

## JSA Prism White Collar Crimes

May 2025

### Supreme Court of India denies anticipatory bail in an economic offence for evasion of judicial process

On April 9, 2025, a 2 (two) judge bench of the Hon'ble Supreme Court of India ("**Supreme Court**") in the case of ***Serious Fraud Investigation Office vs. Aditya Sarda***<sup>1</sup> held that accused persons who evade judicial process and obstruct the execution of warrants, especially in serious economic offence cases, are not entitled to the privilege of anticipatory bail.

#### Brief facts

The Serious Fraud Investigation Office ("**SFIO**"), a statutory body established under the Companies Act, 2013 ("**CA 2013**"), was directed by the Ministry of Corporate Affairs ("**MCA**") in June 2018 to investigate 125 (one hundred and twenty-five) companies of the Adarsh Group, later expanding to 20 (twenty) more companies and 2 (two) individuals. The core entity, Adarsh Credit Cooperative Society Limited ("**ACCSL**"), was managed and controlled by Mukesh Modi, his family and his associates.

ACCSL accepted deposits from its members, who were mostly low to middle income individuals. ACCSL operated over 800 (eight hundred) branches, had 20,00,000 (twenty lakh) members, 3,70,000 (three lakh seventy thousand) advisors, and held deposits to the tune of INR 9,253 crore (Indian Rupees nine thousand two hundred and fifty-three crore) as of May 2018.

As per the SFIO investigation, it was revealed that ACCSL illegally advanced loans amounting to INR 1,700 crore (Indian Rupees one thousand seven hundred crore) to 70 (seventy) Adarsh Group companies and others, *inter alia* violating rules that companies cannot be members of a multi-state cooperative society. The outstanding illegal loans stood at INR 4,120 crore (Indian Rupees four thousand one hundred and twenty crore) as of March 2018. The SFIO alleged that these loans were obtained using forged documents, with directors siphoning off funds and misrepresenting them in company balance sheets.

Following the investigation, the SFIO filed a criminal complaint before the Special Court, Gurugram, naming 181 (one hundred and eighty-one) accused under various provisions of the Companies Act, 1956 ("**CA 1956**"), CA 2013, Limited Liability Partnership Act, 2008 ("**LLP Act**") and Indian Penal Code, 1860 ("**IPC**"). The court took cognisance, issued bailable and then non-bailable warrants, and initiated proclamation proceedings as many accused evaded service.

Despite repeated rejection of anticipatory bail by the Special Court, several accused were granted anticipatory bail by the High Court of Punjab and Haryana ("**P&B HC**") in March and April 2023, which became the subject of challenge before the Supreme Court in these connected appeals.

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<sup>1</sup> SLP (Crl.) No.13956 of 2023

## Issues

1. Whether the P&B HC erred in granting anticipatory bail to the accused persons who had repeatedly evaded the judicial process and were declared proclaimed offenders under Section 82 of the Code of Criminal Procedure, 1973 (“CrPC”), despite the rejection of their bail applications by the Special Court?
2. Whether the P&B HC disregarded the mandatory statutory conditions for bail under Section 212(6) of CA 2013, particularly in cases involving serious economic offences under Section 447 of CA 2013?

## Analysis and findings

The Supreme Court, in the batch of appeals, set aside the anticipatory bail granted by the P&B HC to several accused who had persistently evaded the judicial process.

The Supreme Court while observing that the accused had repeatedly avoided execution of bailable and non-bailable warrants and proclamation proceedings, even after their anticipatory bail applications were rejected by the Special Court, rejected the defence that the accused were unaware of the proceedings, noting that their own anticipatory bail applications proved otherwise.

The conduct of the accused, deliberately concealing themselves and not appearing before the Special Court, was found to be a brazen attempt to stall the criminal proceedings and obstruct the administration of justice.

Emphasising the special nature of economic offences, the Supreme Court reiterated that such cases “*constitute a class apart*” due to their deep-rooted conspiracies and grave impact on public funds and the economy. The Supreme Court further held that the privilege of anticipatory bail, is not available to those who defy the law and judicial process. When warrants or proclamation proceedings are issued, the accused is not entitled to seek anticipatory bail except in extreme, exceptional cases.

The Supreme Court found that the P&B HC had disregarded the mandatory twin conditions for bail under Section 212(6) of CA 2013 viz. (a) that the public prosecutor must be given an opportunity to oppose bail and (b) the court must be satisfied that there are reasonable grounds for believing the accused is not guilty and unlikely to commit an offence while on bail. The P&B HC’s orders are therefore passed in “*utter disregard*” of these requirements and the accused’s conduct, were held to be perverse and untenable. The Supreme Court found that the accused had persistently evaded execution of warrants and avoided appearance before the Special Court, despite being fully aware of ongoing proceedings. This conduct was deemed a clear obstruction of justice and a valid ground to deny anticipatory bail.

Accordingly, the Supreme Court set aside the impugned anticipatory bail orders and directed the accused to surrender before the Special Court within 1 (one) week. Any future bail applications are to be decided strictly in accordance with Section 212(6) of the CA 2013.

## Conclusion

The Supreme Court has reaffirmed that economic offences involving large-scale fraud and public fund siphoning require a distinct and rigorous approach to bail. Such offences are considered grave, given their wide-ranging impact on the financial health of the country and public trust in financial systems.

Section 438 of the CrPC empowers courts to grant anticipatory bail, but this discretion must be exercised judiciously and in accordance with established legal principles, especially in cases involving serious economic offences. Such relief should not be granted routinely, and courts must carefully consider factors like the conduct of the accused, the gravity of the allegations, and any attempt to evade the legal process before granting anticipatory bail.

The judgment reiterates that anticipatory bail is an extraordinary remedy and not a matter of right, especially in cases where the accused have been declared absconders or proclaimed offenders under Section 82 of the CrPC. Relief of this nature is reserved only for exceptional circumstances.

The Supreme Court stated that accused persons are duty-bound to cooperate with trial courts and comply with the judicial process. Attempts to delay or derail proceedings by avoiding summons or warrants amount to obstruction of justice and will not be condoned.

The present judgment brings about stricter conditions for bail in relation to economic offences involving in financial markets and systems.

### **White Collar Crimes & Investigations Practice**

JSA has a well-established and extensive White-Collar Crimes and Investigations practice which assists clients in dealing with diverse issues, matters and investigations arising in relation to fraud, white collar crimes and violation of internal codes of conduct. We represent and advise domestic and multinationals corporates in India and across the globe. The AWCCI practice also complements our other practice areas which provide legal advice to corporates on diverse matters, including representation before other regulators such as the Reserve Bank of India (RBI), the Ministry of Corporate Affairs (MCA), the Department of Industry Policy and Promotion (DIPP) and the Securities & Exchange Board of India (SEBI) and the Directorate of Enforcement (ED) under the (Indian) Prevention of Money Laundering Act, 2002 (PMLA).

Our white-collar crimes litigation team routinely represent clients from across industries and sectors in different fora including all courts, tribunals and judicial bodies in India, along with arbitrations and other forms of dispute resolution.

**This Prism has been prepared by:**



**Hormuz Mehta**  
Partner



**Virgil Braganza**  
Senior Associate



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