

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**+ BAIL APPLN. 572/2010 & CRL.M.(BAIL) 459/2010**

Reserved on: 24<sup>th</sup> May, 2010  
% Pronounced on: 31<sup>st</sup> May, 2010

**H. B. CHATURVEDI** ..... Petitioner

Through: Mr Sidharth Luthra, Sr. Adv. with  
Mr Aaroohi Bhalla, Adv.

*versus*

**C.B.I.** ..... Respondent

Through: Ms Sonia Mathur and Mr Sushil  
Kumar Dubey, Advs. with Mr A.K.  
Tripathi, Inspector, CBI.

**CORAM:**  
**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

- |    |                                                                       |      |
|----|-----------------------------------------------------------------------|------|
| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the Reporter or not?                                | Yes. |
| 3. | Whether the judgment should be reported in the Digest?                | Yes. |

**SIDDHARTH MRIDUL, I**

**1.** This is a petition under Section 439 of the Code of Criminal Procedure (CrPC) for grant of bail in the case registered vide RC No. BDI/2009 E 0005 under Section 120B read with Sections 420, 468 and 478 of the Indian Penal Code (IPC). The petitioner was arrested by the Central Bureau of Investigation (CBI) on 19<sup>th</sup> February, 2010 and remained in police custody till 27<sup>th</sup> February, 2010. The petitioner has been in judicial custody thereafter and has been chargesheeted along with five other co-accused in a case of defrauding the Industrial Development Bank of India (IDBI).

2. Briefly stated the facts of the prosecution case are that the petitioner along with Sanjay Chaturvedi, Sumit Chaturvedi, Amit Chaturvedi, Praveen Juneja all of M/s Shamken Multifab Ltd (SML) and M/s Shamken Multifab Ltd and other unknown persons are parties to a criminal conspiracy during the year 2000-01 in the matter of obtaining Rupee Term Loan (RTL) of Rs.15 crores from the IDBI by submitting false information and forged documents showing utilization of the loan proceeds of Rs.15 crores and siphoning off all the funds, so received from the IDBI, for purposes other than the purpose for which the loan was sanctioned and thereby cheating the IDBI. The prosecution states that the above named accused persons in criminal conspiracy prepared and used forged documents as genuine i.e. Chartered Accountants Certificate, No Lien Account Statements of the bank, invoices showing purchase of machines, while in fact no equipment/machinery was purchased from the said loan proceeds and the amount was diverted for purposes other than the purpose for which the loan was sanctioned. The company had faxed forged/false invoices of M/s Sulzer and M/s Staubli on 13<sup>th</sup> February, 2001 to the IDBI from the Fax Number owned by H.B. Chaturvedi and as per the vouchers the deliveries have been made before June, 2000 and all the equipments are imported against LCs. According to the CBI these forged invoices detail the basis on which the accused persons claimed the disbursement of term loan from the IDBI and ultimately received the payment. Thus the accused availed the term loan facility of Rs.15 crores from the IDBI by furnishing false and fabricated statements of No Lien Account and thereby inducing the bank to release the loan

instalments. Further, the loan amount so obtained was siphoned off by them by transferring the amount to other group accounts of the company and to clear their other outstandings.

**3.** The petitioner filed an application for grant of bail which was dismissed by the court of the Chief Metropolitan Magistrate vide order dated 4<sup>th</sup> March, 2010 on the ground that the investigation is still at a preliminary stage and if the accused is admitted to bail there is every likelihood that relevant documents required for the purpose of investigation and for unearthing the entire fraud alleged to have been committed by the accused persons may never see the light of the day as there is every likelihood that accused will tamper the witnesses and destroy the evidence.

**4.** The petitioner thereafter filed an application for grant of bail before the Additional Sessions Judge which application was dismissed vide order dated 17<sup>th</sup> March, 2010.

**5.** The petitioner feeling aggrieved has filed the present application seeking grant of bail to which status report has been filed by the CBI.

**6.** The learned senior counsel, Mr Sidharth Luthra, appearing on behalf of the petitioner, first submitted that the petitioner, who is 76 years of age, is a chronic heart patient and has been suffering from coronary heart disease since 1998 with 100 per cent blockage in the major arteries resulting in no blood supply to the specific heart areas thereby lowering the heart efficiency. Also, that the petitioner

requires regular medical attention as his heart efficiency is merely 25 per cent and also that the petitioner has been advised that a device known as "Intra Cardiac Defibrillator (ICD)" needs to be inserted into the body of the petitioner. Furthermore, the petitioner is a high risk patient prone to sudden cardiac death due to ventricular fibrillation and the stress of custody is likely to impact his condition negatively.

7. Learned senior counsel appearing on behalf of the petitioner then argued that the charge sheet has been filed and cognizance taken on 22<sup>nd</sup> May, 2010 and that the petitioner is, therefore, not required for any purpose. It was next argued on behalf of the petitioner that the petitioner has been in judicial custody since 28<sup>th</sup> February, 2010 and has not been required by the CBI for any purpose and that the evidence has already been collected qua the petitioner. It was lastly urged that prior to the arrest of the petitioner amount had already been paid to the IDBI and that an scheme of arrangement under Section 391 of the Companies Act, 1956 has been filed which is pending before the Hon'ble Allahabad High Court.

8. Per contra, it is argued by Ms Sonia Mathur, counsel appearing on behalf of the CBI that the trial court has ordered further investigation and that the petitioner is the Chairman-cum-Managing Director of the company that has defrauded the IDBI to the tune of Rs.15 crores. The learned counsel has also contended that the present is an economic offence which stands on a different footing and that, therefore, bail should not be granted to the petitioner. The learned counsel further contended that the medical condition of the petitioner

is being monitored by the Jail Authorities and the regular review of the petitioner along with prescribed medication are being provided to him. It has been furthermore contended on behalf of the learned counsel for the CBI that by simply extending a proposal of settlement may absolve an accused and the company from civil liability but it can in no manner be said to absolve them from their criminal liability.

9. Before proceeding to weigh the relative contentions of the counsel for the parties it would be necessary to extract the relevant portions of the judgments relied upon by them:

- (i) In ***Anil Mahajan v. Commissioner of Customs & ANR., 84 (2000) DLT 854***, this court after considering the judgments, *inter alia*, in *Gurcharan Singh & Others v. State (Delhi Administration)*, AIR 1978 SC 179 and *Gudikanti Narasimhulu and Others v. Public Prosecutor, Air 1978 SC 729*, summarized the legal position as follows:

**"14.** The legal position emerging from the above discussion can be summarised as follows :

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

and properly defend himself than if he were in custody. Hence grant of bail is the rule and refusal is the exception.

- (c) The object of bail is to secure the attendance of the accused at the trial. The principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment.
- (d) Bail is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted.
- (e) Judges have to consider applications for bail keeping passions and prejudices out of their decisions.
- (f) In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in Section 437(1) of the Criminal Procedure Code. But the said discretion should be exercised judiciously.
- (g) The powers of the Court of Session or the High Court to grant bail under Section 439(1) of Criminal Procedure Code are very wide and unrestricted. The restrictions mentioned in Section 437(1) do not apply to the special powers of the High Court or the Court of Session to grant bail under Section 439(1). Unlike under Section 437(1), there is no ban imposed under Section 439(1) against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. However while considering an application for bail under Section 439(1), the High Court or the Court of Sessions will have to exercise its judicial discretion also bearing in mind, among other things, the rationale behind the ban imposed under Section 437(1) against granting bail to persons accused of offences punishable with death or imprisonment for life.
- (h) There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. The answer to the question whether to grant bail

or not depends upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

- (i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation etc. In view of so many variable factors the considerations which should weigh with the Court cannot be Exhaustively set out. However, the two paramount considerations are: (i) the likelihood of the accused fleeing from justice and (ii) the likelihood of the accused tampering with prosecution evidence. These two considerations in fact relate to ensuring a fair trial of the case in a Court of justice and hence it is essential that due and proper weight should be bestowed on these two factors.
- (j) While exercising the power under Section 437 of the Criminal Procedure Code in cases involving non-bailable offences except cases relating to offences punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favor of granting bail subject to sub-section 3 of Section 437 with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.
- (k) If investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be

refused in order to ensure a proper and fair investigation.

- (l) If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence he can be refused bail in order to ensure a fair trial of the case.
- (m) The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.
- (n) For the purpose of granting or refusing bail there is no classification of the offences except the ban under Section 437(1) of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail and when there is no statute prescribing a special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other non-bailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences.
- (o) Law does not authorise or permit any discrimination between a foreign National and an Indian National in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions which are necessary to ensure that the accused will be available for facing trial. It cannot be said that an accused will not be granted bail because he is a foreign national."

- (ii) In Bail Application No. 2179/2009 pronounced on 21<sup>st</sup> December, 2009 a Single Bench of this Court referring to

the decision in *State of Gujarat v. Mohanlal Jitamalji Porwal and Anr.*, AIR 1987 SC 1321, extracted the relevant portion thus:

“The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.”

In the said judgment the Single Bench also noticed the judgment of the Hon'ble Supreme Court in *Suresh Chandra Ramanlal v. State of Gujarat*, 2008 (7) SCC 591, wherein “a case involving cheating and forgery in respect of funds of a bank, the Hon'ble Supreme Court even while granting bail on verified medical grounds, imposed a condition that he would deposit a sum of Rs.40 lakhs with the bank in four monthly instalments. This was despite the fact that in the case before the Hon'ble Supreme Court, there were as many as 49 accused and each one of them had already been enlarged on bail and that included the Chairman, Vice-Chairman, Managing Director, 11 other Directors of the bank and the case of the appellant, Ex. Vice-Chairman of the bank, was that he had resigned in the year 1999, whereas the FIR was registered in the year 2002.”

**10.** In the instant case the FIR was registered on source information and before registration of the present FIR preliminary enquiry was conducted by the CBI. It has nowhere been disclosed on whose statement the FIR was registered and no one from the bank from which loan was availed came forward alleging that the bank has been cheated by the accused persons. In the order passed by the ACMM at the time of hearing submissions on the aspect of cognizance in the case, it has been observed that the Investigating Officer (IO) has not been able to point out even an iota of evidence in the testimony of the bank witnesses exhibiting that they were deceived by the inducement given by the accused persons. The IO has further not clarified, if, as per the statements given by the bank officials, the machines were working there then how and from where they were procured and if no machine was procured then how the bank officials given their report. The learned ACMM has, therefore, opined that the above instances show that the investigation has not been conducted completely and the matter requires further investigation on the aspect of involvement of the bank officials. It is in this behalf that the trial court has ordered further investigation.

**11.** Another aspect is that the petitioner has been in judicial custody, after initial police custody of one week, for a period over 90 days and has already been chargesheeted. The petitioner is 76 years of age and admittedly is a chronic heart patient suffering from coronary heart disease since 1998. Further, the petitioner is a high risk patient prone to sudden cardiac episode due to ventricular fibrillation and has been recommended the insertion into his body of

an “Intra Cardiac Defibrillator”. Also, nothing has been urged on behalf of the CBI to raise a reasonable apprehension that the petitioner will tamper with the prosecution evidence if he is released on bail. Further, nothing has been urged to suggest that the CBI has a reasonable apprehension that the petitioner will flee from justice if he is released on bail. From the material placed on record and the conduct of the petitioner in appearing before the CBI when summoned before his arrest, it is clear that the petitioner is an established businessman with roots in the Society.

**12.** Bail, it has been held in a catena of decisions, is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted. Furthermore, there is no justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. It cannot, therefore, be said that bail should invariably be refused in cases involving serious economic offences.

**13.** The charge sheet in the present case has been filed and cognizance taken on 22<sup>nd</sup> May 2010 and the petitioner is, therefore, not required for any purpose. It is also seen that evidence has already been collected qua the petitioner and the CBI has not thought it appropriate to ask for custodial interrogation of the petitioner during the long period of 90 days when the petitioner was in judicial custody. One more consideration which weighs with the Court is that a scheme

of arrangement under Section 391 of the Companies Act, 1956 has been filed by SML Company and is pending finalization before the Hon'ble Allahabad High Court. Under the scheme of arrangement the IDBI and the petitioner were already agreed on the terms and conditions for the repayment of the loan extended to the company at the instance of the petitioner and other co-accused.

**14.** Having regard to the entire facts and circumstances of the case, I do not find any justification for detaining the petitioner in prison any longer. Therefore, the petitioner who is in custody since 19<sup>th</sup> February, 2010 should be released on bail on furnishing a personal bond in the sum of Rs.5,00,000/- (Rupees five lakhs) with two sureties in the like amount to the satisfaction of the trial court and subject to the conditions that (a) he shall surrender his passport, if not already seized; (b) he shall not leave the country without permission of the trial court; and (c) he shall not tamper with the evidence or do any act which will create a reasonable ground to assume that the petitioner is trying to create hurdle in the fair investigation or trial of the case which will entail cancellation of his bail.

**15.** With the above directions the bail application is allowed. However, expression of any opinion hereinbefore may not be treated as an expression on the merits of the case.

**SIDDHARTH MRIDUL, J.**

**MAY 31, 2010**

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