

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

% *Reserved on :19.11.2014*
Pronounced on :21.11.2014

+ **BAIL APPLN. 2308/2014**

SUNIL AGGARWAL Petitioner
Through : **Mr.Somnath Bhatri, Adv.**

versus

THE GOVT. OF NCT OF DLEHI Respondent
Through : **Mr.Neeraj Kumar Singh, APP for the State.**

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. By filing the present application under Section 439 Cr.P.C., the Petitioner is seeking bail in case FIR No.393/2014 under Sections 406/420/174-A/34 IPC, PS Sangam Vihar, Delhi.
2. The above noted FIR was registered on the basis of complaint made by Sh. Ram Vilas to the effect that he had been cheated of Rs.5.5 lacs and when he demanded his money, threat has been extended to him to kill him. He also reported that Anita Aggarwal and Sunil Aggarwal informed about a scheme under which they would pay him double the amount within three months. After selling his property as well collecting the amount of Committee, he paid Rs.7 lacs to them. After three months, when he contacted Anita Aggarwal and Sunil Aggarwal to have double of the amount, they handed over Rs.1.5 lacs to him and offered to pay Rs.12.5 lacs

in a few days. He continued making rounds for taking back his money. They threatened him to falsely implicate him in some case. Even call made to PCR had no effect as even the police officials who visited, threatened him. His face has also been shown to some persons with the threat that either he should forget the money or he would be killed.

3. On the basis of above complaint, the FIR No.393/2014 under Sections 406/420/174-A/34 IPC was registered at PS Sangam Vihar.

4. Status report has been filed by the State.

5. Chargesheet has already been filed in this case and as per the status report, both the accused were declared Proclaimed Offenders. While Petitioner had been arrested on 08.04.2013 as Proclaimed Offender, his wife is still absconding. Trial is at the initial stage as till date, only one witness has been examined.

6. I have heard learned counsel for the Petitioner as well as learned APP for the State and also gone through the record carefully.

7. The Petitioner is seeking bail on the ground that as per provisions of Section 437(6) CrPC, the trial is required to be concluded within 60 days, which has not been done in this case. Further, out of 32 witnesses, only one witness has been examined so far. It has been further submitted that this type of FIRs have been literally used as recovery proceedings. While referring to the order dated 30.06.2014 passed by learned Addl. Session Judge in Bail Appln. No.3966/2014, learned counsel for the Petitioner submitted that as per para 4 of the said order, out of 23 claimants, the Petitioner has settled with 19 claimants. He further submitted that the Petitioner is not having money to further settle the dispute and his three children are on the road with no one to take care of them for the reason that

his wife is absconding and he is in custody. Learned counsel for the Petitioner has submitted that the Petitioner has been languishing in jail for 1½ years and his family has immensely suffered due to this pre-trial incarceration, which is causing grave injustice to the Petitioner. He was compelled to pay money to the investors though these issues should have been decided by a Civil Court. Further there is no admissible evidence against the present Petitioner and trial is progressing at slow pace. The Petitioner is having clean antecedents and already remained in custody for about 1½ years and in these facts and circumstances, he may be ordered to be released on bail. Learned counsel for the Petitioner has relied upon the following case laws in support of his contentions :

- (i) ***S. Periammal & Ors. vs. The Inspector of police 2013(4) Crimes 331 (SC)***
- (ii) ***Dinbandhu vs. State of Bihar & Anr. 2011 (12) SCALE 1***
- (iii) ***Jagtar Singh & Anr. vs. State of Punjab & Ors. 2004 (7) SCALE 738***
- (iv) ***Ravinder Saxena vs. State of Rajasthan JT 2009 (15) SC 384***
- (v) ***Amarjit Singh vs. State of NCT of Delhi 2002 (1) JCC 465***
- (vi) ***Arnesh Kumar vs. State of Bihar & Anr. 2014 (8) SCALE 250***
- (vii) ***Ram Narayan Singh & Anr. vs. State of Bihar AIR 2000 SC 1945***
- (viii) ***Shailendra Kumar Upadhyay vs. State of U.P. 2009 (7) SCALE 438***

8. Learned APP for the State has drawn the attention of the Court the status report, wherein it is mentioned that:

‘During the course of investigation, statements of other 22 investors were also recorded, who alleged that they also have been cheated by the Petitioner on the same modus operandi. After dismissal of anticipatory bail from the Hon'ble High Court, both the accused ran away to avoid their arrest. Both accused were declared P.O. later on, the Petitioner was arrested on 08.04.2013. The other accused i.e. the Petitioner's wife still at large. After the completion of

investigation the charge sheet of the case has already been filed into the court and case is under trial in the Hon'ble Court of Sh.Navjeet Budhiraja, MM, Saket Court. One PW has been examined. The next date of hearing has been fixed for 19.12.2014. As per the trial Court record, 12 out of 23 investors have compromised the matter as their money have been paid and 11 investors are yet to be paid and their approx. Invested amount is Rs.40 lakh.'

9. Learned APP for the State has strongly opposed the prayer for grant of bail to the Petitioner on the ground that the Petitioner and his wife had cheated large number of innocent persons who had handed over their money to them under the belief that they would get double the amount within three months. It is further submitted that settlement was done by the Petitioner to enjoy protection from the Court from arrest and not under any pressure. It is further submitted by learned APP that since the Petitioner and his wife had cheated large number of innocent persons, every effort will be made to expedite the trial. It is also submitted that infact the past conduct of the Petitioner is such that he was declare Proclaimed Offender and his wife is also absconding, thus, there is no reason to enlarge the Petitioner on bail.

10. I have considered the submissions made by Mr.Somnath Bharti, learned counsel for the Petitioner and Mr.Neeraj Kumar APP for the State.

11. Before proceeding to deal with the submissions made by learned counsel for the Petitioner, it is necessary to refer to the various pronouncements relied upon by Mr.Somnath Bharti, Advocate to seek bail for the Petitioner in this case.

12. In ***S. Periammal & Ors. vs. The Inspector of police*** (Supra), anticipatory bail was granted by the Court subject to deposit of Rs.20 lacs as a condition and the dispute involved an amount of Rs.25 lacs. The Supreme

Court was of the view that the condition imposed was too stiff and the criminal proceedings are almost converted into recovery proceedings.

13. Case ***Dinbandhu vs. State of Bihar & Anr*** (Supra) relied upon by the Petitioner is again a case of grant of anticipatory bail in a case under Sections 192/193/196/200/406/420/467/468/471 and while granting anticipatory bail, a condition was imposed to the effect that in the partition suit, the alleged document, which is subject matter of the dispute in the case in which anticipatory bail was prayed, shall not be used by either party in support of their claim for partition.

14. In ***Jagtar Singh & Anr. vs. State of Punjab & Ors.***(Supra), while applying for anticipatory bail in a case of cheating and conspiracy, offer was made to deposit Rs.5.82 lacs to show the *bona fides* against the allegations of receiving Rs.6.22 lacs as a consideration for sending the Complainant abroad. It was also directed that the said amount was subject to condition that it would be paid to the Complainant only if settlement is arrived. There was no settlement between the parties despite the matter being referred to Lok Adalat. The High Court directed that the amount be paid to the Complainant despite there being no settlement. Thereafter the Supreme Court ordered that the amount voluntarily deposited to show *bona fides* and to obtain bail will not be returned to him till the order of bail continues.

15. Case ***Ravinder Saxena vs. State of Rajasthan*** (Supra) has been relied upon by the Petitioner on the ground that filing of chargesheet is no ground to deny anticipatory bail especially in view of the fact that the dispute involved therein was of purely civil nature.

16. In the case of ***Amarjit Singh vs. State of NCT of Delhi*** (Supra), the condition imposed while granting anticipatory bail was to deposit an amount

of Rs.15 Lacs in the form of FDR in the name of Trial Court. The Supreme Court observed that the condition imposed was unreasonable and the same was set aside.

17. Case ***Arnesh Kumar vs. State of Bihar & Anr.*** (Supra) relied upon by the Petitioner deals with power of arrest of police and when this power should be exercised in the cases involving offences punishable upto seven years.

18. Learned counsel for the Petitioner has relied upon ***Ram Narayan Singh & Anr. vs. State of Bihar*** (Supra) and submitted that in that case, the bail was granted by the Supreme Court observing that accused was in custody for nine months and the trial was proceeding at slow pace. In this case also, the Petitioner is in custody for about 1½ years and till date, only one witness has been examined.

19. In ***Shailendra Kumar Upadhyay vs. State of U.P. 2009*** (Supra) relied upon by the Petitioner, direction was given by the High Court to complete the trial within three months which could not be completed within the time given. State was also not in a position to give a timeframe within which trial could be completed and how many witnesses have been examined or left to be examined and in the above, circumstances, regular bail was granted.

20. So far as reliance placed upon ***S. Periammal & Ors. vs. The Inspector of police, Dinbandhu vs. State of Bihar & Anr., Jagtar Singh & Anr. vs. State of Punjab & Ors., Ravinder Saxena vs. State of Rajasthan, Amarjit Singh vs. State of NCT of Delhi, Arnesh Kumar vs. State of Bihar & Anr.*** (Supra) is concerned, it is nowhere the case of the Petitioner that he has been subjected to any unreasonable condition by the Court while considering his prayer for bail. It may be added here that the Petitioner is

seeking regular bail in the matter, which is being considered on its merits without subjecting him to any condition.

21. So far as placing reliance on *Ram Narayan Singh & Anr. vs. State of Bihar* and *Shailendra Kumar Upadhyay vs. State of U.P. 2009 (7) SCALE 438* is concerned, the bail order was passed in the peculiar facts and circumstances of the case and these two decision of Supreme Court do not lay down any legal principle so as to enable the Petitioner to seek bail merely because he is in custody for 1½ years and only one witness has been examined till date. However, the concern of the Petitioner that till date only one witness has been examined need to be addressed by the Trial Court and learned APP for the State appearing before this Court has also submitted that every effort would be made to expedite the trial.

22. In the instant case, the contents of FIR reveals that the Petitioner and his wife cheated large number of persons representing that their money would be double in three months but failed to pay as promised. The fact that the Petitioner has also been chargesheeted for committing the offence punishable under Section 174-A IPC disclosed that he had absconded after dismissal of anticipatory bail application by Delhi High Court and was later on arrested as Proclaimed Offender.

23. So far as contention of the Petitioner that in view of provisions of Section 437(6) Cr.P.C., if trial is not concluded within 60 days he is entitled to be released on bail is concerned, it may be noted here that such prayer was required to be made before learned Magistrate. The Petitioner has not placed on record the fact that he moved any application under Section 437(6) Cr.P.C. before learned Magistrate or copy of the order passed on such application.

24. The Petitioner though claims to be having clean antecedents, it is emerging on record that he had cheated large number of persons and out of total 23 claimants, he has settled with 19 claimants.

25. The Petitioner is involved in a case under Sections 406/420/174-A/34 IPC which can be termed as white collar crime. In the case of ***Nimmagadda Prasad Vs. Central Bank of Investigation, 2013 V AD SC 549***, the Hon'ble Supreme Court, while observing that bail shall be granted taking into consideration the facts and circumstances with gravity of offence, had also made observation about rising number of cases involving while collar crime.

The relevant paras of the report are as under:-

*“26) Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country’s economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In **State of Gujarat vs. Mohanlal Jitmalji Porwal and Anr.** (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-*

“5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. 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....”

27) While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof,

the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

28) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

26. When the case of the Petitioner is examined in the light of principles laid down above, I find that the conduct of the Petitioner is not such that he should be enlarged on bail just for the reason that he has three children to lookafter. It may be noted here that the Petitioner as well his wife both are accused in this case and wife of the Petitioner is still absconding. In view of his past conduct, chances of the Petitioner fleeing from justice in the given circumstances cannot be ruled out especially for the reason that he has been arrested on 08.04.2013 as Proclaimed Officer in this case. It may be observed here that the criminal case against the accused is on the basis of material which shall be proved against him during trial. At the stage of bail,

it is not for this Court to make any observation about the admissibility of evidence collected during investigation as this is required to be done by learned Trial Court at appropriate stage.

27. In view of above discussion, the bail application is hereby dismissed.

28. Any observations made hereinabove for the purpose of dealing with the contentions raised during hearing of the bail application shall not be deemed to be an expression on merits of the case.

PRATIBHA RANI, J

NOVEMBER 21, 2014

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