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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Order pronounced on 17.08.2022

+ BAIL APPLN. 1937/2022

RIYAZUDDIN

..... Petitioner

Through: Dr. Ashutosh, Ms. Fatima and Ms.
Monal, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. N.S. Bajwa, APP for State.

CORAM:**HON'BLE MR. JUSTICE TALWANT SINGH****Talwant Singh, J.:**

1. This petitioner has approached this Court for bail under Section 439 and Section 482 Cr.P.C. r/w Section 167(2) of the Cr.P.C.
2. As per the prosecution, brief facts of the case are that the petitioner was apprehended at DND Flyover on Yamuna River on 30.08.2021 on the allegations of being in possession of 4 notes of Rs.2000/- denomination, 16 notes of the denomination of Rs.500/- with one note of Rs.2000/- of original Indian currency, said to have been given by decoy customer. Further, two fake currency notes in the denomination of Rs.2000/- were produced by decoy customer which are said to have been purchased from the petitioner for a consideration of Rs.2000/-.
3. FIR No. 228/2021 was registered. Petitioner was arrested and a police remand of five days was taken on 30.08.2021. Thereafter, the petitioner was remanded to judicial custody except for the period when he was on interim bail due to illness of his wife.
4. As per the petitioner, part investigation was completed and on



27.10.2021, a charge-sheet dated 26.10.2021 was filed under Section 468//471/489C/120B IPC and it was stated that further investigation was still pending and upon completion of investigation, final charge-sheet would be filed. No offence under Section 420 IPC was made out till that date so the Court took cognizance of the offence punishable under Section 471/489B/489C/120B IPC.

5. On a specific query by the Court vide its order dated 18.04.2022, the ACP appeared on 19.04.2022 and made a categorical statement that further investigation in the matter was still pending. A supplementary charge-sheet was filed on 23.05.2022 for addition of offence punishable under Section 419 and 420 IPC. The learned Trial Court took cognizance of offence punishable under Section 420 IPC on 06.06.2022. An application dated 20.05.2022 under Section 167(2) Cr.P.C. was filed by the newly appointed counsel of the petitioner but the same was rejected by the learned Trial Court on 06.06.2022. The Trial Court had taken the arguments of the petitioner in respect of the pendency of investigation as filing of incomplete charge-sheet, which was not the contention of the petitioner.

6. The learned Trial Court subsequently took cognizance of the rest of the offences after filing of the supplementary challan by the police, which amounts to taking of cognizance second time, which is not permissible under Code of Criminal Procedure. It is also contended on behalf of the petitioner that judgement relied upon by the learned Trial Court on filing of incomplete charge-sheet in the impugned order dated 06.06.2022 was never brought to the notice of the learned counsel for the petitioner and he was deprived of representing his case effectively before the learned Trial Court, which resulted in passing of the impugned order, contrary to the settled



principles of law.

7. Under these circumstances, the petitioner has prayed for being admitted to bail under Section 167(2) of Cr.P.C.

8. Notice was issued. Status report has been filed.

9. In the status report the facts regarding the registration of the present case have been detailed. It was also mentioned that petitioner was already absconding in FIR No. 271/2021 under Section 489B/489C/34 IPC, registered at PS Jafrabad, Delhi.

9.1. During investigation an original Aadhar Card of the petitioner and one mobile phone were recovered from his personal search besides his other belongings. The Honda City car in which the petitioner came to the spot was searched and one coloured photocopy of another Aadhar Card bearing photo of the present petitioner but in the name of one Rohit S/o Sunil R/o H. No. 512, Lakshmi Nagar, Delhi was recovered which was found to be a forged one. The mobile *SIM* card was obtained by using the forged Aadhar Card and the petitioner also used the said forged Aadhar Card for staying in hotels with women. The currency notes were found to be fake as per the report from Currency Note Press, Nasik, Maharashtra. After completion of investigation, first charge-sheet was filed before the designated Court within the stipulated time period under Section 489B/489C/468/471/120B IPC.

9.2. During further investigation and as per the discussion with leaned APP, Section 419 & 420 IPC were also added. Efforts were made to verify the Aadhar Card from UIDAI, but the said Authority refused to share the information. The online verification was done which proved that the second Aadhar Card is forged one.

9.3. A supplementary charge-sheet under Section



489B/489C/419/420/468/471/120B IPC was filed. The investigation remains to be conducted only on the point of verification of recovered forged Aadhar Card, for which orders are to be taken from the High Court and the said part is pending. A person cannot have two Aadhar Cards with different details.

10. I have heard the learned counsel for the petitioner as well as the learned APP for State.

11. The main grudge, which emanates from the application moved on behalf of the petitioner, seems to be that the judgment relied upon by the learned Addl. Sessions Judge, while rejecting the statutory bail application on 06.06.2022 i.e., the judgement passed by a co-ordinate bench of this Court in ***Mohd. Arbaz vs, State of NCT of Delhi*** (CRL. Revision Petition - 1219/2019) dated 03.11.2020, was never brought to the knowledge of the learned counsel for the petitioner and no opportunity was granted to him to counter the said judgment. This grudge raised on behalf of the petitioner seems to be a genuine one as arguments were heard earlier and while passing the order dated 06.06.2022, the learned Sessions Judge has relied upon the said judgment in the matter of ***Mohd. Arbaz*** (supra). At least a chance ought to have been given to the learned counsel appearing for the petitioner to counter the said judgment and to rely upon any other judgment of this Court or superior Court in support of his contention.

12. Keeping this fact in view, the impugned order dated 06.06.2022 is hereby set aside. The learned Sessions Judge is requested to hear both the sides afresh and a chance be given to the counsel for the petitioner to cite any judgments to counter the judgments relied upon by the learned Sessions Judge, while passing the order dated 06.06.2022.



13. Similarly, an opportunity be also given to learned APP to rely upon any other judgement of this Court or of a Superior Court in support of contentions of the State and after hearing both the parties afresh, order on the application moved by the petitioner under Section 167(2) Cr.P.C. may be passed.

14. The application is disposed of in the above terms.

15. Copy of this order be sent to learned Trial Court for information and compliance.

16. It is made clear that nothing stated hereinabove in the present order will have any effect on the merits of the application filed before the learned Sessions Court.

TALWANT SINGH, J

AUGUST 17, 2022/mr

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