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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 04.08.2015

BAIL APPLN. 1058/2015

RAJESH ANAND ..... Petitioner
Through: Mr. Zafar Sadique, Advocate

versus

THE STATE GOVT OF NCT OF DELHI ..... Respondent
Through: Ms. Isha Khanna, APP with SI Sushil Kumar, PS-EOW
Mr. Gurbaksh Singh and Ms. Richa Samhita, Advocates for the complainant

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under section 439 Cr.P.C., 1973 on behalf of the applicant Rajesh Anand seeking regular bail in FIR No.298/2013, under sections 420/468/471 IPC, registered at Police Station- Kotla Mubarakpur, New Delhi.

2. It would be relevant to point out that the applicant has been in judicial custody since 09.09.2014 and the subject charge sheet has been filed on 15.11.2014 after investigation.

3. Mr. Zafar Sadique, learned counsel appearing on behalf of the petitioner states that the subject charge sheet has been filed without annexing a copy of the report of FSL in respect of the allegedly forged signatures on the Power of Attorney in relation to sale of property No.B-2, Ridge Castle Apartment, Dada Bari, Mehrauli, New Delhi. Mr. Sadique would, therefore, urge that since the applicant has been in judicial custody since 09.09.2014 and the charge sheet has been filed, no useful purpose shall be served by keeping the applicant in judicial custody. In this behalf, Mr. Zafar Sadique has invited my attention to the decision of the Supreme Court in ***Sanjay Chandra vs. Central Bureau of Investigation*** reported at **(2012) 1 SCC 40** as well as the decision of this court ***Rajat Sharma vs. State of NCT of Delhi*** in **Bail Application No.279/2015** decided on 21.04.2015 to urge that although the applicant is charged with an economic offence arising out of a commercial transaction, the presence of the applicant in further custody is not necessary. Mr. Sadique further submits that the offences of which the applicant is charged are triable by a Magistrate. Mr. Sadique lastly submits that in fact the applicant only received a loan of Rs.14,00,000/- and not Rs.50,00,000/- as alleged by the prosecution and has already repaid the complainant to the tune of Rs.8,00,000/-. In other words, the subject FIR is the consequence of a commercial transaction between the complainant and the applicant and the latter has been falsely implicated.

4. On the other hand, Ms. Isha Khanna, learned APP appearing on behalf of the State would urge that there is every possibility of the applicant tampering with the evidence and absconding in the event of his release because of his previous involvement in other cases.

5. According to the prosecution, the applicant is alleged to have duped the complainant of Rs.50,00,000/-. The applicant induced the complainant to advance a loan of Rs.50,00,000/- on interest at the rate of Rs.2% per month and pledged the subject property in order to secure repayment by claiming to be the owner thereof. Subsequently, since the applicant allegedly neither repaid the loan nor the interest, the complainant made enquiries and found out to his shock that the applicant was not the owner of the subject property pledged by him, to secure repayment of the loan.

6. In the landmark decision of the Supreme Court in the case of ***Sanjay Chandra*** *(supra)* the relevant paragraphs relied upon by the counsel for the applicant are as under:-

> "45. In *Bihar Fodder Scam (Laloo Prasad case)* 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 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 pre-trial prisoners would not serve any purpose.
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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."

7. In ***Rajat Sharma*** *(supra)*, the relevant paragraph relied upon by the counsel for the applicant is as follows:-

> "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."

8. In the present case, there is no gainsaying the circumstance that the investigation has already been completed and charge sheet has been filed. It is, however, an admitted position that the applicant has been charged under sections 420/468/471 IPC. It is further observed that the applicant is involved in at least one other case for having committed an offence punishable under section 420 IPC, which is registered at Police Station-Mehrauli being FIR No.888/2013. It is also noticed that the applicant was absconding and was ultimately nabbed in Mumbai. Consequently, the submission made on behalf of the prosecution that there is every possibility that the applicant will not be available to stand trial, if he is enlarged on bail by this Court, cannot be ruled out. Furthermore, the FSL report which will determine whether the signature on the documents related to the subject property are forged or not, is still awaited.

9. The decision of the Supreme Court in ***Sanjay Chandra*** *(supra)* does not come to the aid of the applicant because in that decision the Hon'ble Supreme Court itself observed 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 Hon'ble Supreme Court then went on to cite with approval its earlier decision in ***State of U.P. vs. Amarmani Tripathi,*** **(2005) 8 SCC 21**, where it is held as under:-

> "18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) **danger of the accused absconding or fleeing, if released on bail;** (v) character, behavior, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail…"

The Hon'ble Supreme Court also went on to refer to its own decision in ***Gurcharan Singh vs. State (Delhi Administration)*****, (1978) 1 SCC 118** wherein it was observed that:-

> "Two paramount considerations, while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, are **the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both**

> **of them relate to ensure the fair trial of the case.** Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing."

10. The decision of this Court in ***Rajat Sharma*** *(supra)* also is of no avail to the applicant since in that case there was no hint or allegation that the accused was a flight risk.

11. This Court cannot ignore the circumstance that the applicant was absconding. Therefore, there is every possibility that he will not be available to stand trial. The applicant also has another FIR registered against him under section 420 IPC and, therefore, the possibility of the applicant repeating a similar offence also cannot be ruled out. Tampering of witnesses by the applicant is another factor which also cannot be ruled out at this stage. The submission of the counsel for the applicant that the subject FIR is triable by a Magistrate is untenable, since the charge sheet filed against him is under the provisions of sections 420/468/471 IPC. The assertion of the counsel for the applicant that the present is a commercial transaction masquerading as a criminal offence at the behest of the complainant is belied by the circumstance that the applicant has admittedly received a loan and is alleged to have pledged the subject property in lieu thereof, of which he is not the owner.

12. Keeping in view the gravity of the offence, the severity of the punishment in the event of conviction and considering the antecedents of the applicant, I see no reason to enlarge him on bail at this stage. The application is dismissed. However, it is made clear that nothing stated in the this order shall be considered as an expression of an opinion on the merits of this case.

SIDDHARTH MRIDUL, J

AUGUST 04, 2015
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