPC does empower the High Court or the Court of Session to impose such conditions while making a direction under sub-section (1) as it may think fit in the light of the facts of the particular case, and such direction may include the conditions as in clauses (*i*) to (*iv*) thereof. However, a reading of the precedents laid down by this Court referred to above makes the position of law clear that the conditions to be imposed must not be onerous, unreasonable or excessive. In the context of the grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating officer/court, unhindered completion of investigation/trial and safety of the community assume relevance. However, the inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is

really not the purpose and intent of the provisions for the grant of bail.

43. In the present case, the proceedings under the SARFAESI Act are pending, and if the recovery is to be effected, it has to be as per law and not by resorting to the threat of arrest. Hence, the submission that the petitioner is to be arrested to recover the money will not help the prosecution.

44. The case diary was produced before the Court, but the documents seized by the police have been withheld. Even the report based on which the FIR was registered was not produced before the Court. Therefore, it is difficult to agree with the conclusions drawn by the police. No reason was assigned as to why only the case diary and not the documents seized by the police have been handed over to the Court. Thus, the submission that the police have collected sufficient material to justify the petitioner's pre-trial detention cannot be accepted.

45. The status report dated 25.03.2025 in the case of Ashok Kumar and dated 06.03.2025 filed in the case of petitioner Yudh Chand Bains mentions that the loan of ₹12 crores was sanctioned on 05.07.2016, a loan of ₹7.87 crores was sanctioned on 15.06.2017, a loan of ₹39.68 crores was sanctioned on

20.09.2017, and a loan of ₹39.68 crores was sanctioned on 25.02.2019. As per the status report dated 24.01.2025, the certificate was forged on 30.06.2019. Therefore, the loans were disbursed before the sanction of the loan, and it is difficult to see how the utilisation certificate could have been used to mislead the Bank into granting the loan.

46. It was submitted that the economic offences are to be viewed differently from the normal offences. There is no quarrel with the proposition of law that the cases involving economic fraud are to be viewed seriously, and a person involved in the economic fraud is not entitled to the concession of pre-arrest bail. However, the commission of an economic offence is to be established before applying this principle. In the present case, the investigation conducted so far does not show any economic offence. At the cost of repetition, the Board of Directors, who are responsible for this economic fraud, are still at large because the offence alleged against some of them is non-bailable and punishable with less than seven years imprisonment and against others, not even worth their interrogation despite a lapse of more than one year since the registration of the FIR. Hence, the

plea that there is economic fraud justifying the denial of pre-arrest bail is not acceptable.

47. It is undisputed that the Bank had issued a possession notice under the SARFAESI Act, and the petitioner Yudh Chand Bains had obtained a stay order from the Debt Recovery Tribunal, Chandigarh, where the proceedings are pending. There is a force in the submission of Mr N.S. Chandel, learned Counsel for the petitioner, that it is a case of disbursal of a loan and failure to return it, for which the appropriate remedy is the Civil Courts, and recourse cannot be had to the Criminal Courts to recover the money taken as a loan. When some of members of the Board of Directors have been released after serving a notice upon them, the submission that the present case is a case of abuse of the position by the public servants to benefit the individual cannot be accepted.

48. The police are also seeking to arrest the petitioner Harish Chand because money was transferred to his account by petitioner Yudh Chand Bains. He is simply a beneficiary of the transfer made by petitioner Yudh Chand Bains, and it is not shown what crime was committed by him in receiving the

money. Section 411 of IPC punishes a receiver of the stolen property, but in the absence of any allegation of criminal breach of trust, his case is not covered under this provision.

49. No other point was urged.

50S. In view of the above, the present petitions are allowed, and the interim order passed by the Court is made absolute.

51. The observation made herein before shall remain confined to the disposal of the instant petitions and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

13th May, 2026
(Nikita)