

GAHC010101092024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./1477/2024

KHUSHDEEP BANSAL
S/O SRI TEJ PAL BANSAL,
R/O W5/27, WESTERN AVENUE, SAINIK FARM, NEW DELHI- 110062

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 13.06.2024

Heard Mr. B.K.Mahajan, learned counsel for the petitioner as well as Mr. A.K.Bhuyan assisted by Mr. M More, learned counsel for the informant. Also heard Mr. M.Phukan, learned Public Prosecutor for the State respondent.

2. The petitioner has filed an application u/s 439 Cr.PC, seeking bail in connection with **CIDPS**caseno.16/2023u/s120B/255/256/257/259/260/406/417/419/420/463/465/466/467/468/471/472/474/506 IPC and read with section 7(1)(2) of State Emblem of India (Prohibition

of improper use) Act, 2005.

3. The brief fact of the case is that on 09/10/2023, the complainant lodged an FIR before the Officer-in-charge of the CID police station, stating inter alia that the petitioner and his brother Harish Bansal along with other co-accused Shaswat Singh Bundela, Dilip Singh Bhagel, Pallabi Thakuria, Partha Bhardwaj and others committed serious offences of cheating by personation as a public servant, forgery of valuable security and counterfeiting seals and such documents with a dishonest intention to misappropriate funds more than 63 crores of Sabharwal Trading India Pvt. Ltd in criminal breach of trust and in conspiracy and in collusion with each other. Accordingly, the CID PS case no. 16/2023 was registered.

4. It was urged by learned counsel for the petitioner that on 04/02/2024 the petitioner was arrested at Delhi on the strength of warrant of arrest issued by the learned CJM, Kamrup (M). On 05/02/2024, the accused/petitioner was produced before the Chief Metropolitan Magistrate, South District, Saket, who allowed transit remand of the accused/petitioner. Subsequently he was produced before the learned CJM, Kamrup (M) on 06/02/2024 and taken into police custody for six days. On completion of police custody he was sent to Judicial custody on 12/02/2024 and since then he has been languishing in jail.

6. It is further submitted that the accused/petitioner is a well known Professional Vastu Shastra Expert and also one of the Directors of VSKB Consultant Pvt Ltd. and he is also having no any criminal antecedent and as such considering the length of detention, the petitioner may be released on bail.

7. It is also the submission of learned counsel for the petitioner that charge sheet has been submitted against the co-accused Niazul Islam Talukdar and Mrinal Kumar Saikia and subsequently, they have approached this court by filing bail application in connection with the instant case and this court vide order dated 30/04/2024 granted bail to both the accused persons on the ground that charge sheet has been laid against them and prosecution has cited around 63 nos of witnesses in the charge sheet and as the trial has not yet been commenced, there is no any justification for detaining them in the custody any longer. Moreover, bail was also granted to another FIR named co-accused Pallabi Thakuria. According to leaned counsel for the petitioner, as the charge sheet has been submitted against the

accused/petitioner also he may be enlarged on bail on the same grounds.

8. Learned counsel for the petitioner, also contended that the accused/petitioner is suffering from various ailments including Fatty liver Grade I, Gall bladder, Diabetes etc. He has also suffered two heart attacks, first one in the year 2017 and the second one in the last part of 2021. It is also stated that on 17/05/2023, the accused petitioner underwent Coronary Artery graph surgery at Fortis Hospital, Gurgaon due to which the accused/petitioner has advised special diet and regular medications and further continued incarceration in jail would deteriorate the health condition of the accused/petitioner. Accordingly, the learned counsel for the petitioner prays to grant the accuse/petitioner the privilege of bail

9. In support of his submission, the learned counsel for the petitioner has placed reliance on the following case laws –

- a. (2005) 7 SCC 226 (Kamaljeet Singh vs. State of Punjab and another)
- b. Bail Application 1511/2022 (Junmoni Rabha vs. State of Assam)
- c. Special Leave to appeal (Crl) No. 9476/2022 (Vivek Kumar Gautam vs. State of Haryana)
- d. (2014) 4 SCC 626 (Dinubhai Bogabhai Solanki vs. State of Gujarat and others)
- e. Criminal Appeal No. 32-33 (Gaurav Kumar and another vs. State of Bihar)

10. Per contra, learned counsel for the informant, has vehemently opposed in granting bail to the petitioner by stating that the accused/petitioner was initially arrested on 20/10/2023 and produced before the court of Chief Metropolitan Magistrate, Saket court, New Delhi. He was granted transit bail for seven days on undertaking being given that he shall remain present personally before the concerned court within seven days. It was directed in the order dated 20/10/2023 that the accused shall join the proceedings pending before the learned CJM, Guwahati but he did not join the proceedings before the learned CJM, Guwahati as directed in his bail order and rather he filed an anticipatory bail application which was subsequently rejected by this court being not maintainable.

11. Learned counsel for the informant also submitted that the accused/petitioner in spite of rejection of his pre arrest bail did not surrender and absconded from the criminal proceeding by violating the conditions of transit bail. Thereafter the learned CJM, Kamrup (M) issued NBWA against the accused petitioner and he was arrested on 04/02/2022 on the strength of NBWA.

12. Learned counsel has also pointed out that the accused/petitioner is a habitual offender and mastermind of similar frauds in different parts of the country. Another FIR was registered regarding similar kind of modus operandi in Sonapat District in the State of Haryana vide Murthal PS case no. 37/2024 dated 30/01/2024.

13. The last limb of argument is that the accused/petitioner is an influential person and there are serious nature of accusation. Many incriminating evidence are collected and submitted along with charge sheet and there is also reasonable apprehension of influencing the witnesses and tampering the evidences since two co-accused are yet to be arrested. Moreover, looking at the earlier conduct of the accused in violating the condition of transit bail and absconding from the process of law, there is every likelihood of his jumping the bail.

14. Learned counsel for the respondent no 2 has relied on the following case laws –

- a. Y.S. Jagan Mohan Reddy vs. CBI [(2013) 7 SCC 439].
- b. Virupakshappa Gouda and another vs. State of Karnataka and another [(2017) 5 SCC 406].
- c. CBI vs. Vijay Sai Reddy (2013) 7 SCC 452.

15. Learned P.P. also has argued in the same tune by stating that the co-accused are yet to be arrested, as such, the question of tempering of evidence and influencing of witnesses cannot be nullified at all. Learned P.P. has, therefore, prayed for dismissal of bail application.

16. I have considered the submissions of the learned counsel for the parties.

17. Hon'ble Supreme Court in the case of [Y.S. Jagan Mohan Reddy vs CBI](#): (2013) 7 SCC 439 in respect of granting bail in economic offences having deep rooted conspiracy and large public money involved, has held as under:-

"34. Economic offences constitute a class apart and need to be visited with a different

approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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.....”

18. Honb’le Supreme Court in the case of [Nimmagadda Prasad vs CBI](#): (2013) 7 SCC 466 has observed that the alarming rise in white collar crimes has affected the fiber of country's economic structure. Economic offences have serious repercussions on the development of the country as a whole. Economic offences constitute a class apart and a different approach has to be adopted in the matter of bail.

19. In ***State of Gujarat v. Mohanlal Jitamalji Porwal*** [(1987) 2 SCC 364 : 1987 SCC (Cri) 364], Honble Supreme 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."

20. 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 itself 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.

21. 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 a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

22. In judgment rendered in the case of ***State of Bihar Vs. Amit Kumar*** (2017) 13 SCC 751, it has been held that while considering the bail involving socio-economic offences stringent parameters should be applied. Paras 8-9 of [the said judgment](#) are extracted hereunder:-

"8. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such the mere fact that he was in jail for however long time should not be the concern of the courts. We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar.

9. We are conscious of the fact that the accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ringleader. Further, it is alleged that the respondent-accused is involved in tampering with the answer sheets by illegal means and interfering with the examination system of Bihar Intermediate Examination, 2016 and thereby securing top ranks, for his daughter and other students of Vishnu Rai College, in the said examination. During the investigation when a search team raided his place, various documents relating to property and land to the tune of Rs 2.57 crores were recovered besides Rs 20 lakhs in cash. In addition to this, allegedly a large number of written answer sheets of various students, letterheads and rubber stamps of several authorities, admit cards, illegal firearm, etc. were found which

establishes a prima facie case against the respondent. The allegations against the respondent are very serious in nature, which are reflected from the excerpts of the case diary. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the credibility of the education system of the State of Bihar."

23. Further, the aforesaid view has been reiterated in the case of **Rohit Tandon vs Directorate of enforcement** (2018) 11 SSC 46. Paras 21 and 22 of the aforesaid judgement read as under:-

"21. The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the 2002 Act.

22. It is not necessary to multiply the authorities on the sweep of Section 45 of the 2002 Act which, as aforementioned, is no more res integra. The decision in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : (2005) SCC (Cri) 1057] and State of Maharashtra v. Vishwanath Maranna Shetty [State of Maharashtra v. Vishwanath Maranna Shetty, (2012) 10 SCC 561 : (2013) 1 SCC (Cri) 105] dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting

bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail."

24. The Supreme Court in its judgment in ***Serious Fraud Investigation Office Vs. Nitin Johri and another***, (2019) 9 SCC 165, while considering the factors to be taken into account while considering the bail involving serious economic offences in para 24-28 has held as under:-

"24. At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences. In this regard, it is pertinent to refer to the following observations of this Court in Y.S. Jagan Mohan Reddy [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] : (SCC p. 449, paras 34-35) "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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.

25. 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.

26. This Court has adopted this position in several decisions, including *Gautam Kundu v. Directorate of Enforcement* [*Gautam Kundu v. Directorate of Enforcement*, (2015) 16 SCC 1 : (2016) 3 SCC (Cri) 603] and *State of Bihar v. Amit Kumar* [*State of Bihar v. Amit Kumar*, (2017) 13 SCC 751 : (2017) 4 SCC (Cri) 771]. Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences.

27. As already discussed *supra*, it is apparent that the Special Court, while considering the bail applications filed by Respondent 1 both prior and subsequent to the filing of the investigation report and complaint, has attempted to account not only for the conditions laid down in Section 212(6) of the Companies Act, but also of the general principles governing the grant of bail.

28. In our considered opinion, the High Court in the impugned order has failed to apply even these general principles. The High Court, after referring to certain portions of the complaint to ascertain the alleged role of Respondent 1, came to the conclusion that the role attributed to him was merely that of colluding with the co-accused promoters in the commission of the offence in question. The Court referred to the principles governing the grant of bail as laid down by this Court in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [*Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057], which discusses the effect of the twin mandatory conditions pertaining to the grant of bail for offences under the *Maharashtra Control of Organised Crime Act, 1999* as laid down in Section 21(4) thereof, similar to the conditions embodied in Section 212(6)(ii) of the Companies Act. However, the High Court went on to grant bail to Respondent 1 by observing that bail was justified on the "broad probabilities" of the case."

25. As pointed out by learned counsel for the informant that the Hon'ble Apex Court in the case of *Virupakshappa Gouda* (*supra*) has held that filing of the charge sheet does not in any manner lessen the allegation made by the prosecution. On the contrary, filing of charge sheet

establishes that after due investigation, the investigating agency having found materials has placed the charge sheet for trial of the accused persons.

26. In view of the aforesaid legal proposition, considering the involvement of the accused petitioner and his conduct during investigation of the case, antecedent of pending of other cases in the same nature of offence , this court is not inclined to grant bail to the petitioner.

27. The bail application is rejected.

Bail application is disposed of.

JUDGE

Comparing Assistant