

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

+ BAIL APPN. No.104/2012

Date of Decision : 10th July, 2012

SUNIL GROVER

..... Petitioner

Through: Mr. Amit Mahajan, Adv. along
with the petitioner in person

Versus

STATE

..... Respondent

Through: Mr. Sunil Sharma, APP

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J.

1. This is a petition filed by the petitioner under Section 439 of Cr.P.C. for grant of bail.
2. The facts of the case are that one Salim Khan, who was one of the investors, was duped by the accused persons on seeing an advertisement published by RKG Trade for Profit in The Economic Times of April, 2009. On seeing the said advertisement, he went to the office of the accused persons, where he met both the accused and his father. They told him that their company, RKG Trade for Profit was a member of Multi Commodity Exchange of India Ltd. Both asked Salim Khan to deposit a sum of Rs.50,000/- which would fetch an interest @ 7% per month. An agreement to that effect was entered into between the parties.

Salim Khan deposited a sum of Rs.1,00,000/- through cheque in May, 2009 in the office of the accused persons. The accused persons managed the portfolio of Salim Khan. Whenever he met the accused persons, he was given assurances and was persuaded to deposit further amounts of money. He was swayed by these assurances and his father also deposited a sum of Rs. 5,30,000/- with the office of the accused. Till December 2009, the complainant received the payments through cheques. However, the cheque for the month of January, 2010 had bounced and thereafter the money was not paid. The accused persons had allegedly closed their office and ran away.

3. On the basis of this statement of the complainant, an FIR was registered for cheating and various other offences. During the course of interrogation of the accused, computers and other material of the accused persons were seized. The investigation of this case was transferred to EOW Cell (Crime Branch) on 8.5.2010 and thereafter, a number of persons came forward and made allegations against the accused. About 188 complaints had been made by the investors who had purportedly been duped by the accused persons for more than Rs.1,00,00,000/-. The Report under Section 173 Cr.P.C. shows that more than 1500 investors

had invested approximately Rs.30,00,00,000/- in the concern of the accused persons.

4. The petitioner had filed repeated bail applications before the Court below which did not yield any result, after which the petitioner's bail application was rejected by Mr. H.S. Sharma, the learned ASJ on 17.1.2012, whereupon the present bail application has been filed.
5. The present bail application was listed before the High Court on 24.1.2012 and vide order dated 27.1.2012, this Court had granted interim bail to the petitioner, in the interest of investors, on his furnishing a Personal Bond in the sum of Rs.1,00,000/- with two sureties for the like amount to the satisfaction of the learned Trial Court, subject to the condition that he shall dispose of his property i.e. space in a Mall at Gurgaon (Haryana) owned by him, by way of a public auction and deposit the transaction amount by a demand draft and not by cash. The said order reads as under:-

*"CrI.M.A. No. 959/2012 (Exemption)
Exemption allowed, subject to all just
exceptions.
The application is disposed of.*

*BAIL APPLN. 104/2012
Consequent to order dated 24th January,
2012, the father of the petitioner is*

present in the Court. Learned counsel for the petitioner, on instructions from the father of the petitioner, submits that he shall execute all the documents which are required for disposal of the property, to the petitioner, thereafter, he would dispose of the property i.e., the Mall at Gurgaon (Haryana) and deposit the entire amount in the form of FDR.

2. Learned APP on the other hand submits that the claimants are 822 and the total claim is more than Rs.22 Crore. Therefore, until and unless the petitioner gives an advertisement in a paper to sell the aforesaid property by way of demand draft (no cash transaction).

3. Keeping the welfare of the investors into view and in the interest of justice, the petitioner shall be released on bail on furnishing personal bond in the sum of Rs.1 lac with two sureties of the like amount to the satisfaction of the trial court with the following conditions:

1. As stated by the father of the petitioner, who has been produced by the Jail Authorities in pursuance to order dated 24th January, 2012, he shall give all rights to the petitioner so that he may dispose of the property.

2. The petitioner shall give an advertisement in the leading newspaper including at least one local newspaper in English and Hindi, of Gurgaon, regarding the sale of the property within a fortnight mentioning that the transaction shall be done by way of demand draft and no cash will be accepted.

4. The IO of the case is directed to supply the photocopy of the documents, if required by the petitioner.

5. The IO is further directed to release

the original documents of the property mentioned above at the time of transfer or at the time of total transaction amount being received.

6. List the matter on 12th March, 2012.

7. Order dasti.

Sd-/

Suresh Kait, J

January 27, 2012"

6. On 12.3.2012, this Court observed that the bonafides of the petitioner were suspicious as the advertisement which was given by him was in 'Business Standard' (Hindi and English Edition), which hardly has any circulation and accordingly he was directed to procure a firm offer for purchase of property in question and the matter was listed on 16.4.2012. From 12.3.2012, nearly 4 months have gone by, but the petitioner has not shown any inclination or seriousness in disposing of his property. He has neither advertised for the sale of the property owned by him in a Mall in Gurgaon nor has he taken any positive step in this direction by advertising afresh in some National Daily which has a wide circulation, like The Hindustan Times or The Times of India, in English or Hindi. He has also not got any firm offer from any bidder who would be purchasing his property, so as to deposit the sale consideration with the Registrar-General of this

Court, in order to repay the money taken from the investors or to show his bonafides.

7. Two facts are important here:- First, that the petitioner has cheated nearly 1500 investors of their hard-earned money by promising them a lucrative return and all this amount has been invested by the petitioner in the purchase of a Mall or a space in a Mall in Gurgaon. It may also be pertinent to mention here that the complaints/claims, which had been lodged by different investors with the local police, shows that the monies, of which these investors have cumulatively been cheated, is to the tune of Rs.30 crores, approximately. This mentality on the part of the petitioner and his father has been actuated essentially with the intention of earning a fast buck, as was observed by the learned Sessions Judge.
8. I have heard the learned counsel for the petitioner as well as the learned APP.
9. The learned counsel for the petitioner has vehemently contended that the accused has been in custody for more than 20 months and therefore, he must be permitted to retain the benefit of his interim bail, as his continued incarceration is not likely to serve any purpose. He has also relied upon judgments of *Sanjay*

Chandra -vs- CBI, 2011(13) SCALE 107 and *Suresh Kalmadi -vs- CBI, 2012(1) JCC 734* to contend that in both these cases, the financial implication of the amount of which the allegations of cheating were made, were much higher and therefore, in case they could be released on bail, the petitioner certainly deserves to be enlarged on bail. The learned counsel for the petitioner has also relied upon an order passed by the Division Bench in WP(C) 3892/2011, wherein the Division Bench, headed by Hon'ble Mr. Justice A.K. Sikri, the Acting Chief Justice, while placing reliance on the judgment of the Apex Court in *R.D. Upadhyay -vs- State of A.P. & Ors., 1996(3) SCC 422*, had ensured that the persons who are accused of various offences of attempt to murder, kidnapping, theft, cheating, extortion, grievous hurt, criminal breach of trust, molestation, counterfeiting and Arms Act and who had undergone substantial incarceration for a considerable period of time as specified in the said order and who are awaiting the conclusion of the trial and further on account of their indigence, are not able to engage counsel, a general order of bail was passed, giving therein the guidelines. On the strength of these judgments, the learned counsel has contended that the petitioner having remained in jail deserves to

be given the said benefit permanently.

10. The learned APP has vehemently opposed the grant of bail to the petitioner or the confirmation of interim bail to the petitioner on the ground that the petitioner along with his co-accused father in a calculated, pre-determined and a very sophisticated manner carried out an operation of gaining the trust of the members of the general public and invited them to invest in their company by promising them lucrative returns which have not been adhered to and all these investors, who are 1500 or so in number, having invested their hard earned money which is to the staggering amount of Rs.20 to 30 crores, cannot be taken lightly, as such persons show the repeated propensity to commit such offences again and have scant respect for law. The learned APP has also contended that the petitioner was released on interim bail on the ground that he would dispose of his property situated in a Mall in Gurgaon, as suggested by him. He was extended the benefit of interim bail, subject to the condition that he complies with certain conditions imposed by the Court which have also not been complied with, inasmuch as neither the advertisement has been given in some respectable paper which has a wide circulation, which would have been helpful in

identifying the prospective purchaser of the property owned by them nor have they been able to identify and got a firm offer from any person in this regard of their own which clearly shows that the very suggestion given by the petitioner to the Court that he would dispose of the property and further that his father had also authorized him to do so has misled the Court and taken it for a ride by their sweet talks. It has accordingly been suggested that the gravity of the offence is so serious that it does not deserve to be a case where the benefit of bail should be granted.

11. I have considered the respective contentions carefully and have also gone through the judgments cited by the learned counsel for the petitioner.
12. So far as the judgments of the Apex Court in *Sanjay Chandra's* case and *Suresh Kalmadi's* case (supra) are concerned, no doubt, these reinforce and revisit the basic principles of law with regard to the grant of bail. The 'bail is the rule' and the 'jail is an exception' and further that while granting the bail to the accused person, not only the gravity of the offences is to be seen, but also the fact as to whether accused would be available to face the trial or flee away from the processes of law. He should not have propensity to win over the witnesses or tamper with the

evidence. I am also cognizant of the fact that in both these cases cited by the learned counsel for the petitioner, the quantum of money allegedly involved was much higher than the amount of money involved in the instant case, but there is a fundamental difference between these two sets of cases which have been cited by the learned counsel for the petitioner and the present case. In the cases, which have been cited by the learned counsel for the petitioner, no member of the general public was affected directly, rather it was the public ex-chequer which was put to loss by not holding auction of government resources or by over invoicing lenders. This is totally different from the facts of the present case where the petitioner floats advertisements and invites the offers from the members of the public to invest money in their schemes by promising them lucrative returns at regular intervals. He is able to gain their confidence and cheat them of their hard-earned money which ranges from Rs.1,00,000/- to Rs.10,00,000/-. This kind of activity ultimately shows a great deal of deliberation, preparation and operation which can be done only by an intelligent person and this whole exercise has been rightly observed by the learned Sessions Judge to be actuated by a mentality "to get richer overnight" at

the instance of the general public or investors. I would say that this is a mentality of a class of persons who have the capacity and the temerity to lead a lavish life and create assets at the miseries of the general public by making them invest their hard earned money with them. It will send a wrong signal in case the bail is granted to such persons. This tendency is to be curbed by denying the benefit of bail to such persons. In addition to this, in the instant case, the repeated attempts on the part of the petitioner to get himself bailed out had not yielded any result, as a consequence of which the petitioner has filed the present bail application in the High Court. The petitioner has even gone to the extent of misleading the Court by showing that he has all the intentions of selling his property erected from this ill-gotten money, so collected, and that he would deposit the sale proceeds received through demand draft, with the Registrar-General of this Court . It was required that he would get an advertisement published in the newspaper and take appropriate steps in this direction. Therefore, the Court had shown the indulgence by granting him interim bail only for the purpose of showing his bonafides in repaying the amount to the investors, as, all along, his claim was that it was not his intention to cheat

such a large number of people and that it was a civil transaction. But, unfortunately, despite expiry of a considerable time, the petitioner does not seem to have shown any willingness to do so. His actions have not been matching with the submissions which have been made in Court. Therefore, this was only a ploy to come out on bail. I feel that merely because he has been in custody for 20 months or merely because the bail was granted in *Sanjay Chandra* (supra) and *Suresh Kalmadi's case* (supra), it does not *ipso facto* result in the grant of a bail to a person who is also facing the allegations of cheating. The grant of bail in a non-bailable offence remains essentially a matter of discretion which is to be exercised by the Court, keeping the judicial principles in mind, namely, gravity of the offence and the implications thereof.

13. In my view, the gravity and the implication of the offence, in the instant case, has a far-reaching effect on a definite number of members of the public, who are around 1500 in number, as on date and more are adding by the day.

14. So far as the judgment of the Division Bench of this Court in the writ petition is concerned, that was an order passed in a general manner on a writ petition and not a specific bail order for the purpose of decongesting the jails where the persons who, on account of lack of proper legal advice or on account of indigence, were not able to furnish the securities, that a general order of bail was passed. Those guidelines do not apply to the present petition. Therefore, the very first parameter, that is the gravity of the offence and the implications thereof, dissuades this Court from extending the grant of bail to the petitioner by way of an interim measure on 27.1.2012. So far as the other two aspects of the matter, i.e., tampering with the evidence as well as fleeing away from the processes of law are concerned, I am not going into the same as the very first parameter is not satisfied.
15. Having regard to the totality of the circumstances, I do not feel that this is a fit case where the petitioner deserves to be enlarged on bail. Accordingly, interim bail dated 27.1.2012 is not extended. The petitioner is directed to surrender before the learned ACMM, New Delhi today itself, who shall act in accordance with law. A copy of the order is given to the petitioner free of cost. However, expression of any opinion

hereinabove shall not be treated as an expression on the merits of the case. The petitioner is given liberty to move an application for the grant of bail after the examination of material witnesses as the charge sheet has been filed.

V.K. SHALI, J

JULY 10, 2012

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