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

% *Judgment pronounced on : February 02, 2015*

\+ **Crl. M (Bail) No. 1174/2014 in BAIL APPLN. 1272/2014**

RAM SUMIRAN PAL ..... Petitioner
Through Mr. Anjani Kumar Singh, Adv., Mr. Amit Kumar, Adv. and Mr. Manish Kumar, Advs.

versus

STATE ..... Respondent
Through Mr. M.N. Dudeja, APP for State

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. This is an application under Section 439 read with Section 482 CrPC for interim bail. The petitioner has been facing trial in a case registered pursuant to the FIR No.198/2013 under Section 420/406/120B IPC at Police Station, Crime Branch, Delhi on complaint of one Rambir Sharma.

2. On the basis of complaint the FIR was registered on 29th November, 2013. The contents of the FIR read as under :

> "he is residing with his family since 1988 and is running Auto Parts business factory, which was earlier in Jhandenwalan and after that shifted to Rai Haryana. In 2006-07 I incurred big loss in the factory and due to that I was searching for job. At that time in 2010 one Shri Anil Khatri told me invest money and by investing good return

> will come and after listening all this I got allurement of money and invested money in one Speak Asia company. Anil Khatri along with his associates opened a franchisee of Speak Asia in KD-306, Pitampura and its head office was at Mumbai and Singapore also. The owner of the company I Manoj, Ram Niwas, Ram Sumiran Pal etc. and I came in their words and invested money in the company and for that my online account was opened and for survey online forms started coming to me. In 2011 Company organized a seminar in Talkatora Stadium in which Manoj, Ram Niwas and Ram Surmiran Pal addressed and showed the big dreams to all people and insisted people to invest in the company and after that I invested all my money by taking my wife's jewellery and by taking money from relatives making an amount of Rs.25 lakhs and after few days I got to know that the owners of the company have grabbed the money and ran away by locking the company. So many people in the area tried to get the money back but false promises came from the company. The company did a big fraud with crores of people and nobody complaint about it. But when I saw the photos and arresting of Ram Sumiran Pal in TV and newspaper and now with full strength came to you to lodge a complaint against Manoj, Ram Niwas and Ram Sumiran Pal and as well as Anil Khatri along with his associates have racketeering with me as I have invested Rs.25 lakhs and cheated with me and with crores of people."

3. The petitioner is in custody since 25th November, 2013. It is pleaded that he is innocent and has been falsely implicated in the present case. Even the counsel has made the statement that he was arrested before the date of complaint. On the basis of the complaint the FIR was registered on 29th November, 2013 at Police Station Crime Branch, New Delhi. The petition for quashing the FIR is also pending for disposal.

4. It is stated that the petitioner is not the owner of Speak Asia company as alleged and the same is also revealed during the investigation in the matter. He is one of the franchisee of the said company, out of 150 franchisees across India. As regards the allegation that a seminar at the Talkatora Stadium was conducted where the petitioner and the other accused addressed the audience and insisted them to invest money, it is stated that firstly there is no Talkatora Stadium in Goa, and even if it is considered that the same was in Delhi, during investigation, petitioner's presence and participation as a speaker in the said seminar is not found.

5. It is averred in the bail application that M/S SPEAK ASIA ONLINE PVT. LTD. was long back in the year 2006, established at Singapore by one Mrs. Harender Kaur in the name and style of M/S. HAREN TECHNOLOGIES PVT. LTD. which was later on in the year 2010 renamed as M/S SPEAK ASIA ONLINE PVT. LTD., which was incorporated with the ACRA (Accounting and Registration Authorities of Singapore). The company has been in the business of conducting surveys through its web portal www.speakasiaonline.com, wherein Harender Kaur has been the Chairperson and Director since inception. The primary job of the company was to recruit new panellist through its marketing by various modes like print and electronic media, seminars, etc. The marketing of the company was handled by its staff under the supervision and leadership of Mr. Manoj Sharma, CEO, India and Mr. Tarak Bajpai, COO, India.

The said Mrs. Harender Kaur established one more company at Singapore in the year 2006 in the name and style of M/s Haren Auto Parts Pvt. Ltd. which was later in the year 2010 renamed as M/s Haren Venture Pvt., Ltd., which was in the business of providing E-magazines to the panellists of M/s. Speak Asia Online Pvt. Ltd. She was the Chairperson and Director of the above named both companies since inception having office at Singapore and has been maintaining company bank's account in Singapore only.

6. The above named companies were being operated by its Channel Partners/Master Distributors/Collection Agents like M/s. Kritanz, M/s. Seamless, M/s. Tulsiyat Tek and others in India. These Channel Partners/Master Distributors/Collection Agents companies were established by one Manoj Sharma and others in India. The above named Master Distributors/Collection Agents had further appointed about 150 franchisees like A and A Associates, Delhi, Growrich, Mumbai, etc. across the country on behalf of the parent companies. These franchisees were like shops of Master Distributors from where subscription code was purchased by the people in order to be panellist. Franchisee had no direct connection either with Speak Asia or Haren Venture. Once a person became panellist, they started to directly deal with the company. Franchisees used to get 3% discounting of the total sale made from their Master Distributor.

Further, there is no proof of payment to the petitioner by the complainant. It is stated that the allegation of the complainant regarding investment of Rs. 25 lacs is false as as per the scheme of

Speak Asia, each person was to invest Rs. 11,000/- and for the purpose of collecting Rs. 25 lacs, cheating 220 victims would be needed, however, there was no such list to show that 220 victims were also duped into investing money. Even otherwise investment of Rs.25 lacs by one person alone is not permissible under the scheme of the company. Prima facie, it is a false claim made by the complainant.

7. It is stated that the allegation of the complainant is against the Delhi Franchisee (A& A Associates) whose received amount was transferred to its Master Distributor (M/s Kritanz & Seamless) which further used to transfer the same into account of Haren Venture, Singapore. The petitioner's case falls nowhere in the chain. The petitioner concern was only to the extent of 3% commission from the amount received from the members as one of the Franchisee and nothing else. He has been transferring the amount received from the members to M/s. Tulsiyat Tek Co. (Master Franchisee in India) who used to re-transfer the amount to M/s Haren Venture Pvt., Ltd. and ultimately the amount was transferred to M/S Speak Asia Online Pvt. Ltd.

The FIR except naming the petitioner as owner of the company does not contain any allegation against the petitioner. The entire allegation of the complainant in the FIR pertains to advising and getting his money invested against Anil Khatri. The petitioner has never met, advised or received any amount from the complainant to deposit the same with Speak Asia. The petitioner is neither the owner nor a shareholder in Speak Asia company, rather he is only the owner of the franchisee named Growrich. The same is evident from the charge-sheet itself also.

8. It is argued by the learned counsel for the petitioner that a bare-perusal of the bank accounts of the complainant, his wife and his firm would reveal that between 1st July, 2012 to 30th September, 2012 there has been withdrawal of Rs. 12 lacs in the name of Anil Khatri in 6 shots. The same is not reflected in the account of A&A Associates. So the same may be related to some personal transaction between the complainant and Anil Khatri. Detailed account of A& A Associates for the period 1st November, 2010 to 6th January, 2014 are brought on record but there is no proof of payment of Rs. 25 lacs.

9. Counsel for the petitioner has also further submitted that earlier three complaints were filed against the petitioner wherein the bail orders have been passed in favour of the petitioner on 10th January, 2014, 29th January, 2014 and 6th February, 2014 by the ACMM, Mumbai. The copies of the orders are placed on record.

Learned counsel has also referred to letter dated 18th February, 2014 issued by Superintendent Mumbai Central Prison, Maharashtra addressed to Shri Sajay Jindal, CMM (North West) Rohini Court, New Delhi which discloses that on the date of issuance of letter under trial prisoner No.2139/2014 i.e. the petitioner does not have any case pending as per record.

10. Counsel has heavily relied upon the decision of the Supreme Court in the case of ***Sanjay Chandra v. Central Bureau of Investigation***, (2012) 1 Supreme Court Cases 40 in paras 21, 22, 23, 24, 40, 45, 46 after recording the facts and law has held 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 is 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.
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> **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 unconvicted 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 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 unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

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40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

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45. In *Bihar Fodder Scam* (*Laloo Prasad v. State of Jharkhand, (2002) 9 SCC 372*) this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.

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 jeopardise 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 ally the apprehension expressed by CBI."

11. Lastly, it is argued that the petitioner is innocent and has been falsely implicated in the present case. The investigation and interrogation in the present case qua the petitioner is complete and

there is no incriminating evidence on record against him. Without prejudice, he is willing to deposit the alleged share of the cheated amount in the form DD in the name of the complainant.

12. It is prayed that the petitioner be granted bail since there is no evidence against the petitioner except the allegation made in the FIR. He is a married man having two small children and the family is solely dependent on him. He undertakes to be present before the Court as and when required. He has been granted bail in all other cases against him except for this case. There is no apprehension of him absconding or tampering with evidence/witness.

13. Admittedly three bail applications filed by the petitioner before the Additional Sessions Judge were rejected vide order dated 12th March, 2014, 12th May, 2014 and 24th May, 2014. Out of said three applications, two applications for granting the bail were dismissed after filing of the charge sheet and supplementary charge sheet. Status report filed by the State is in line with the charge sheet and supplementary charge sheet.

14. Mr.M.N. Dudeja, learned APP for the State, states with regard to the petitioner and his brother that during investigation bank account statements and relevant documents of A/c No.910010023493680, 028010100113038, 911010014921937 AXIS Bank Mumbai in respect of co-accused Ram Niwas Pal were obtained and the perusal of the transactions made in his account No. 910010023493680 of Axis bank for the period from August 2010 to October 2011, it was revealed during investigation that approximately

Rs.6 Crores were received in his account through different modes including foreign bank accounts and the money so received has been siphoned off by the accused Ram Niwas Pal through cash withdrawals and other persons, details of which is being obtained. He has further pointed out that in so far as the present petitioner/accused Ram Sumiran Pal is concerned, the details of bank account statement of Account No.05228470000020 HDFC Mumbai and Account No.540011021219 of Ing Vysya Bank, Mumbai maintained by the accused Ram Sumiran Pal through his company Growrich Associates have also been obtained which reveals that approximately Rs.53.76 Crores in Account No. 05228470000020 and approximately Rs.4.31 Crores in Account No. 540011021219 were deposited through RTGS by several investors. The major part of the funds have been transferred in the account of Ram Niwas Pal Tulisyat Tek Co., Seven Rings Education Co. etc. and a major amount has also been siphoned off through cash withdrawal by the accused persons and other persons. The investigations conducted so far reveals that both the said companies i.e. Tulsiyat Tek Co. and Seven Rings Education Co. were established by the accused Manoj Kumar Sharma who is named in the FIR and Bank details of both these companies have been obtained which reveals huge transactions of money and further siphoning off funds by the accused persons. In the charge-sheet the details of other accused are mentioned.

15. It is settled law that the object of bail is to secure the attendance of the accused at the trial and not to withheld him as a punishment unless he is convicted. While exercising the discretion to grant or refuse bail the Court would have to take into consideration of various aspects i.e. nature of seriousness of the offence and the circumstances in which the offence is committed. The position and status of accused and the likelihood of the accused fleeing from the justice or repeating the offence, history of the case as well as stage of investigation, in case the accused is entitled for the benefit of these circumstances, normally it is not advisable to continue to detain the accused during pre-trial and it may not be in the interest of justice.

16. This Court is conscious about the fact that the petitioner is in custody since 25th November, 2013 and as per the settled law, the object of the bail is to secure the appearance of the accused at the trial and the object of bail is neither punitive nor preventive and detention in custody pending completion of trial could be a cause of great hardship. The grant or refusal of bail lies with the discretion of the Court and no purpose would be served if he would continue to be detained during pre-trial stage.

17. The learned counsel for the petitioner has not denied the fact that his client is one of the franchisee and was receiving the huge amount from the investor and was transferring the same to Master Franchisee in India. The amount received from investor has been transferred to M/s. Tulsiyat Tek Co. (Master Franchisee in India) who used to re-transfer the amount to M/s Haren Venture Pvt., Ltd.

(Global Franchisee of Speak Asia) and ultimately the amount was transferred to M/S Speak Asia Online Pvt. Ltd. as per the case of the petitioner.

18. Further investigation in the matter is in progress as per the case of prosecution and the efforts are being made by the prosecution to apprehend the remaining accused persons, namely Manoj Kumar Sharma, Renu Sharma, Harender Kaur, Anil Khatri, Avadh Kishore Gupta, Mansoor Nazim Patel and Ravi Janakraj Khanna, kept in column No.12 and on the arrest of the remaining accused persons and on receipt of relevant documents/reports, supplementary charge-sheet will be filed accordingly. As stated in the charge-sheet, the petitioner had invested huge amount in real estate in Kamla Nagar and Uttam Nagar and Najafgarh area, the requisite documents have been recovered. It is also the case of the prosecution that the said properties were purchased by the petitioner after the commission of Speak Asia Financial Scam and it seems to have been purchased from the money collected from the investors.

19. Having gone through the charge sheet and supplementary charge sheet as well as the status report filed by the respondent. In the present case the money has been transferred to M/s. Tulsiyat Tek Co. as admitted by the petitioner who have further transferred the amount to global franchisees and ultimately the amount was transferred to M/s. Speak Asia Online Pvt. Ltd. The owner/partner associates are absconder. The prosecution yet to apprehend the

remaining accused. Thus, at this stage I am not inclined to grant the relief of bail to the petitioner.

20. But at the same time, it must also be mentioned that the petitioner is in the custody for the last 15 months. Charge-sheet has been filed in April, 2014. The police has so far not been able to arrest other accused for the last more than year. Charges has yet to be framed against the petitioner. The police is not able to arrest other accused and charge-sheets against them is yet to be filed but at the same time why one of the accused who is in custody for the last more than one year may suffer because of failure on the part of the police. In fact, it is a matter of serious concern that the bail in the present case is not being granted because of peculiar facts and circumstances explained in the earlier part of this judgment. Under these circumstances, one final opportunity is granted to the police to complete the investigation and to arrest the other accused and to file its report within two months from today. The petitioner is granted liberty to renew his bail application before the trial court after expiry of said period.

21. The bail application is disposed of accordingly. Copy of order be given dasti to both parties.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 02, 2015