



2025:DHC:6944



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision: 13.08.2025**

+ BAIL APPLN. 3183/2020

YOGESH SINGH

.....Petitioner

Through: Mr.Jinendra Jain, Ms. Bijay Lakshmi,  
Mr.M.N. Mishra, Mr.Krishna Sharma,  
Mr.Manoj Gautam and Ms.Kashish  
Gupta, Advocates

versus

STATE OF NCT OF DELHI &amp; ANR.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for State  
with IO Ashok Chauhan, PS Rani  
Bagh.  
Mr. Bharat Gupta & Mr. Tushar  
Rohmetra, Advocates for the  
complainant.

**CORAM:****HON'BLE MR. JUSTICE ARUN MONGA****JUDGMENT****CRL M.A. No. 20701/2024**

1. Application herein is under Section 482 of the Cr.P.C., filed by complainant/informant of the FIR, seeking directions for release of an amount of Rs. 1,50,00,000/- along with the interest. Said amount was deposited by the non- applicant/accused, in course of the anticipatory bail proceedings disposed of vide an order dated 28.03.2024 passed by co-ordinate bench of this court. The genesis of the proceedings is an FIR No. 627/2019 dated 06.12.2019 u/s 420/34 IPC registered at Rani Bagh, Delhi.



2. Relevant extract of the application seeking release of money reads as under:

*“3. That it is pertinent to mention herein that the accused persons showed their interest to settle the matter and deposited Rs 1,00,00,000/- (One Crore) in the compliance of the order of this Hon’ble Court vide order dated 19.10.2020 and because of which, the accused persons were granted interim protection and the same was continuously extended. It is further pertinent to mention herein that this Hon’ble Court vide order dated 28.03.2024 had granted Anticipatory bail to the petitioners on a condition that the petitioners will further deposit a sum of Rs 50,00,000/- (Fifty Lakhs) in the in the High Court registry and in the compliance of the said order the petitioners deposited a sum of Rs 50,00,000/- (Fifty Lakhs) in the High Court registry. The copy of the order dated 19.10.2020 and 28.03.2024 is annexed herein as Annexure-A(Colly).*

*4. That now the above said matter is disposed of, so, the applicant/complainant requests to release the said amount.*

*5. That it is respectfully submitted that in view of the consideration of the aforementioned circumstances and of prolonged delay of more than 4 years, this Hon’ble Court may pass order/directions to the registry to release the amount of Rs 1,00,00,000/- (One Crore) and Rs 50,00,000/- ( Fifty Lakhs) amounting to a total of Rs 1,50,00,000/- (One Crore Fifty Lakhs), along with the accrued interest deposited by the petitioners in compliance of the order dated 19.10.2020 and order dated 28.03.2024 respectively, in favour of the present applicant/complainant in view of the heavy loss suffered by him.”*

3. In course of the arguments on the above application and upon perusal of the FIR by this court, what has transpired is rather peculiar and glaring. At the very outset, I was constrained to observe that it appeared to be a case of complete abuse of police powers. In as much as, the FIR was registered in 2019, that too *qua* a dispute which seemingly is outright civil in nature. And



yet, it has been given the color of criminal culpability, where none exists. Let us see how.

4. Two questions arise that warrant a decision i.e. one relates to jurisprudence and the other to jurisdiction. To put the matter with precision, the following questions of law arise for consideration which require adjudication by this Court:

- A. Whether, on the face of it, the allegations contained in the FIR, the essential ingredients of the offence under Section 420 IPC are made out?
- B. Whether this Court, in a given case, can exercise its inherent jurisdiction under Section 528 of BNSS [482 of CR.P.C.] even when the issue formally raised does not directly pertain to the legality and validity of the FIR?

5. In addition, there is yet another aspect of the matter which warrants immediate attention i.e. delay in filing of charge sheet. In fact, it was in this premise that, at the very threshold, on account of the inordinate delay in filing of the charge sheet, this Court posed a query as to why the FIR itself should not be quashed. This issue also merits examination. More of it later.

6. Taking the two questions, *ibid*, in reverse order seems more logical. Whether this Court lacks jurisdiction, a foundational issue, ought to be addressed first, as any deliberation on jurisprudence would otherwise be moot.

7. The objection raised by the learned counsel for the complainant/informant is that the FIR in question is not under challenge before this Court. It is contended that only a bail application filed by the accused had earlier been considered, which now stands disposed of. The present matter has been taken up on an application filed by the complainant in the already



disposed-of bail application. Therefore, it is argued that this Court is barred from exercising its jurisdiction in the matter i.e. question ‘B’ *ibid*.

8. To resolve this, let us first examine Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which is as under [Section 528 of the BNSS corresponds to Section 482 CrPC] :-

**Section 528:**

**Saving of inherent powers of High Court.**

*“Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”*

A bare perusal of section, *supra* would reveal that it preserves the inherent powers of the High Court, ensuring that-The High Court can make any order necessary to-

- (a) give effect to any order under the BNSS;
- (b) prevent abuse of the process of any Court and
- (c) secure the ends of justice.

No doubt, the power is extraordinary and residuary in nature. It is envisaged to be invoked only in cases where no specific provision provides relief or failure to act would result in miscarriage of justice or perpetuation of illegality.

9. In the light of above position of law, reverting now to jurisdictional objection raised. The objection of the learned counsel for the complainant is that the FIR is not under challenge before this Court. The bail application (filed by the accused) has already been disposed of. The present matter has been put up before the court on an application by the complainant in the disposed-of bail application. Therefore, this Court lacks jurisdiction to entertain any question



qua legality of the FIR. Essentially, the argument is that the High Court cannot reopen validity of FIR or exercise any power in a disposed of proceeding, unless there is a fresh, valid proceeding before it assailing the FIR explicitly.

9.1. Elaborating further, it is contended that once a bail application has been disposed of, the Court becomes *functus officio* in respect of that proceeding. There is no statutory provision enabling the reopening or recalling of a disposed-of bail matter, except by way of appeal or cancellation of bail under appropriate procedure. Inherent powers under Section 528 cannot be used as a substitute for review or appeal, nor to revive a concluded matter. Entertaining and going into such a question raised in present proceedings in a disposed-of file would erode procedural discipline and open the door to uncertain litigation.

10. Now, how does Section 528 affect this? As noted above, ordinary Rule is Courts cannot exercise jurisdiction in a disposed-of matter unless a statutory provision allows review/recall (which a criminal court clearly lacks). However, under Section 528, the High Court retains inherent powers to pass orders to prevent abuse of the process of Court or secure justice, even in circumstances not covered by the express provisions of the BNSS. This includes situations where- continuing the criminal proceedings in a particular matter would frustrate the administration of justice and/or there is an attempt to misuse the Court's process through technicalities. Clearly, this power cannot be used to rehear a matter or reopen a concluded adjudication under the guise of inherent jurisdiction. Moreover, trite law it is that inherent power is to be used sparingly, with caution, and in rare cases. It cannot override statutory prohibitions or create a new remedy.

11. Inherent powers are not controlled by the procedural character of the original proceeding, provided the intervention sought is necessary to secure justice. Section 528 BNSS—enables the High Court to step in, to prevent abuse



of law or to ensure justice, irrespective of the stage, including after disposal of a matter, if the action is necessary to neutralize misuse of the court's process. The fact that the present application has been moved only within the disposed-of bail proceeding cannot be treated as a bar where the substance of the matter relates to preventing abuse of the law or protecting the integrity of the judicial process.

12. This Court cannot fold its hands merely because the bail file has been formally closed. A narrow view of jurisdiction would defeat the very purpose of Section 528, which is designed as a constitutional safety valve for the administration of criminal justice. In the present case, this Court is satisfied that to refuse examination of FIR on a mere technicality of the bail matter being “disposed of” would result in gross injustice. The High Court's inherent powers extend to moulding relief to prevent abuse, regardless of the procedural posture of the earlier matter. Section 528 BNSS embodies the extraordinary jurisdiction of the High Court to act *ex debito justitiae*—wherever necessary to prevent abuse of process or secure the ends of justice. This power is not shackled by the procedural posture of a matter. If subsequent developments reveal abuse of law or threat to the fairness of trial, the High Court cannot decline intervention on a mere technicality. A hyper-technical view would defeat the very object of Section 528, which is to preserve judicial control against abuse of process of law.

13. The exercise of inherent powers is undoubtedly to be sparing and exceptional. However, the present matter warrants examination because the FIR allegations, if not acceptable to reflect any criminality, may strike at the root of a fair investigation and trial. A refusal to entertain the plea on a technical ground would virtually render the Court powerless to check a



continuing abuse of its own process. The preliminary objection is thus overruled.

14. In the present case, it is merely the bail order which has attained finality, but this Court's inherent jurisdiction is not exhausted. Provided of course, if it is found necessary to prevent an abuse of process, which is the essential test and a *sine qua non*. For example, if the accused is trying to misuse the bail order in a way that affects the investigation, the High Court ought to intervene under Section 528 — not as a continuation of the bail proceeding, but under its inherent jurisdiction in a fresh cause, as, in my opinion, there is no bar then. At the same time, if the bail applicant is merely seeking to reargue bail or reopen the disposed bail application, that would be barred, because inherent power is not a substitute for appeal or review.

15. To conclude, jurisdiction under Section 528 exists independently of the disposed-of bail application. However, to exercise the same, all that is required to be seen is whether the situation covered by Section 528, *ibid* exists, not necessarily as a fresh or separate proceeding so as to invoke inherent powers. The Court must be satisfied and record reasons that intervention is essential to prevent abuse of process or secure justice. If this test is not met, the objection by the complainant/respondent no.2 would stand, and this Court would be barred from exercising jurisdiction. Conversely, if the Court is satisfied that its intervention is necessary to prevent abuse of the process of the Court or otherwise to secure the ends of justice, the objection against this Court's jurisdiction under Section 528 will not be acceptable. Question of law at 'B' as framed above is thus answered accordingly.

16. Adverting now to jurisprudential issue i.e. question of law at 'A', *ibid*. First and foremost, obviously, despite 6 long years of investigation, there is either no material or insufficient material unearthed to prosecute the accused in



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the FIR. This is borne out from the very fact that the charge-sheet, let alone being filed, is not even ready as on today i.e. 13.08.2025. The I.O. is present in person in court along with the learned APP. On being put to a query, he initially said that the draft charge sheet is ready and stated that to establish the same if matter is passed over, he can arrange for it to be sent to him on email or WhatsApp from the office/police station. This court then passed over the matter and gave liberty to show the soft copy of draft charge-sheet, by requisitioning it on WhatsApp or on email. However, when matter was called up in the second round, no soft copy was shown to the court. Position thus remained the same. Be that as it may, let us proceed on the premise that draft charge sheet is ready, but the fact remains it is yet to be filed in the trial court after 6 years of investigation.

17. Adverting now to the case set up by the prosecution/complainant. As per the FIR, in June 2016, Mr. Soni was introduced by one Mr. Devki Nandan and one Mr. Kailash Kumar to one Mr. Krishan Kumar, who in turn introduced him to one Mr. Narender Singh, his wife one Mrs. Krishna Singh, and their sons; non-applicant/accused Mr. Yogesh Singh and one Mr. Kunal Singh. The accused persons represented that the family of Mr. Narender Singh owned two highly profitable stone mines located at villages Ramal Vas and Manka Vas, District Dadri, Haryana, through their company M/s Kayden Infra Engineering Pvt. Ltd. They assured the complainants that upon payment of Rs.1.5 crores, they would pay monthly interest at 24% p.a. for six months, return the principal thereafter, and further pay 1% of the mines' profits per month. Believing these representations, the complainants paid Rs.1.5 crores by RTGS on 08.11.2016 to Mr. Yogesh Singh from accounts of Mr. Kapil Soni, Mrs. Raj Bala, and Mr. Radhey Shyam Soni.





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17.1. Subsequently, the accused persons persuaded the complainants to purchase 1.25% shareholding in M/s Kayden Infra Engineering Pvt. Ltd. for Rs.43,66,000/-, directing that the amounts be paid in the names of Mrs. Krishna Singh and M/s Ashali Infrastructure Pvt. Ltd., another family company of Mr. Narender Singh. Between 18.01.2017 and 19.01.2017, multiple complainants made payments via RTGS, NEFT, and demand drafts, aggregating Rs.43,66,000/-. Thus, a total sum of Rs.1,93,66,000/- was paid to the accused persons.

17.2. It is alleged that the accused neither paid the agreed interest nor returned the principal amount, and instead issued purported share allotment details in M/s Ashali Infrastructure Pvt. Ltd., contrary to the promise of allotment in M/s Kayden Infra Engineering Pvt. Ltd. Despite repeated demands, neither share certificates in M/s Ashali Infrastructure Pvt. Ltd. nor the promised shares in M/s Kayden Infra Engineering Pvt. Ltd. were provided. The accused allegedly avoided the complainants, failed to repay the amounts, and continued to make excuses.

17.3. The complainants later learnt that the accused had similarly taken money from others under false pretences. A Panchayat convened on 11.07.2018 at the mines' office in Village Manka Vas, saw an assurance from accused Devki Nandan to repay, but no payment ensued. It is alleged that the accused, acting in conspiracy, dishonestly induced the complainants to part with Rs.1,93,66,000/-, thereby causing wrongful loss to them and wrongful gain to themselves.

18. It was in the aforesaid factual backdrop, that this court expressed its preliminary opinion that *ex facie* it does not appear to be a case of commission of any crime. And, thus why should the FIR itself be not quashed exercising



inherent powers under Section 528 of BNSS, as it appeared to have been registered in complete abuse of the process of law.

19. FIR is appended with the disposed of bail application as Annexure A/1. Before advertng to the merits thereof, it is deemed appropriate that it be seen. A disclaimer though, it is rather long, perhaps the distinction between drafting a civil suit and an FIR got blurred at the time of its registration. The FIR, shorn of other unnecessary details, in verbatim, is as below:

- (i) Mr. Radhey Shyam Soni (the complainant on behalf of all the victims) is known to one Mr. Devki Nandan and Kailash Kumar (both brothers) for the last about 25 years and who introduced to him with one Mr. Krishan Kumar S/o Mr. Jaidev in the month of June, 2016. The said Mr. Devki Nandan and Mr. Krishan Kumar later introduced the complainant/Mr. Radhey Shyam Soni to one Mr. Narender Singh and Mrs. Krishna Singh and their two sons i.e. Mr. Yogesh Singh and Mr. Kunal Singh, in the month of June, 2016.*
- (ii) It was represented by the said Mr. Devki nandan, Kailsah Kumar and Mr. Krishan Kumar, Mr. Narender Singh and Mrs. Krishna Singh and his two sons namely Mr. Yogesh Singh and Mr. Kunal Singh to the complainant that the family of Mr. Narender Singh owned two stone mines at village Ramal Vas, District Dadri, Haryana and other is situated at village Manka Vas, District Dadri, Haryana. It was represented by the said accused persons that the said two mines are owned by their family company i.e. Kayden Infra Engineering Pvt.Ltd. (CIN U70100HR2014PTC053892) having its registered office atg 265, Defence Colony, Hisar, Haryana.*
- (iii) It was represented to the complainant by the aforesaid accused persons that the said two stone mines are very well established and earning high profits as the quality of the stones in the said two mines is of very high grade and the said Mr. Narender and his family members are earning very high profits from the said two mines.*
- (iv) The aforesaid accused persons represented to the complainant that if they pay a sum of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only) to Mr. Narender Singh and/or his family members they shall pay to the complainants interests @ 24% p.a., monthly and*



*after a period of 6 months they shall return the entire principal amount of Rs. 1.5 crores and after a period of 6 months they shall pay amount to the equivalent of 1% profit of the said two mines to the complainant per month. All the accused persons spoke from very high of themselves and also about two mines and the high profits being earned by the said two mines.*

*(v) It is stated that the said accused persons lured the complainant by making false representations and promises and believing the said representations and promises made by the said accused persons the complainant/all the victims paid an amount of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only) to the family of Mr. Narender Singh as per the table below:*

Sr.	Mode of amount paid by amount	Amount	No. Payment	RTGS	Date	Beneficiary
1	Amount paid to Mr. Yogesh Singh	53,10,000	(2)	RTGS	8/11/2016	Kapil Soni S/o Radhey Shyam Soni
2	Amount paid to Mr. Yogesh Singh	53,10,000	(2)	RTGS	8/11/2016	Mrs. Raj Bala W/o Radhey Shyam Soni S/o Mr. Prashad Soni
3	Amount paid to Mr. Yogesh Singh	43,80,000	(2)	RTGS	8/11/2016	Mr. Radhey Shyam Soni S/o Mr. Ram Prashad Soni

*The Bank Statements of Mr. Kapil Soni, Mrs. Raj Bala and Mr. Radhey Shyam Soni duly reflected the above payments of Rs. 1.5 Crores made in favour of Yogesh Singh.*

*(vi) After sometime, the said accused persons, once again made representations to the complainant that they wish to sell the shares of their company ie. M/s Kayden Infra Engineering Pvt.Ltd. to the extent of 5%. The accused persons represented that there are other persons namely Mr. Nishant Berwal, Mr. Devki Nandan (one of the accused). Mr. Mohit Malik and one Mr. Pawan Panchal are also interested in buying the share holding in the said company because profits in the said two stone mines is very high, which is owned by M/s Kayden Infra Engineering Pvt. Ltd. it was represented by the accused persons that the complainants must buy shareholding in the said company and they will earn very high profits and even Mr. Devki Nandan (who is one of the accused) is also buying the shareholding i.e. M/s Kayden Infra Engineering Pvt. Ltd.. The complainants were also lured by the accused persons by representing that the complainants will earn very high profits if they buy the said shareholding in the said company. Believing the representations and promises made by the said accused persons, the complainant and his family members (the other victim complainants) became ready to buy the shareholding in the said company.*



*After that the accused persons told the complainant to pay a sum of Rs. 43,66,000/- (Rupees Forty Three Lakhs Sixty Six thousand only) for purchase of shareholding to the extent of 1.25% in M/s Kayden Infra Engineering Pvt. Ltd.. However, the accused persons told the complainant to pay the said amount in the name of Mrs. Krishna w/o Mr. Narender Singh and in the name of M/s Ashali Infrastructure Pvt.Ltd. which is another family company of Mr. Narender Singh and in the name of M/s Ashali Infrastructure Pvt. Ltd. which is another family company of Mr. Narender Singh. Believing the aforesaid representations and false promises made by the accused persons, the complainants paid the following amount to the accused persons as under:*

- (1) Mrs. Satya Bhama w/o Mr. Jai Narayan Soni Vide RTGS 18/1/2017 paid to Mrs. Krishna Singh 2,30,000/-*
- (2) Mr. Nitin S/o Mr. Jai Narain Soni Vide RTGS 18/1/2017 paid to Mrs. Kirshna Singh, 1,70,000/-*
- (3) Mr. Mani Ram S/o Patram Dass Vide RTGS 19/1/2017 paid to Mrs. Kirshna Singh 1,50,000/-*
- (4) Mr. Parveen Kumar Soni S/o Mr. Mani Ram Soni Vide NEFT 18/1/2017 paid to Mrs. Kirshna Singh, 1,05,000/-*
- (5) Mrs. Pooja Soni W/o Shr. Parveen Kumar vide NEFT 18/1/2017 paid to Mrs. Kirshna Singh 58,000/-*
- (6) Mr. Pawan Kumar S/o Mr. Mani Ram vide NEFT 18/1/2017 paid to Mrs. Kirshna Singh 93,000/-*
- (7) Mr. Mange Ram S/o Sh. Sohan Lal vide NEFT 18/1/2017 paid to Mrs. Kirshna Singh 1,30,000/-*
- (8) Mr. Dharmender S/o Mr. Mange Ram vide NEFT 18/1/2017 paid to Mrs. Kirshna Singh 90,000/-*
- (9) Mrs. Meena Devi W/o Mr. Dinesh Soni Vide NEFT 18/1/2017 paid to Mrs. Kirshna Singh, 90,000/-*
- (10) Mrs. Vidya Devi W/o Mr. Mange Ram Vide NEFT 18/1/2017 paid to Mrs. Kirshna Singh, 1,30,000/-*
- (11) Mr. Dinesh Soni S/o Mr. Mange Ram vide NEFT 18/1/2017 paid to Mrs. Kirshna Singh, 1,10,000/-*
- (12) Mrs. Pratibha W/o Mr. Dharmender vide NEFT 18/1/2017 paid to Mrs. Kirshna Singh, 1,30,000/-*
- (13) Annu Soni Dio Radhey Shyam Soni vide DD No. 154220/PNB paid to M/s Ashali Infrastructure Pvt. Ltd. 2,00,000/-*
- (14) Gopal Krishan Soni S/o Daryai Lal Vide DD No. 85138/BOB paid to M/s Ashali Infrastructure Pvt. Ltd. 2,00,000/-*



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(15) Mrs. Jyogi Soni W/o Kapil Soni vide DD no. 661655/SBI paid to Mis Ashali Infrastructure Pvt. Ltd, 1,60,000/-

(17) Surender Kumar S/o Ram Prashad Vide DD No. 085139/BOB paid to M/s Ashali Infrastructure Pvt. Ltd. 2,50,000/-

(18) Soniya Soni W/o Gopal Krishan vide DD No. 154221/PNB and DD No. 001998/IDBI paid to Mis Ashali Infrastructure Pvt. Ltd. 6,00,000/-

(19) Jai Narayan S/o Ram Prashad Vide DD No. 863737/Canara Bank paid to M/s Ashuli Infrastructure Pvt. Ltd. 1,50,000/-

(20) Rajni W/o Nitin Soni Vide No. 863738/ Canara Bank paid to paid to M/s Ashali Infrastructure Pvt. Ltd. 1,00,000/-

(21) Surender Kumar HUF Vide DD No. 421413000022 paid to M/s Ashali Infrastructure Pvt. Ltd. 4,00,000/-

(22) Radhey Shyam Soni Sio Ram Prashad Vide DD No. 421413000021 to paid to Mis Ashali Infrastructure Pvt. Ltd. 2,00,000/-

(23) Radhey Shyam HUF vide DD NO. 421413000020 paid to M/s Ashali Infrastructure Pvt. Ltd. 2,00,000/-

(24) Raj Bal Soni Wio Radhey Shyam Soni vide DD No. 421413000019 paid to Mis Ashali Infrastructure Pvt. Ltd. 2,00,000/-

in the above manner, all the complainants have paid a sum of Rs. 43,66,000/- (Rupees Forty Three Lakhs Sixty Six thousand only) to the accused persons.

In addition to the said amount of Rs. 43,66,000/- (Rupees Forty Three Lakhs Sixty Six thousand only), the complainants have already paid another sum of Rs. 1,50,00,000/- as mentioned hereinabove. In the above manner, a total sum of Rs. 1,93,66,000/- (Rupees One Core ninety three lakhs sixty six thousand only) has been paid by the complainants to the accused persons on their representations and false promises made by them a mentioned hereinabove.

(3) It is stated that the accused persons have received the said amount in their personal name/individual account and in their company namely M/s Ashali Infrastructure Pvt. Ltd., the accused persons have not paid back any interest on the amount of Rs. 1.5 crores as agreed and also not returned the said amount to the complainant as same was promised to be returned within a period of 6 months.



(4) Further, in lieu of amount of Rs. 43,66,000/- (Rupees Forty Three Lakhs Sixty Six thousand only) the accused persons have not issued/allotted the share of M/s Kayden Infra Engineering Pvt. Ltd. And instead one of the accused persons namely, Mr. Kunal Singh S/o Mr. Narender Singh sent a Whatsapp from his mobile No. 9910270009 to Mr. Radhey Shyam Soni on his mobile No. 9654808477 on 29.8.2017 giving the details of issuance of shares in their company, namely M/s Ashali Infrastructure Pvt. Ltd. Which is against the promise made by the accused persons.

(5) It is stated that when the complainant confronted the accused persons that the shares were to be allowed in M/s Kayden Infra Engineering Pvt. Ltd. And not in M/s Ashali Infrastructure Pvt. Ltd., the accused persons told the complainant that because of some accounting reasons, presently they are issuing/allotting shares in M/s Ashali Infrastructure Pvt. Ltd. And later they shall issue shares of M/s Kayden Infra Engineering Pvt. Ltd.

(6) The Complainants has many a time requested the accused persons to pay the interest at the agreed rate of 24% on the sum of Rs. 1.5 Crores and also to return the said amount to the complainant, however, the accused persons are making lame excuses and now they have started avodign the complainant and not even picking the phone of Mr. Radhey Shyam Soni.

(7) Further, even the alleged share certificates alleged to have been issued in favour of the complainants of the complainant M/s Ashali Infrastructure Pvt. Ltd. Has not been given to the complainant and further the share in the company, namely M/s Kayden Infra Engineering Pvt. Ltd. Has not been issued as promised.

(8) It is stated that the complainant has made the accused persons various times and requested the accused persons to pay back the entire amount of Rs. 1,93,66,000/- (Rupees One Crore ninety three lakhs sixty six thousand only) alongwith the interest, however, on the one pretext or the other, the accused persons are deferring the payment.

(9) it is stated that the complainants have become aware that the accused persons have also taken money by making false promises from other persons also and not returning their amount also. It is stated that after much persuasions the accused persons called the Panchayat on 11.7.2018 which was held in the office of the mines situated at Village Manka Vas, Dadri, Haryana wherein one of the accused Mr. Devki Nandan promised that he shall pay the amount



*of the complainant and also other persons, however, even after that no amount was paid by the accused either by Devki Nandan or by any other accused persons to the Complainant.*

*(10) It is stated that the accused persons have caused the huge monetary loss of Rs. 1,93,66,000/- (Rupees One Crore ninety three lakhs sixty six thousand only) to the complainants by making representations and false promises. It is stated that the accused persons in a pre-planned manner hatched the criminal conspiracy in active collusion with each other and made false representations and promises to the complainants and on the basis of said representations and false promises took the huge amount of Rs. 1,93,66,000/- (Rupees One Crore Ninety Three Lakhs Sixty Six thousand only) from the complainants and caused a wrongful loss to the complainants and wrongful gain to themselves accused persons.*

*(11) It is stated that complainant also became aware that there is another FIR is registered against the a accused persons being FIR No. 130/16 dt. 21.12.2016 with P.S. Shivdi, Distt. Mumbai, Maharashtra U/s 406/420/IPC on the complaint of one Ms. Seema Saharan.*

*(12) It is stated that the accused persons have committed the offences of cheating, fraud, criminal breach of trust, misappropriation of money etc. And they are liable to be punished for the same. The undersigned request and pray to the police authorities to register an FIR against all the accused."*

## **DEFENCE OF THE ACCUSED**

20. The defence of the accused *qua* the FIR *supra*, may be noted from the bail application (in which the application in hand has been filed), wherein it is, inter alia, stated as under :-

*"3. That the complainant has not placed true facts before the Police Authorities and has registered the present FIR on the basis of false and concocted facts the real facts are as under:-*

*(a) That in the year 2016, M/s Kayden Infrastructure Pvt. Ltd. was having four shareholders namely;*



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<b>Folio No.</b>	<b>Name of Shareholder</b>	<b>No. of shares allot</b>	<b>Date of Transfer</b>	<b>Distinctive No.</b>	<b>No. of shares transfer</b>	<b>As on 31.3.2016</b>
1.	Yogesh Singh	50000		2000 to 4500	-2500	52500
2.	Narender Singh S/O Des Raj	750000		7001 to 9500	-2500	752500
3.	Ashali Infrastructure Private Ltd	800000	24.2.2016	2000 to 4500 7001 to 9500	5000	5000
4.	Amarjeet Dhillon			2000 to 4500 7001 to 9500	5000	5000

*(b) It is submitted that as per the above details it clearly shows that in M/s Kayden Infrastructure Pvt. Ltd. only 4 persons were having the shares on 31.03.2016 and M/s Ashali Infrastructure Pvt. Ltd., was having 8,00,000 shares 16 of M/s Kayden and the owner of M/s Ashali Infrastructure Pvt. Ltd. Mr. Amarjeet Dhillon was having 5,000 shares of M/s Kayden Infrastructure Pvt. Ltd.*

*(c) It is submitted that in October, Nov. 2016, Mr. Narender Singh and Yogesh Singh decided to separate their business with Mr. Amarjeet Dhillon and M/s Ashali Infrastructure Pvt. Ltd. and it was agreed by M/s Ashali and Mr. Amarjeet that they will sell the entire shareholding of 8,05,000 shares sold to Mr. Narender and Mr. Yogesh or any persons through them for a sum of Rs. 108 per share. The value of 805000/ comes to 86940000/- which was later on given to Ashali and Mr Amarjeet for transfer of their Kayden's shares.*

*(d) That thereafter, it is submitted that during that time Mr. Radhey Shyam Soni came into the contact with accused persons and requested Mr. Narender Singh for giving them the shares of M/s Kayden and it was agreed that they will sell the share at the rate of Rs. 125 per share from Mr. Yogesh and Mrs. Krishna Singh who*





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was purchasing from M/s Ashali will transfer the same to the family members of Mr. Radhey Shyam Soni.

(e) It was further submitted that thereafter in lieu of agreement in order to purchase the share of M/s Kayden @ 125 per share sum of Rs. 1.50 Crores was transferred by way of three transactions in the following manner-1. Kapil Soni paid Yogesh Singh Rs. 53,10,000/- on 08.11.2016 by RTGS 2. Rajbala paid Rs. 53,10,000/- to Mr. Yogesh Singh on by way of RTGS on 8.11.2016 (3) Mr. Radhey Shyam Soni paid to Mr. Yogesh vide RTGS 8.11.2016 Rs. 43,80,000/-.

(f) It is submitted that the last amount was transferred on 8.11.2016 and on the same day, the Hon'ble Prime Minister announced demonetization and therefore, the entire deal has to be stopped for almost about two months. It is submitted that originally it was agreed that Mr. Radhey Shyam Soni and his family will purchase total share 1,60,000 shares @ 125 per share. It is submitted that due to demonetization it was suggested to the complainant to make direct payment to M/s Ashali Infrastructure Pvt. Ltd. for purchase of their share and the complainant and his family members made a direct payment to M/s Ashali Infrastructure Pvt. Ltd. and similarly, several other persons also purchased the shares of M/s Ashali on the same rate @ Rs. 108 per share and in this way all the 8,05,000 shares of M/s Kayden Infrastructure Pvt. Ltd. held by M/s Ashali Infrastructure Pvt. Ltd. were transferred in the following manner:

Folio No.	Name of Shareholder	Date of Transfer	Distinctive No.	No. of shares transfer	As on 31.3.17	Value of Shares @ 108
1	Annu Soni	5.2.2017	810001 to 811851	1851	1851	199908
2	Gopal Krishan Soni	5.2.2017	811852 to 813702	1851	1851	199908
3	Jyoti Soni	5.2.2017	813703 to 815553	1851	1851	199908
4	Sahnu Soni	5.2.2017	815554 to 817034	1481	1481	159948
5	Surender Kumar	5.2.2017	817035 to 819348	2314	2314	249912



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6	Sonia Soni	5.2.2017	819349 to 824903	5555	5555	599940
7	Narender	5.2.2017	824904 to 838791	13888	13888	1499904
8	Al Narayan Soni	5.2.2017	838792 to 840179	1388	1388	149904
9	Rajni Soni	5.2.2017	840180 to 841104	925	925	99900
10	Surender Kumar HUF	5.2.2017	841105 to 844807	3703	3703	399924
11	Radhe Shyam Soni	5.2.2017	844808 to 846658	1851	1851	199908
12	Radhe Shyam HUF	5.2.2017	846659 to 848509	1851	1851	199908
13	Raj Bala Soni	5.2.2017	848510 to 850360	1851	1851	199908
14	Sandeep Bansal	5.2.2017	850361 to 886471	36111	36111	3899988
15	Mohit Malik	5.2.2017	886472 to 932767	46296	46296	4999968
16	Nishant	5.2.2017	932768 to 988322	55555	55555	5999940
17	Devki Ji	5.2.2017	988323 to 1096099	107777	107777	11639916
18	Bhawna Singh	5.2.2017	1243801 to 1252596	8796	8796	949968
19	Apoorva Singh	5.2.2017	1252597 to 1261855	9259	9259	999972
21*	Krishna Singh	5.2.2017	1261856 to 1277595  2000 to 4500  7001 to 9500	20740	20740	2239920
22	Narender Singh Mundlia	5.2.2017	1332225 to 1387779	55555	55555	5999940



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	HUF					
23	Chetan Yadav	5.2.2017	147113 to 1610000	138888	138888	14999904

*\*Note:- Shares of Ashali Purchased by Krishna Singh 1261856 to 1277595 Shares of Amarjeet Purchased by Krishna Singh 2000 to 45007001 to 9500*

*(g) It is submitted that the above shares of M/s Kayden Infrastructure Pvt. Ltd. held by M/s Ashali Infrastructure Pvt. Ltd. were duly transferred on 5.2.2017 itself and the 20 transferred shares of M/s Kayden Infra Engineering Pvt. Ltd. was also transferred in the name of all the transferee including the Complainant and his family members. It is submitted that all the complainant as well as the applicant and his family members or other persons who purchase the share of M/s Kayden Infra Engineering Pvt. Ltd. from M/s Ashali Infrastructure Pvt. Ltd. purchased the said shares @ 108 and the receipt in this regard are jointly attached. It is submitted that by this way the shares for the entire amount of Rs. 43,66,000/- were transferred and issued to the complainant and his family members and the same are duly reflected in the records of ROC also..*

*(h) It is submitted that in the same manner on 6.2.2017 Mr. Yogesh Singh also issued the receipt and deposit the share transfer form for the purpose of transferring the shares to Mr. Kapil Soni, Mrs. Rajbala and Mr. Radhey Shyam Soni for an amount of Rs. 1,50,00,000 however the complainant at this stage, started asking for issuance of shares @108 per share instead of Rs. 125/-and refused to come to company for transfer due to that the shares could not be transferred earlier. However, the receipt of that money and all the necessary documents for transfer of shares were deposited by Mr. Yogesh and Mrs. Krishna Singh in the company and the distinctive share folio number were also informed to the company by Mr. Yogesh and Mrs. Krishna Singh which will be transferred in the name of the complainant as and when they will come to company to complete the formalities. Copy of the receipts issued by Mr. Yogesh Singh and Mrs. Krishna Singh are attached herewith.*



(i) *It is submitted that the Complainant has falsely stated that the shares of M/s Kayden Infra Ltd. has not been issued to them whereas it is matter of fact that only the shares of M/s Kayden Infra Engineering Pvt. Ltd. which were held by M/s Ashali Infrastructure Pvt. Ltd. were issued to the complainant and the same are also reflected since 2017 before the Registrar of Companies. The copies of the transferred shares of M/s Kayden Infrastructure earlier held by M/s Ashali Infrastructure Pvt. Ltd. now transferred in the name of complainant and his family members are jointly attached herewith.*

(j) *It is submitted that the above facts clearly shows that all the shares were duly issued to the complainant and there was no cheating whatsoever. However, it seems that now the complainant want money back instead of share and has trying to convert the simple civil transaction into criminal one.*

(k) *It is submitted that the intention of application/accused can be checked from the very facts that in the present FIR the complainant have alleged that the accused persons have cheated them for a sum of Rs.1,93,66,000/- whereas as per the records maintained by M/s Kayden Infra Engineering Pvt. Ltd. a sum of Rs. 2,18,60,000/- was given instead of 22 1,93,66,000/- which shows the entire amount is accounted for and not a single entry or amounts are denied which shows the clear intention of the applicant. That the said amount was given in Nov. 2016 and in Feb. 2017 and the shares were issued in 2017 itself and whereas the complainant has registered the FIR in Dec. 2019 after highly belated time of almost 3 years by falsely alleging cheating which cannot be accepted.*

(l) *It is submitted that the entire amount was given either to Mr. Yogesh (1.5Crores), Mrs. Krishna Singh(Rs 2500000/-) and M/s Ashali Infrastructure Pvt. Ltd.(Rs 4360000) which was given against the transfer of shares and the said amount was duly admitted by them and therefore, no other person can be liable in the entire allegations and the allegations of cheating and fraud does not hold good.*



*(m) It is submitted that Mr. Kunal Singh was not even present in India in June, 2016 and was out of India which can be proved by his passport copy and the same is attached herewith.*

*(n) It is further submitted that Mr. Narender Singh, Mr. Kunal Singh, Mr. Devki Nandan and Mr. Kailash Kumar and Mr. Krishan Kumar have nothing to do with the present case as they have not received any money from the the complainant and have nothing to do with the present case. It is submitted that they have also purchased the shares of Kayden on the same rate as purchased by Complainant group. That now the 23 complainant is trying to rigor out from the agreement of purchasing shares and is trying to get his money back instead of shares by tying to give a normal civil transaction into criminal transaction. “*

21. In light of the above, learned counsel for the non-applicant/accused would submit that it is a fit case to exercise inherent powers for quashing of the FIR in question, even though matter has been taken up on an application filed by the complainant.

22. Opposing the quashing of the FIR, the learned counsel for Applicant/Respondent No. 2 gave his written submissions, which in-verbatim, are as below :-

### **WRITTEN SUBMISSIONS OF THE COMPLAINANT**

*“1. That in the present case, FIR was registered on the complaining statement of the present applicant/Respondent No. 2. Following the registration of the FIR bearing No. 627/2019 PS Rani Bagh u/s 420/34 IPC, accused persons approached the Ld. Sessions Court seeking anticipatory bail, however the bail applications of accused Yogesh Singh, Narender Singh, Krishan Kumar and Kunal Singh and Devki Nandan were dismissed. Thereafter, the accused persons approached this Hon'ble Court in Bail Applications bearing no. 3168/2020, 3171/2020, 3173/2020, 3180/2020 and 3183/2020. The matter was sent to mediation vide order dated 19.10.2020 subject to accused persons depositing a*



*sum of Rs. 1 Crore with the Registrar General of this Hon'ble Court and on this condition this Hon'ble Court granted interim protection to the accused.*

2. *That mediation failed to bring any result and the abovementioned bail applications was finally disposed on 28.03.2024 wherein this Hon'ble Court was pleased to make absolute the interim protection granted vide order dated 19.10.2020 subject to further deposit of Rs. 50 Lacs. It is further pertinent to mention herein that the matter could not be taken for arguments, initially due to COVID 19 and later due to repeated adjournments taken by the counsel for the accused and could only be disposed of in 2024. Thereafter, the present applicant/complainant moved to Delhi. An application bearing no. CRL.M.A. NO. 20701 of 2024 seeking release of the aforementioned amount of Rs. 1.5 Crores along with the accrued interest in his favour. The matter was again referred to mediation where it was again returned 'not settled' and the matter was listed for arguments on the Crl. MA 20701 of 2024 on 13.08.2025 but no opportunity has been granted to present complainant to address his arguments.*

3. *That no application u/s 528 of BNSS or article 226 of the Indian Constitution was ever filed by the accused persons and thus there is no reason to quash the FIR and subsequent proceedings by invoking the inherent power 528 BNSS without there being a just cause or giving appropriate opportunity to the complainant to address his arguments in the present matter. It is pertinent to mention herein that the date was fixed for limited purpose of seeking release of the amount deposited with the Hon'ble High Court. It is pertinent to mention herein that this Hon'ble Court has only accorded the opportunity to the counsel for the complainant to file his written submission which is against the principles of natural justice.*

4. *That it is essential to mention herein that the bail application had already been disposed of and no opportunity has been accorded to prosecution to address the arguments on quashing of the FIR, which is against the principles of natural justice.*

5. *That it is further essential to mention herein that no opportunity has been granted to bring appropriate documents before this Hon'ble Court either by the prosecution or the*



*complainant and the quashing is being decided in undue haste. It is further underlined that no arguments on merits of the case were ever addressed by either parties on the point of quashing. Perusal of the status report in the disposed bail applications will show that the present complainant has been cheated for a sum of amount of Rs 1,93,66,000/- (One crore Ninety three lakhs sixty six thousand only) by the accused persons in a pre-planned manner.*

6. *That it is pertinent to mention herein that the Chargesheet is ready to be filed as on 13.08.2025 and the said submission was also made by the I.O who was present in the court. It is also pertinent to mention herein that since the registration of FIR on 06.12.2019, about 5 yrs and 8 months have elapsed, however the same is not hit by section 468 of Cr.P.C as the punishment for offence as mention in the FIR is seven years. It is apposite to mention herein that on enquiries made by the complainant, the charge sheet stood filed.*

7. *That it is the submission of the I.O that delay was caused due to the delay in procuring the result of the voice recording sent to the FSL wherein the accused has admitted his guilt. Right to speedy trial, although an essential fundament right of the accused, has to be balanced with the interests of the complainant who has been cheated of a huge amount by the way of a preplanned conspiracy by the accused persons. It is pertinent to mention herein that it is settled proposition that the power under 528 BNSS (482 Cr.P.C) has to be used sparingly and only to meet the ends of justice. However, the quashing of the present FIR has been taken up Suo moto without a just cause and without taking into account the irreparable loss caused to the complainant.”*

## **ANALYSIS AND DISCUSSION**

23. Before proceeding further, at this stage, final order dated 28.03.2024, vide which anticipatory bail was granted to the applicant, be seen, relevant part of which is as under:

*“4. At this stage, learned counsel for the applicant submits that to show his bonafide, the applicant Yogesh Singh who had received the sum of Rs.1.50 crore undertakes to make a further deposit of Rs.50 lacs with the Registrar General of this Court*



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*within a period of four weeks from today, without prejudice to his rights and contentions. The undertaking given on behalf of the applicant is accepted and taken on record. He is made bound by the same. He further submits that the accused persons are still ready and willing to take the requisite steps for the issuance of the shares in the name of the complainant/victims.*

*5. Keeping in view the aforesaid facts and circumstances including the fact that the bail application has been pending since the year 2020 and that the applicant has already deposited a sum of Rs.1 crore and he further volunteer to deposit another sum of Rs.50 lac as also the fact that the applicant has joined the investigation and that the entire case is documentary in nature, the interim protection granted to the applicant vide order dated 19.10.2020 is made absolute and it is directed that in the event of arrest, the applicant be released on bail subject to his furnishing a personal bond in the sum of ₹25,000/- with one surety of like amount to the satisfaction of the Arresting Officer/Investigating Officer/SHO of the concerned Police Station x-x-x-x-x”*

24. Having given my thought to all of above, at the outset, I must observe herein that I am fully conscious that the instant application is under Section 482 of the Cr.P.C. seeking release of money deposited by accused as part of the bail condition as per the final order dated 28.03.2024, *ibid*. However, as per the guidelines laid down in ***State of Haryana v. Bhajan Lal***<sup>1</sup>, what has to be seen is whether contents of the FIR, *ex facie*, disclose the commission of a crime. Therefore, the assertion of the learned counsel for the applicant that additional material ought to have been allowed to be placed on record for Court's assistance by granting opportunity doesn't hold any ground if the FIR itself suffices for deciding the question. Furthermore, the arguments raised that in the absence to challenge to the FIR in the present application or otherwise, it amounts to suo motu exercise of power is also being noted only to be rejected. For, not only the FIR is on record, but even the complainant, accused and the





State (prosecution) are also before this court and duly represented by their respective learned counsels. The term “suo motu” is a latin term and means “on its own motion”. It thus refers to the power of a court to initiate proceedings on its own, without any proceedings initiated by any party which is not the case here.

24.1. Before moving further, it may also be noted that, in fact, *dehors* above position, there is no restriction on the High Court in exercising its inherent powers under Section 528, *ibid*. In any event, the present proceedings can, at most, be characterized as a concurrent exercise of jurisdiction—both to adjudicate the application for release of money and to invoke inherent powers—but certainly not as a *suo motu* action, as has already been opined, *supra*.

25. Adverting now to the fundamental question—why should the FIR be not quashed? This case, in my considered view, reveals glaring facts that speak for themselves, requiring no further embellishment or explanation. Let us delve into FIR by treating it gospel and proceed on that premise and break it down *qua* inconsistencies and contradictions in sub paras here after.

### **25.1. LODGING OF FIR AND ALLEGATIONS**

- i. The FIR in question was lodged on 06.12.2019. It is alleged that the complainant, Radhey Shyam, had been acquainted with accused Devki Nandan and Kailash Kumar—both brothers—for approximately 25 years prior to the lodging of the FIR. These two accused allegedly introduced the complainant to the other accused persons, namely Narinder Singh, his wife Krishna Singh, and their two sons, Yogesh Singh (accused herein) and Kunal Singh, in June 2016.

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<sup>1</sup> 1992 Supp (1) SCC 335.



- ii. Pertinent here to note that first tranche of remittance was in November, 2016 and last in January, 2017 and yet complainant sat over it for almost 3 years and lodged a belated FIR in 06.12.2019.
- iii. It is further alleged that the accused represented to the complainants that Narinder Singh's family owned two stone mines under their family company, M/s Kayden Engineering Private Ltd. They purportedly assured the complainants that if a sum of Rs. 1.5 crore was paid to Narinder Singh and his family members, they would: Pay interest at the rate of 24% per annum on a monthly basis; Return the principal amount of Rs. 1.5 crore after six months; and Thereafter, pay an additional sum equivalent to 1% of the monthly profits from the two mines.
- iv. Pursuant to this alleged assurance, on 08.11.2016, the complainants paid an aggregate sum of Rs. 1.5 crore to accused Yogesh Singh in the following manner:
  - (a) Kapil Soni (son of Radhey Shyam Soni) – Rs. 53,10,000/-
  - (b) Raj Bala (wife of Radhey Shyam Soni) – Rs. 53,10,000/-
  - (c) Radhey Shyam Soni – Rs. 43,80,000/-

## **25.2. ALLEGED INVESTMENT IN SHARES**

- i. It is further alleged that subsequently, the accused represented their intention to sell shares of M/s Kayden Engineering Private Ltd., stating that purchasers would earn substantial profits. Acting on this representation, the complainants allegedly paid an aggregate sum of Rs. 43,66,000/- in favour of Krishna (wife of Narinder Singh) and M/s Ashali Infrastructure Private Ltd., another family concern of Narinder Singh.
- ii. The promise was for issuance of share certificates in M/s Kayden Engineering Private Ltd., not of M/s Ashali Infrastructure Private Ltd.



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However, even the share certificates of M/s Ashali Infrastructure Private Ltd., which were allegedly issued, were not delivered to the complainants.

iii. The accused allegedly failed to:

Pay the promised interest on Rs. 1.5 crore;

Refund the principal amount;

and

Deliver the share certificates of M/s Kayden Engineering Private Ltd. against the payment of Rs. 43,66,000/-.

### **25.3. OFFENCES INVOKED**

- i. On 06.12.2019, the complainants approached the police, alleging that the accused, by making false representations and promises, caused them a monetary loss of Rs. 1,93,66,000/-. It was alleged that the accused acted in collusion, hatched a criminal conspiracy, and induced the complainants to part with their money, thereby causing wrongful loss to the complainants and wrongful gain to themselves.
- ii. The FIR was registered under Section 420 IPC (cheating). Although the complainants also alleged fraud, criminal breach of trust, and misappropriation of money, the investigating agency invoked only Section 420 IPC, as the remaining offences could not co-exist with the one under Section 420 IPC.

### **25.4. ANALYSIS OF ALLEGATIONS**

- i. Cheating under Section 415 IPC is defined as an act where a person, by deceiving another, fraudulently or dishonestly induces the person so deceived to deliver any property. Section 420 IPC prescribes punishment for such cheating where the inducement results in the delivery of property. False and dishonest representation, coupled with inducement at



the inception of the transaction, are *sine qua non* for the offence under Section 420 IPC.

- ii. On a plain reading of the FIR, it is evident that there is no material to indicate that at the time of the alleged inducement—on 08.11.2016—the accused had no intention to perform their promise or that the representations were false and dishonest *ab initio*. The subsequent failure to fulfill a promise does not *ipso facto* establish a dishonest intention at inception.

### **25.5. NATURE OF DISPUTE**

The allegations, taken at face value, suggest that with respect to the sum of Rs. 1.5 crore paid on 08.11.2016, the complainants stand as unpaid creditors seeking recovery of principal and interest. The dispute appears to arise from the non-performance of contractual obligations, which has been given the colour of a criminal offence.

### **25.6. ALLEGATIONS REGARDING SHARES**

- i. It is alleged that for the amount of Rs. 43,66,000/-, the accused promised to issue share certificates of M/s Kayden Engineering Private Ltd. and not of M/s Ashali Infrastructure Private Ltd. However, the complainants admittedly made the payments in favour of Krishna in her personal name and M/s Ashali Infrastructure Private Ltd. Had the promise genuinely been for shares of M/s Kayden Engineering Private Ltd., the payments would logically have been made in that company's name.
- ii. The FIR itself thus states that share certificates of M/s Ashali Infrastructure Private Ltd. were allegedly issued, though not delivered. When the complainants knowingly made payments to parties other than M/s Kayden Engineering Private Ltd., they cannot claim to have been



deceived into believing that they would receive shares of that company. The alleged misrepresentation is inherently implausible.

#### **25.7. ROLE OF DEVKI NANDAN AND KAILASH KUMAR**

The complainant, Radhey Shyam, had known accused Devki Nandan and Kailash Kumar for over two decades. Their role appears limited to introducing the complainant to the other accused. There is no allegation in the FIR that they handled any payments or derived any benefit. Their implication in the FIR appears to be without substantive allegations and motivated by extraneous considerations.

#### **25.8. ABUSE OF PROCESS AND EXERCISE OF INHERENT POWERS**

The registration of this FIR constitutes an abuse of the process of law. Permitting the continuation of the proceedings would amount to perpetuating the hardships, harassment and humiliation of the accused. To secure the ends of justice, this is a fit case for the exercise of inherent powers of this Court under Section 528 of BNSS to quash the FIR. This Court is neither denuded of its inherent powers nor precluded from exercising them merely because the accused have not moved a petition for quashing.

#### **25.9. CONCLUSION**

Having perused and considered the FIR, this Court finds that the allegations in the FIR lack the essential ingredients of the offence under Section 420 IPC. What is essentially a civil dispute concerning repayment of money and transfer of shares has been camouflaged as a criminal case.

#### **CHARGE-SHEET**

26. It is abundantly clear that even after an inordinate delay of nearly six



years, the investigation remains incomplete. If any incriminating material against the accused had truly been unearthed, the charge sheet would have been filed long ago. No plausible explanation has been offered for this delay, which strongly indicates that either evidence against the accused is lacking or is being artificially manufactured.

27. Furthermore, by sheer lapse of time, the prosecution now seeks to exploit the inevitable fading of human memory. Hereafter, subjecting witnesses to cross-examination would only result in evasive and uncertain answers, reducing the process to a travesty of justice. Continuing with such proceedings would constitute an abuse of the criminal process and a futile exercise, placing an unnecessary burden on an already overstrained judiciary.

28. The prolonged and unexplained delay in completing the investigation and filing the charge sheet amounts to a clear infringement of the accused's fundamental right to a speedy trial as guaranteed under Article 21 of the Constitution of India. Supreme Court in *Pankaj Kumar v. State of Maharashtra*<sup>2</sup> categorically held that the right to speedy trial is an essential part of the right to life and personal liberty. Unwarranted prolonged investigation causing inordinate delay in the case in hand is thus a contributory factor.

29. Continuing the proceedings after such an inordinate and unexplained delay would amount to nothing short of an abuse of the process of law, as recognized in *Bhajan Lal, (Supra)* wherein the Court laid down that where the continuation of proceedings amounts to harassment without any legal justification, inherent powers under Section 482 CrPC (analogous to Section 528 BNSS) must be exercised to quash the same.

30. The sheer delay severely prejudices the right of the accused to defend



themselves effectively. Material witnesses may be untraceable, and their memory may fade or even fail. This prejudice is a legitimate ground for quashing proceedings,

31. The conduct of the investigating agency clearly reflects gross negligence and lack of due diligence. No satisfactory explanation has been offered for the six-year delay, which vitiates the sanctity of the entire process and raises serious doubts about the bona fides of the prosecution.

32. Despite repeated opportunities for investigation, the investigating agency has failed to make any progress sufficient to justify failure to file a charge sheet. This demonstrates the absence of substantive evidence, which by itself warrants quashing to prevent futile prosecution.

33. The continuation of such proceedings serves no legitimate purpose and only adds to the burden on the judiciary, and would be a misuse of the State's machinery of criminal law to arm twist the opponent to succumb on the dotted lines.

34. Having noticed the various infirmities in the FIR, *ibid*, and as a cumulative effect of the above discussion, I am of the considered opinion that the allegations in the FIR seem to lack the essential ingredients to attract the offence of cheating ascribed to the accused. To my mind, in reality it was/is civil dispute arising out of non-performance of the alleged promise to pay interest and refund the principal amount and for the sale/purchase of company shares which has been camouflaged and given the colour of a criminal offence leading to the registration of the FIR.

35. Resultantly, I am of the opinion that the registration of the FIR was/is an abuse of the process of law; that allowing further continuance of consequential proceedings amount to perpetuating the long suffered hardships, harassment

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<sup>2</sup> (2008) 16 SCC 177.



and humiliation of the accused and that in order to secure the ends of justice, it is fit case for the exercise of inherent powers of this court under section 528 of BNSS [482 Cr.PC] for quashing the same.

36. I may also hasten to add here, though at the cost of repetition, that this Court is not prevented from performing its duty or denuded of its inherent powers under the law merely because the accused have not moved a formal petition for quashing of the FIR, as long as this court is otherwise alive to the entirety of the matter. In light of the foregoing, given that charge sheet has not been filed and as an upshot of the preceding discussion *qua* merits of the FIR, this a fit case for the Court to exercise its inherent powers under Section 528 of the BNSS and quash the FIR.

37. Accordingly, FIR no. 627/2019 dated 06.12.2019 u/s 420/34 IPC registered at P.S. Rani Bagh, Delhi is quashed with consequences to follow. As sequel thereto, the complainant's application for release of money deposited by the accused in bail proceedings is rejected with liberty to seek appropriate remedy, in civil law.

38. Before parting, though I have finished my judgment as above and quashed the FIR in the preceding part, but there is another aspect of the matter which, invariably is *causa causans* leading to undesirable criminal consequences and not necessarily due to the *mens rea* and, that is - excessive greed. This court deems it appropriate to red flag this issue in the succeeding part, more as an *obiter dictum* rather than *ration decidendi*.

38.1. In the FIR it is stated that the non applicant promised to give assured interest @24 % per annum which he failed and thus induced the gullible complainants to lend money and/or invest in the mines, as the case may be. Assured high interest/return was also flagged as an issue in an order/judgment





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rendered by me in *Anil Jindal v. State of Haryana*<sup>3</sup> (when I was a Judge in that Court). I intend to elaborate on the same opinion, as rendered therein, *i.e.* those who gamble with impractical promises must own their risks. People, lured by unrealistic returns, first willingly dive into financial traps and later cry foul running to seek State help. But what shakes the foundation of blind victimhood is, the excessive greed which comes with a price. The promise of 24 percent annual return on a loan, when bank deposits offer barely 1/3<sup>rd</sup> or 1/4<sup>th</sup> of that, should raise suspicion, not confidence. Yet, such offers continue to attract people like moths to a flame. Why? Because in their race for windfall gains, these investors conveniently ignore the basic principle of finance: higher returns mean higher risk. Is non servicing of debt *ipso facto* a crime? Accepting an answer in the affirmative would be fraught with danger. In a country where debt recovery tribunals are already inundated with cases, every debtor would, by extension, also be branded a criminal. This is not to deny that some debtors may engage in acts of financial misconduct/siphoning off etc. that can amount to criminal offenses. However, when a person consciously lends at high interest or acquires a debt, the fundamental principle of “*buyer beware*” should apply, rather than raising an outcry afterward. Proper due diligence is imperative.

38.2. The debate thus is, more for law makers of the country to take note of, whether the recipient of such investments alone should carry the cross of criminal liability when things go south ? Indubitably, the law must hold accountable those who deceive. What about the conscious choice of investors who ignored the warning bells in pursuit of quick wealth? An uncomfortable, but necessary reality is if you choose to chase extraordinary gains, you must be prepared for extraordinary losses. Greed is not just a personal flaw; it creates ripple effects. When investors pump money into unsustainable ventures, they

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<sup>3</sup> 2020 SCC OnLine P&H 830.



inflate bubbles that harm genuine end-users and distort market equilibrium. And when the bubble bursts, they expect the law to paint them as victims, absolving them of all responsibility. The allure of easy money is a dangerous illusion. A responsible society cannot endorse a culture where greed masquerades as innocence. Investors who ignore prudence and succumb to unrealistic promises must understand that their choices carry consequences. The law must punish fraud, but it cannot shield people from the fallout of their own avarice.

38.3. Adding further to the debate, when you invest in fantasy, don't expect reality to show you mercy. Are these investors really as gullible as they claim? May be not. It could then rather be a façade of innocence worn by investors crying foul after losing money in schemes that promised them the moon. They knew exactly what they were signing up for i.e. unbelievably high returns of 24% annually or 2% every month. These are not returns; these are temptations. Like the complainants herein fell for. Let us call it what it is: a hunger for unearned wealth. When someone promises riches far beyond what the market offers, common sense should scream "scam." But greed silences reason.

38.4. And, there is another irony i.e. if the recipient had paid them these sky-high returns, he was a hero, a genius, a financial wizard. The moment the business crashed, either under the weight of impossible debts or otherwise, he became a criminal in their eyes. Overnight, their celebration turned into litigation. When you give unsecured loans for such outrageous returns, are you then as innocent an investor? Nay, perhaps a part gambler. And every gambler knows the rule of the game: when you win, you cheer; when you lose, you pay. You cannot bet your money on wild promises and then run to the law crying "victim" when the bet goes bad. If you had the courage to take the risk, you must have the spine to face the consequences. Greed is a silent crime against



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wisdom. It blinds people to the obvious, drives them into risky ventures, and then makes them demand sympathy when the tide turns. Fraudsters must be punished, yes—but should Courts become shelters for reckless risk-takers. The investor who demands 24% annual returns without security is not a saint wronged; he is a speculator who rolled the dice and lost.

39. To sum up, it may sound brutal but seems fair: if you choose greed, you choose risk; and if you choose risk, you choose consequences. But such victims ought not to pretend they were duped by magic when they walked willingly into the illusion. So, to every dreamer chasing quick riches—it is a wake up call. Easy money is a trap. If the returns sound unbelievable, believe this instead: you are next in line to pay the price.

40. Disposed of with these additional observations.

**ARUN MONGA, J**

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