



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Pronounced on: 23rd July, 2025

+

BAIL APPLN. 2317/2021, CRL.M.A. 22542/2023 (vacation of the Order dated 07.07.2021), CRL.M.(BAIL) 894/2021 (interim Anticipatory Bail)

PRABIR PURKAYASTHA

S/o Lt. A.K. De Purkayastha,

Aged about 71 years

R/o D-132, 2nd Floor, Saket,

New Delhi-110017

Email: prabirp@gmail.com

Mob: +91-98111424462

....Petitioner

Through: Mr. Kapil Sibal, Senior Advocate with Mr. Dayan Krishnan, Senior Advocate with Mr. Arshdeep Singh Khurana, Mr. Harsh Srivastava, Mr. Sidak Singh Anand, Mr. Shreehdar Kale, Mr. Nikhil Pawar and Mr. Peeyush Bhatia, Advocates.

versus

STATE OF NCT OF DELHI

(Economic Offences Wing)

Through its Standing Counsel (Criminal)

Chamber No.437, Lawyers Chamber Block-I,

Delhi High Court, New Delhi-110003

Email: dhcprosecutiondelhipolice@gmail.com

Mob: +91-9891919168

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, Ld. APP for State.

Mr. S.V. Raju, Ld. ASG, Mr. Zoheb Hossain, Spl. Counsel, Mr. Vivek Gurnani, Panel Counsel with Mr.



Kanishk Maurya, Mr. Harik Sabharwal, Mr. Pranjal Tripathi, Mr. Kunal Kochar and Mr. Siddharth Kumar, Advocates and Mr. Mohit Godara, ED(I.O).
ACP Keshav Mathur, Insp. Sanjay Singh EOW, Mandir Marg.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Bail Application under Section 438 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C'*) has been filed on behalf of the Petitioner, Prabir Purkayastha seeking Anticipatory Bail in FIR No. 116/2020 dated 26.08.2020 under *Section 406/4208120-B of the Indian Penal Code, 1860* (*hereinafter referred to as 'IPC'*) registered at Police Station Economic Offences Wing, Delhi Police.
2. The Respondent has issued a Notice under Section 41-A Cr.P.C., for summoning the Applicant for 07.07.2021 along with certain documents, failing which he may be liable for arrest.
3. It is submitted that the Applicant is a respectable and law-abiding citizen of India having deep roots in the Society and is residing with his partner. The Applicant, Prabir is a reputed journalist having, being founder editor of the digital media platform Newsclick.in set up in 2009, which was one of the most popular and reputed digital media platforms in the country, as well as, abroad. The Applicant actively advocated for the cause of downtrodden and oppressed communities in India, as well as, abroad, as



well as, reported issues of national and international importance in an independent and impartial manner. The expertise of the Applicant in various issues relating to industry and technology have also been recognised by the Government of India. He has been a member of the National Steering Committee, ASTeC Programme, as well as, a Member of the Expert Group on Industrial Application, both of which are convened under the aegis of the Ministry of Electronics and Information Technology, Government of India. He has published several scholarly articles in various national and international publications in the fields of Engineering, Software Technology, energy policy and other social issues.

4. It is submitted that the Applicant has not been named as an Accused in the FIR. *M/s PPK Newsclick Studio Pvt. Ltd.* had preferred Writ Petition bearing W.P.(Crl.) No. 1130/2021, for quashing of the present FIR in which Notice was issued on 21.06.2021.

5. The Applicant is also a Director of *M/s PPK Newsclick Studio Pvt. Ltd.*, a law-abiding corporate entity incorporated under the Companies Act, 2013. It owns and operates “*newsclick.in*”.

6. The Newsclick was controlled by a trust, namely, the Newsclick India Trust and later from the year 2015, a Limited Liability Partnership i.e. *M/s PP Newsclick Studio LLP*. With intent to receive investment to allow the LLP to grow and expand, an Agreement dated 01.05.2017 was entered between *M/s PP Newsclick Studio LLP* and *M/s BGJC Associates LLP*. Further, to enable a smooth inflow of future investment, a decision was taken by *M/s PP Newsclick Studio LLP*, to convert the LLP into a private Limited Company, which was done on 03.06.2017. The Company was



approached for FDI and ultimately, an entity by the name of M/s Worldwide Media Holdings LLC (*hereinafter referred to as 'WWMH'*) invested the shares of the said Company as FDI.

7. WWMH was incorporated on 29.11.2017 as a Limited Liability Corporation in USA. During this time, when the possibility of investment by WWMH in the Company was being discussed, the Applicant wanted to confirm the regulatory regime around the receipt of FDI by a Company engaged in the digital media business, to ensure any regulatory regime is fully complied with. The Applicant addressed a Letter dated 20.12.2017, to the Ministry of Information and Broadcasting requesting for a clarification to the FDI policy. The Ministry of Information and Broadcasting gave a Reply dated 05.01.2018 clarified that *“online publications on website/web portal do not fall under the ambit of print media.”*

8. Thus, in accordance with the terms of the Agreement dated 01.05.2017, M/s BGJC and Associates LLP, submitted a valuation report dated 28.02.2018 wherein the shares of the Company were valued at Rs.9188 per share. The Independent valuers also issued a Certificate dated 05.02.2018 certifying that the fair value of the equity shares of the Company may be taken as Rs.9188 per share having face value of Rs.10 each.

9. This valuation was a legal requirement for the investment by foreign entity into shares of an Indian entity, in terms of Regulation 11(1), Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017. Consequent to the Valuation Report, the parties agreed to a value of Rs.11,510 per share.



10. Therefore, the parties entered into an Investment Agreement dated 20.03.2018 wherein WWMH agreed to invest a total of USD 4.5 Million in three tranches of USD 1.5 Million each, in exchange for a total 23.07% shares of the said Company. The Investment Agreement dated 20.03.2018 was executed between WWMH and *PPK Newsclick Studio Pvt. Ltd.*

11. In terms of the Agreement dated 20.03.2018, the first tranche of investment of USD 1.5 Million, was remitted by WWMH on 11.04.2018, in exchange for 7.69% shares of the Company. However, the remaining investment was never remitted or exercised by WWMH. Consequently, WWMH holds 7.69% shares of the Company.

12. Subsequently, the present FIR No.116/2020 dated 26.08.2020 under Section 406/4208120-B IPC, was registered on the Complaint of Sh. Sobhan Singh at Police Station Economic Offences Wing, Delhi Police wherein the allegations were made that the investment was made by greatly undervaluing the shares of the Company, to avoid the alleged gap of 26% of FDI in a digital news website. It was further alleged that over 45% of this investment was diverted/siphoned off for the payment of salary/consultancy, rent and other expenses, which payments are alleged to have been made for ulterior motives. Therefore, it is alleged that the Company has violated the FDI and other laws of the country and has caused a loss to the Government Exchequer.

13. The Applicant has asserted that this FIR has been registered *mala fide* even though no offences under IPC are made out. The *mala fide* was also evident from the fact that the FIR was not uploaded on the website of Delhi Police. Further, no investigations have been carried out by the Respondent,



for over ten months. The Applicant became aware of the FIR only when the Directorate of Enforcement (ED) carried out search and seizure operation at the residence of the Applicant. He was then informed that based on the FIR, ED had registered an ECIR bearing No. ECIR/14/HIU/2020 dated 02.09.2020 for the offences under Section 3 and 4 of PMLA, 2002. The Applicant has been granted Interim protection in the ED proceedings.

14. Since the FIR was not uploaded on the website of Delhi Police, Letters dated 26.04.2021 and 15.05.2021, were addressed to the Respondent seeking the copies of FIR but the Applicant received no response. Being aggrieved by this obstructionist conduct of the Respondent, the Company was constrained to prefer an Application, before learned CMM, South and South-East, New Delhi, for seeking a copy of the FIR, which was made available only on 06.06.2021. Also, the learned CMM, South-East, noticing the conduct of the Respondent, *suo moto* asked the officials of the Respondent, to show-cause who action not be taken against them for violation of the law *vide* Order dated 07.06.2021.

15. It is asserted that from the perusal of the FIR, it is apparent that no cognizable, let alone offences under Section 406/420 and 120-B IPC, offence is made out. The said allegations could constitute violations of the Foreign Exchange Management Act, 1999 (FEMA), which the Respondent has no power to investigate. The FIR has been registered mala fide only to confer jurisdiction on the ED, since offences under the FEMA, are not schedule offences under the PMLA.

16. Aggrieved by the registration of FIR, Company preferred W.P. (Crl.) 1130/2021, for quashing of this FIR, in which the Respondent stated that on



21.06.2021 that the Respondent would issue a Notice before taking any coercive steps. On 02.09.2020, this Court directed that no coercive steps be taken against the Applicant. Thereafter, a Notice under Section 41A dated 30.06.2020 was served upon Applicant, directing him to appear before the Respondent on 07.07.2021 at 04:00 PM. The Applicant apprehends that he may be arrested on his appearance before the Respondent.

17. The Anticipatory Bail is sought on the ground that no cognizable offence is disclosed in the FIR. There is a legal bar on the registration of the FIR since the allegations pertain to violations of FEMA for which EOW has no jurisdiction to examine.

18. The investment of FDI by WWMH was lawful investment, in terms of the law regarding FDI in Digital News Media in 2018 and no offence is disclosed. Furthermore, FIR has been registered *mala fide* to chill the free speech harass and intimidate the Petitioner.

19. It is submitted that the Applicant satisfies the triple test that is Flight Risk, influencing the witnesses and Tampering with evidence. The Applicant is a senior journalist with deep roots in the society. He has cooperated with ED and there is no likelihood of he being a flight risk. There is no allegation that he has ever influenced or intimidated the witnesses. Moreover, the entire evidence is documentary in nature, which has already been seized by ED and there are no chances of him fleeing from justice.

20. In the end, it is submitted that the Applicant is a senior citizen aged about 71 years and suffers from various co-morbidities and any custody of the Applicant could be deleterious upon his health, especially in the light of



the COVID-19 pandemic. It is, therefore, submitted that he be granted Anticipatory Bail.

21. *The Respondent in its Status Report*, has alleged that *M/s PPK Newslick Studio Pvt. Ltd.* received a FDI of Rs.9.59 Crores from WWMH during the Financial Year 2018-2019, which was used for allotment of 8333 equity shares of Rs.10 each at a premium of Rs.11,510/- per share as against the allotment of share of Rs.10/- at face value only to the promoters. Apparently, much higher than valued by RBI. The reason for charging huge premium on allotment of share seems to deliberately avoid the restrictions/cap of FDI in the digital news website at 26% of the capital, as well as, to avoid Government approval for such FDI. The investor Company WWMH was incorporated in USA giving the address of the Chartered Accountant and the Company was reported as cancelled due to non-payment of tax as on 01.06.2017. It shows that this Company had received FDI of Rs.9.59 Crores from WWMH, after a gap of more than one year from the date when this Company was cancelled. The reason for incurring such huge losses was excessive payment of consultancy, salary and rent. For example, salary/consultancy fee of Rs.3.82 Crores and Rs.1.12 respectively was paid during the Financial Year 2018-2019 even when the total revenue of the Company was Rs.1.10 Crore. More than 45% of FDI was actually diverted / siphoned-off for the payment of Salary/Consultation fees, rent and other such expenses of Promoters/Journalists/Employees associated with the Company. *Prima facie* these facts suggested that the FDI was actually intended to make the payments for ulterior motives clandestinely. The above news portal has violated the FDI law and other laws of the country and



caused loss to the exchequer. Hence, the FIR was registered and the investigations initiated.

22. During the course of investigation, Reply from the RBI was received wherein it was indicated that as per the Form FCGPR, the foreign remittance was under automatic route and there was no delay in issue of shares as well as reporting, as per the extant FEMA Regulations in case of *M/s PPK New Click Studio Pvt. Ltd.*

23. The scrutiny of accounts of *M/s PPK New Click Studio Pvt. Ltd.*, revealed that the account was opened on 13.02.2018. Alleged money of FDI of Rs.9.59 Crores was transferred on 11.04.2018. Further, Fund from various foreign entities, was received viz an amount of Rs.23.51 Crores from *Justice and Education Fund Inc. of Amercia*, Rs.62.43 Lacs from the *Tri-Continental Ltd.*, Rs.2.89 Lakh from *GSPAN*, Rs.2.0 Lakh from *Centro Popular* and Rs.2.27 Lakh from *Viva Salud*. All these companies transferred foreign fund into the account of ICICI Bank of *M/s PPK News Click Studio Pvt. Limited*, till October, 2020. Further, the Applicant had joined the investigations on 07.07.2021 and provided Replies to the query. The documents submitted by him are being verified from Foreigners Division (FCRA), MHA. Further investigation is in progress.

24. *The Anticipatory Bail is, therefore, vehemently opposed.*

25. *A Reply to the status report has been filed by the Respondent* wherein it is asserted that the status report reveals that the RBI responded to the EOW and no violation of any FEMA regulations was pointed out in the transactions of the Company/*M/s PPK Newslick Studio Pvt. Ltd.* It is also asserted that the Applicant has joined the investigation on 07.07.2021 and



submitted the relevant documents, thereby making it evident that the Applicant is cooperating with the investigation.

Submissions heard and the record perused.

26. The virtue of Personal Liberty is such that the Constitution protects it through Article 21. It is not a casual right which can be tampered with without serious considerations. The Apex Court has expressed the value of upholding Personal Liberty in a catena of judgments.

27. As observed by a coordinate Bench of this Court in Anil Mahajan vs Collector of Customs, 2000 (53) DRJ, the object of Bail is to secure attendance of the Accused at the trial, take judgment, and serve a sentence if the Court punishes him with imprisonment. But Bail cannot be withheld as a punishment.

28. The main contention of the Applicant is that the Petition for quashing of FIR is already pending. The protection in this Case has been granted against any coercive steps *vide* detailed Order dated 07.07.2021.

29. The FIR has been registered in the year 2020 in which the investigations are still on-going. The Applicant has joined the investigations and made available on the papers. The evidence in the present Case is essentially documentary nature and there is little likelihood of it being tampered or the witnesses being influenced by the Applicant. The Applicant is 75 years old and there is little likelihood of his absconding from the process of law.

30. Considering the nature of allegations and the aforesaid factors, it is directed that in the event of his arrest, the Petitioner/Accused shall be



admitted to Anticipatory Bail by the Investigating Officer/Arresting Officer, subject to the following conditions:-

- (i) The Petitioner/Accused shall furnish a personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the Investigating Officer/Arresting Officer.
- (ii) The Petitioner/Accused shall join the investigations, as and when called by the Investigating Officer and shall co-operate during the investigations.
- (iii) The Petitioner/Accused shall furnish his cell-phone number to the Investigating Officer on which he may be contacted at any time and shall ensure that the number is kept active and switched-on at all times.
- (iv) The Petitioner/Accused shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case.
- (v) The Petitioner/Accused shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

31. The Petition stands disposed of in the above terms. The Pending Application(s), if any, also stand disposed of.

32. Copy of the Order be sent to the learned Trial Court for compliance.

(NEENA BANSAL KRISHNA)
JUDGE

2025:DHC:5976



JULY 23, 2025/RS