IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 15th July, 2015

BAIL APPLN.1060/2015

AMIT NAGPAL ..... Petitioner

Through: Mr. N. Hariharan and Mr. Dayan Krishnan, Sr. Advocates with Mr. Rajesh Anand, Mr. Siddharth S. Yadav and Mr. Sahil Paul, Advocates

Versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr. Rajesh Mahajan, ASC (Criminal) Mr. Sunil K. Mittal, Mr. Gautam Chaubey and Mr. Vipin K. Mittal, Advocates for the Complainant

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an application for grant of regular bail under Section 439 Cr.P.C., 1973 in FIR No.17/2014, under Sections 419/420/467/468/471/120B IPC, Police Station- Economic Offences Wing, New Delhi.

2. At the outset, it is noticed that the applicant has been in judicial custody since 14.05.2015 and the subject charge sheet has been filed on 08.07.2015 after investigation.

3. Mr. Hariharan, learned Senior Counsel appearing on behalf of the applicant has invited my attention firstly, to the orders passed by DRT-II on 08.04.2015, specifically paragraph 14(e) at page 95, paragraph 14(f) at page 96 and paragraph 20 at page 98 of the application paper book to urge that insofar as the banks who are alleged to have been cheated are concerned, their interests have been secured by the said order.

4. Mr. Hariharan, learned Senior Counsel has relied upon the decision of the Supreme Court in ***Sanjay Chandra vs. Central Bureau of Investigation*****: (2012) I SCC 40** as well as the decision of this Court in ***Rajat Sharma vs. State (NCT of Delhi)*****: 2015 SCC OnLine Del 8914** to urge that although the allegations levelled against the applicant are serious economic offences resulting in loss to the State Exchequer, what requires to be considered is that punishment in the shape of detention ought to be imposed only after trial and conviction and that the applicant should be considered innocent unless he is found guilty. In other words, Mr. Hariharan's thrust is that if this principle is not adhered to, it may lead to a chaotic situation seriously jeopardizing personal liberty of an individual.

5. On the contrary, it has been urged by Mr. Rajesh Mahajan, learned Additional Standing Counsel (Criminal) appearing on behalf of the State and

Mr. Sunil Mittal, learned counsel appearing on behalf of the complainant that although the charge sheet has been filed, the investigation is not complete and the applicant is alleged to have repeatedly taken loans from different banks on the same property by means of forged documents. It is further urged by Mr. Mahajan that other accused persons in the subject FIR are still at large. Lastly, it has been urged that since multiple banks seem to be involved in the purported scam, release of the applicant on bail may hamper investigation.

6. Mr. Sunil Mittal, learned counsel appearing on behalf of the complainant has buttressed his submissions by relying upon the decision of the Supreme Court in ***Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation*****: AIR 2013 SCC 1933** and in paragraph 15 of the report in particular to urge that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail since they involve deep rooted conspiracy affecting the economy of the country as a whole.

7. According to the prosecution, the applicant is alleged to have, in connivance with his late father Shri K.C. Nagpal, and officials of certain banks, cheated the Banks to the tune of Rs.3.25 crores on the basis of fake property documents. In this behalf, it is observed that a perusal of the charge sheet reveals that a notice was issued to the ICICI Bank, who are one of purported lenders on 28.04.2015 but no response has been forthcoming from the Bank. It is a matter of some concern that in a case involving alleged defalcation of public funds, the prosecution went ahead and filed a charge sheet without first obtaining the relevant documents from the concerned Bank.

8. In the landmark decision reported as ***Sanjay Chandra*** *(supra)*, the Hon'ble Supreme Court crystallized the law in respect of the regular bail 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.
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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 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.

24. In the instant case, as 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 has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering 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 Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice."

25. The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law

and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.

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39 Coming back to the facts of the present case, both the Courts have refused the request for grant of bail on two grounds :- The primary ground is that offence alleged against the accused persons is very serious involving deep rooted planning in which, huge financial loss is caused to the State exchequer ; the secondary ground is that the possibility of the accused persons tempering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property, forgery for the purpose of cheating using as genuine a forged document. The punishment of the offence is punishment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

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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 ally 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.
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> (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."

9. 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 the 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.

10. In the present case there is no gainsaying the fact that the applicant is charged of an economic offence. However, the fact that the investigating agency has already completed investigation and the chargesheet qua the applicant 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 cogent 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. The applicant has already been in custody for more than two months. Consequently, I am of the opinion that the applicant is entitled to grant of bail pending trial on stringent conditions.

11. As a 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 dates 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.

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

SIDDHARTH MRIDUL, J

JULY 15, 2015
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