

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 21st April, 2015

BAIL APPLN. 279/2015

RAJAT SHARMA

..... Petitioner

Through: Mr Vikas Pahwa, Sr. Advocate with
Mr Rakesh Kumar, Mr Aditya
Nayyar, Mr Parmod Sachdeva,
Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms Isha Khanna, APP with
SI Ashwani Kumar EOW Cell.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under Section 439 CrPC, 1973 on behalf of the applicant/accused Rajat Sharma seeking bail in FIR No.10/2014 registered at Police Station- EOW, Mandir Marg under Sections 409/420/120B IPC.
2. At the outset, it is noticed that the applicant has been in judicial custody since 02.11.2014 and that the subject charge-sheet has been filed on 29.12.2014 after thorough investigation.
3. Mr Vikas Pahwa, learned senior counsel appearing on behalf of the

applicant, has urged that there are no allegations against the applicant, who was the Bank Manager, having accepted any illegal gratification. Next it has been urged by Mr Pahwa that the beneficiaries of the subject loans against deposit of gold have already been enlarged on bail by this court by way of order dated 16.01.2015. Further it is argued by Mr Pahwa that there is no likelihood of the trial commencing at an early date since the CFSL report with respect to the gold deposit is still awaited. Furthermore it has been urged that the beneficiaries to the subject loans are yet to be charge-sheeted. Finally it is urged by Mr Pahwa that the applicant has been in custody for a period of over five months and his two minor children aged about 10 and 3 years respectively are being subjected to undue harassment in the absence of their only bread earner.

4. On the contrary, it has been urged by Ms Isha Khanna, learned APP appearing on behalf of the State, that the applicant, who was the Manager of the branch not only exceeded his financial limits but got appointed a relative of the beneficiaries as an appraiser qua the subject loans. It is also urged by Ms Khanna that the applicant is guilty of conspiracy inasmuch as he was responsible for extending loans to the beneficiaries when he was the Branch Manager in Karol Bagh and continued to benefit the same persons when he

was shifted to the Connaught Place branch. It is lastly urged by Ms Khanna that it would be possible for the trial court to frame charges against the applicant in the subject FIR.

5. The applicant herein is accused to have sanctioned loans amounting to Rs.11 crores against spurious gold ornaments to the accused beneficiaries in connivance with bank panel appraiser. It is alleged that the applicant had sanctioned the said loans without prior consent of the bank operational manager superseding the guidelines of the bank.

6. In a landmark decision reported as **Sanjay Chandra v. Central Bureau of Investigation: 2012 (1) SCC 40**, the Hon'ble Supreme Court has crystallized the law in respect of regular bails as under:-

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the

operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”

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“46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the Appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

47. In the view we have taken, it may not be necessary to refer and discuss other issues canvassed by the Learned Counsel for the parties and the case laws relied on in support of their respective contentions. We clarify that we have not expressed any opinion regarding the other legal issues canvassed by Learned Counsel for the parties.

48. In the result, we order that the Appellants be released on bail on their executing a bond with two solvent sureties, each in a sum of `5 lakhs to the satisfaction of the Special Judge, CBI, New Delhi on the following conditions:

(a) The Appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts or the case so as to dissuade him to disclose such facts to the Court or to any other authority.

(b) They shall remain present before the Court on the dates fixed for hearing of the case. If they want to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, they shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that they may be permitted to be present through the counsel.

(c) They will not dispute their identity as the accused in the case.

(d) They shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered before the Ld. Special Judge, CBI, that fact should also be supported by an affidavit.

(e) We reserve liberty to the CBI to make an appropriate application for modification/recalling the order passed by us, if for any reason, the Appellants violate any of the conditions imposed by this Court.”

7. A plain reading of the above decision makes it crystal clear that the object of bail is to secure the appearance of the accused person at his trial. It

is further observed that the object of bail is neither punitive nor preventative and that deprivation of liberty must be considered a punishment unless it is required to ensure that the accused person will stand his trial when called upon. The Supreme Court further observed that when a person is punished by denial of bail in respect of any matter upon which he has not been convicted it would be contrary to the concept of personal liberty enshrined in the Constitution except in cases where there is reason to believe that he will tamper with the witnesses. To encapsulate, the Hon'ble Supreme Court has held that pre-conviction detention should not be resorted to except in cases of necessity to secure attendance at the trial or upon material that the accused will tamper with the witnesses if left at liberty.

8. In the present case there is no gainsaying the fact that the applicant is charged of an economic offence of some magnitude. However, the fact that the investigating agency has already completed investigation and the chargesheet has already been filed cannot be lost sight of. Furthermore there is no hint or allegation that the accused is a flight risk; nor is there any material to suggest that he will tamper with the evidence. Therefore, in my view, the presence of the applicant in further custody is not necessary. Furthermore, as mentioned above, the beneficiaries in the subject transaction

have already been enlarged on anticipatory bail by this court; and the applicant has already been in custody for over five months. Consequently, I am of the opinion that the applicant is entitled to grant of bail pending trial on stringent conditions.

9. In the result it is directed that the applicant be released on bail on his executing a personal bond in the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the trial court subject to further condition that the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the court or to any other authority and subject to further condition that the applicant shall remain present before the court on the date fixed for hearing of the case. The applicant shall surrender his passport, if not already surrendered, before the trial court at the time of furnishing bail/surety bond. The application is disposed of accordingly.

10. A copy of this order be given dasti under signature of Court Master to counsel for the applicant.

SIDDHARTH MRIDUL, J

APRIL 21, 2015/mk