

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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EVADING JUSTICE AND THE LIMITS OF ANTICIPATORY BAIL: A CASE COMMENT ON ‘SERIOUS FRAUD INVESTIGATION OFFICE V. ADITYA SARDA’

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ABSTRACT

This article examines how the judiciary deals with anticipatory bail applications in relation to economic crime and corporate fraud. It provides an analysis of the principles that guide judicial discretion when granting pre-arrest bail in circumstances where there are allegations of serious financial wrongdoing and actions that may harm the administration of justice. The research demonstrates that economic crimes should be treated as a separate type of crime and their effects on the stability of our economy, the trust and confidence of the general public and the integrity of institutions warrant this classification. The research explores the connection between personal liberty and procedural accountability, and how each party must take on their respective responsibilities by balancing the rights and freedoms of individuals with ensuring an effective investigation and due process. In addition, the article critically assesses what constitutes compliance with legal proceedings, assisting investigative authorities, and meeting statutory safeguards. Finally, the analysis makes a contribution to the discussion surrounding economic crimes, the liability of corporations for any wrongful acts and providing protection against the misuse of procedural remedies within the criminal justice system.

Index Terms: Anticipatory Bail, Economic Offences, Corporate Fraud, Personal Liberty; Public Interest, Companies Act, 2013.

INTRODUCTION

The case of *Serious Fraud Investigation Office v. Aditya Sarada*¹ is an important decision dealing with serious economic offences and the limits on granting anticipatory bail. It was a result of a massive financial fraud of the Adarsh Group of Companies and the Adarsh Credit Cooperative Society (ACCSL). Under the advice of the Central Government, the Serious Fraud

¹ Serious Fraud Investigation Office v. Aditya Sarada (2025) 256 Comp Cas 395

Investigation Office (SFIO) examined the affairs of over 125 companies. It was found that ACCSL, which had lakhs of members and deposits of thousands of crores, had given loans to companies in which its promoters had a stake. These were loans that were founded on falsified financial statements, and huge sums of money were drained off to personal gain, leaving depositors with huge losses.

In 2019, the Serious Fraud Investigation Office (SFIO) filed a criminal complaint against 181 defendants (including Aditya Sarda) after completing its investigation, which included filing a summons and issuing bailable warrants. The majority of defendants did not appear at the call of the Court thereby necessitating the issuance of non-bailable warrants and commencing proclamation proceedings. The anticipatory bail application(s) of the accused were consistently denied by the Special Court, however, in 2023 the High Court granted anticipatory bail to several of the accused resulting in an appeal by the SFIO.

The Supreme Court was asked to determine whether the accused of significant economic crimes who had evaded due process of law were entitled to an award of anticipatory bail. The Court emphasized that anticipatory bail is an extraordinary remedy and cannot be used as a shield to protect an individual who has intentionally sought to evade the laws of the land. The case demonstrates a tough stance taken by the Courts towards economic crime; however, it also demonstrates that personal liberty must be protected while also ensuring that investigations are conducted expeditiously, and the greater good of Justice is served within our legal system.

FACTS OF THE CASE

The Adarsh Credit Cooperative Society Limited (ACCSL) and the Adarsh Group of Companies was recently charged with operating an enormous financial fraud scheme. ACCSL is a multi-state cooperative organization having approximately twenty lakh members with over eight hundred branches and deposit levels of Rs. 9253 crore (approximately) and is primarily involved in serving the needs of low- and middle-income citizens.

The individuals responsible for the ACCSL were said to have formed and operated nearly one hundred twenty-five companies that fall within the Adarsh Group of Companies and appointed relatives and associates to those companies as directors while using these companies to funnel the membership's funds from the society.

According to the Serious Fraud Investigation Office (SFIO), approximately Rs. 1,700 crores in unlawful loans were made to approximately seventy companies in the Adarsh Group and/or related parties as of March 2018, and the total outstanding loan balances amount to approximately Rs. 4,120 crores as of March 2018, with documentation supporting these loans purportedly being fraudulent loan documentation or forged financial records. Furthermore, allegations of the accused fraudulently transferring and/or removing amounts from the society through collusive transactions, manipulating records, and/or utilizing corporate structures to benefit themselves have also been made against some of the accused.

After completing the investigation accustomed by the SFIO, the agency recommended prosecution against all the accused, resulting in the filing of a criminal complaint at the Special Court in Gurugram against one hundred eighty-one individuals, including Aditya Sarada.

ISSUES BEFORE THE COURT

1. Whether accused persons who are involved in serious economic offences under the Companies Act should be granted anticipatory bail, especially offences that involve fraud and high volumes of public funds?
2. Whether the High Court was justified in granting anticipatory bail to the accused persons despite the issuance of non-bailable warrants and proclamation proceedings against them?
3. Whether the High Court overlook the compulsory terms of bail given under *Section 212(6) of the Companies Act, 2013*², when granting anticipatory bail?
4. Whether an accused who deliberately avoids court proceedings and conceals himself can claim the extraordinary relief of anticipatory bail?
5. Whether the Special Court had the discretion to issue non-bailable warrants instead of summons in a complaint case involving serious economic offences?

ARGUMENTS OF THE PARTIES

Arguments by the Appellant (SFIO):

According to the SFIO, the defendants had committed economic crimes that represented large-scale fraud as well as the inappropriate use of public funds. The respondents repeatedly attempted to avoid the courts by not responding to multiple summonses and warrants issued by

² The Companies Act, No. 18 of 2013, § 212(6)

the court, and they did not cooperate in any way during the investigation. The SFIO stated that granting anticipatory bail, under such circumstances, would provide assistance to individuals trying to evade justice and would also cause significant damage to the legal system. In light of the severity of the positive impacts that economic crimes have on society and the economy, anticipatory bail should only be granted in exceptionally rare circumstances.

Arguments by the Respondents (Accused):

The respondents claim they did not know about the criminal cases brought against them, so could not present themselves in court. They stated that warrants were not served on them in good faith or with a view to avoiding the law. They referred to their right to be free, and sought anticipatory bail based on the precedent provided by the decision of the Supreme Court to grant anticipatory bail. They argue that since they had not at any time purposefully prevented the justice system from working, they are entitled to be free from arrest.

ANALYSIS OF THE CASE

A. PROCEDURAL HISTORY

In the case that commenced on 20th June 2018, the Government of India directed that the Serious Fraud Investigation Office (SFIO) carry out an investigation against around 125 companies of the Adarsh Group which was extended further by one month in February 2019. This report of investigation was handed over to the Special Court at Gurugram with findings from the investigation and the SFIO requested the prosecution of these companies and submitted a criminal complaint to court against 181 people including Aditya Sarda for their involvement in the advertisements. After they had not shown up after multiples of bailable warrants and multiple requests for anticipatory bail were rejected by the Special Court, the court issued a non-bailable warrant to all 181 defendants and started a proclamation under Section 82 of CrPC. The defendants have been given relief by the High Court; however, the SFIO has filed an appeal with the Supreme Court against the rendering of relief to the defendants.

B. JUDGEMENT

- In the case of *Serious Fraud Investigation Office v. Aditya Sarda*³, the Supreme Court decided that the High Court had improperly granted anticipatory bail to the accused

³ Supra Note 1

individuals. The Court determined that the respondents were not only aware of the criminal proceedings but also evaded the Special Court. They did not give up even after their anticipatory bail applications had been denied previously and could not be found at their respective addresses. This action reflected the desire to avoid the legal process. The Court believed that the Special Court was correct in issuing non-bailable warrants and proclamation proceedings against them. It stressed that anticipatory bail is a special measure and must be awarded in extraordinary cases, particularly not in grave economic crimes of large-scale fraud and embezzlement of government funds. The Court also noted that such offences affect the economy and the interests of the public at large, and therefore must be handled with greater strictness. To this end, the Supreme Court quashed the majority of the High Court orders granting anticipatory bail, and did not interfere in a few cases where no coercive measures were taken, or bail was already duly granted.

- To support its reasoning, the Court referred to a series of earlier decisions in a structured and logical sequence. It initially used the case of *Inder Mohan Goswami v. State of Uttaranchal*⁴ in which the Supreme Court clarified that non-bailable warrants must be issued as a last resort, when summons and bailable warrants have not been effective in ensuring the appearance of the accused. The Court emphasized that such coercive measures should be employed carefully and in cases where there is reasonable suspicion that the accused will not show up on his own. It was also cited in the context of *State of U.P. v. Poosu*⁵, which provided that courts should consider the severity of the offence, the quality of evidence and the chances of the accused evading or evading trial when issuing warrants.
- The Court then cited *P. Chidambaram v. Directorate of Enforcement*⁶ in which it was determined that anticipatory bail is an extraordinary discretionary measure that is intended to protect persons in extraordinary situations, and that it should not be issued as a matter of routine. Following this, it was further held based on *State of M.P. v. Ram Kishna Balothia*⁷, that anticipatory bail is not an extension of the right to personal liberty under Article 21, but a statutory concession, which is conditional. The Court also referred to the case of *Jai Prakash Singh v. State of Bihar*⁸, where it was pointed

⁴ (2007) 12 SCC 1

⁵ (1976) 3 SCC 1

⁶ (2019) 9 SCC 24

⁷ (1995) 3 SCC 221

⁸ (2012) 4 SCC 379

out that anticipatory bail was only to be granted when the court was convinced that the charge was false or malicious and that the accused would not abuse the freedom accorded.

- Moreover, the Court referred to the case of *Y.S. Jagan Mohan Reddy v. CBI*⁹, which acknowledged that economic crimes represent a separate category since they have a severe effect on the financial system of the country and are associated with intricate conspiracies and massive abuse of state funds. Likewise, in the case of *Nimmagadda Prasad v. CBI*¹⁰, the Court noted that the number of white-collar crimes has increased tremendously over the past few years, which has had a grave impact on the economic fabric of the country. Economic crimes have extensive effects on the growth of the country and citizen confidence. Citing the case of *State of Gujarat v. Mohanlal Jitmalji Porwal*¹¹, the Court emphasized that these crimes are planned and have a selfish motive as compared to impulsive crimes. It emphasized that not punishing economic offenders undermines the confidence of the people in the justice system and the greater interests of society and the national economy.
- Lastly, the Court cited *Srikant Upadhyay v. State of Bihar*¹², stating that the authority to grant anticipatory bail should be used sparingly and in exceptional circumstances and that it should not be applied as a shield by the accused individuals to evade investigation or hinder the course of justice.

C. RATIO DECIDENDI

The Supreme Court ruled that anticipatory bail is considered an extraordinary and discretionary remedy granted for exceptional cases only. Courts should take a stricter approach regarding serious economic crimes because of their wider ramifications on both the economy and the public at large. A key factor to be considered when exercising discretion is the behaviour of the accused; that is, those who evade legal action or fail to cooperate with an investigation or intentionally avoid attending court are usually not entitled to relief. The Court emphasised that discretion should be exercised with caution (under *Section 438 CrPC*¹³) upon an evaluation of the relative merits of the personal liberty of the accused and the effective administration of justice and the public good.

⁹ (2013) 7 SCC 439

¹⁰ (2013) 7 SCC 466

¹¹ (1987) 2 SCC 364

¹² (2024) SCC OnLINE SC 282

¹³ Code of Criminal Procedure, 1973, § 438

D. OBITER DICTA

Anticipatory bail is considered a rare and discretionary remedy to be granted only under exceptional circumstances. The Court has held that because economic offenses are considered to be a separate class of crimes due their negative effects on one's economy, public revenue and confidence in the community; therefore, when deciding whether to grant bail in these types of cases; courts must apply a stricter approach. The accused's behaviour and conduct, especially if the accused is not cooperating with the investigation or trying to avoid appearing before the court will heavily influence whether the accused qualifies for bail. Personal Liberty; as provided for by *Article 21*¹⁴, must be weighed against the public interest and an effective investigation by law enforcement. Non-bailable warrants should be issued for people that fail to appear as required to answer criminal charges in a court of law and there should be no unnecessary judicial interference with the trial court's decision-making and the ongoing investigation by law enforcement.

CRITICAL ANALYSIS

In the case of *Serious Fraud Investigation Office v. Aditya Sarda*¹⁵, the Supreme Court took a very principled approach on the issue of serious economic food crimes and how they are misused by way of anticipatory bail by reasserting that anticipatory bail constitutes an extraordinary remedy rather than an absolute right. The Supreme Court also emphasised that a defendant who purposely evades legal process may not take advantage of procedural protections to avoid being held accountable. The Supreme Court recognised that the broader concern with regard to serious economic crime is how that crime will affect public money, financial stability, and public confidence; therefore, the Supreme Court affirmed the need to carefully analyse and scrutinise serious economic crime and established that there will be greater accountability for corporations. The Supreme Court further upheld the ability of trial courts to issue non-bailable arrest warrants and issue proclamation proceedings against uncooperative defendants. The Supreme Court's ruling therefore strengthens the authority of the trial trade court and safeguards the integrity of our criminal justice system. The Supreme Court's ruling also strikes a proper balance between the personal freedoms of individual defendants and the public interest by holding that the constitutionally protected rights cannot be used to impede an investigation or to prevent justice from occurring. The Supreme Court,

¹⁴ INDIA CONST. art. 21

¹⁵ Supra Note 1

therefore, in cases where no coercive methods have been taken against a defendant or a defendant has already received valid bail, appropriately refrained from interfering in the trial court's decisions, thereby preserving the discretion of the judiciary while enforcing accountability in the context of serious financial fraud.

CONCLUSION

The Supreme Court ruled in the case of *Serious Fraud Investigation Office v. Aditya Sarda*¹⁶ to take a focus on policy concerns with respect to abuses of anticipatory bail where serious economic crimes have been charged. With this ruling, the Supreme Court stated that any person seeking anticipatory bail and who wilfully failed to appear in court will not be granted relief from the courts. The Supreme Court found that based on wilfully failing to appear in person in court or cooperating with investigators, those individuals must come to court with "clean hands" and be equitable to receive equitable relief. The ruling also provided for the necessity of the courts to provide procedural discipline when enforcing the legal protections of anticipatory bail to prevent the use of the legal protections to avoid being held accountable for their actions.

Additionally, the Supreme Court held that economic crimes require an increased level of judicial scrutiny because they encompass a larger population (economic crimes have an affect/impact on the general public; as they involve taxpayer money, the economy, and overall societal trust). Therefore, the ruling provides for an increased level of scrutiny to economic crimes. Therefore, the decision grants greater level of judicial scrutiny to economic crimes. Although, the court's decision raised possible issues relating to the public's right to personal liberty by limiting the use of anticipatory bail in circumstances where an individual's non-appearance does not establish intent to evade justice. However, the Supreme Court did not apply a blanket rule by examining the facts of each individual case. All in all, the decision strengthens the fight against corporate crime but also illustrates the tension that exists between an individual's rights against effective law enforcement in relation to serious economic crimes.

¹⁶ Supra Note 1