

#3

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23.09.2015

BAIL APPLN. 1635/2015

POOJA KHANNA

..... Petitioner

Through: Mr. Shahid Azad and Ms. Meenu
Sharma, Advocates

versus

STATE

..... Respondent

Through: Mr. M.S. Oberoi, APP with SI
Muneesh Kumar, PS- Barakhamba
Road

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') in FIR No.89/2015, under sections 419/420/467/471/34 IPC, registered at Police Station- Barakhamba Road, New Delhi.

2. The applicant, who is a young and fledgling legal professional, has been in judicial custody since 24.07.2015. The applicant is stated to be all of 34 years old.

3. It is the case of the prosecution that on 23.07.2015, on a complaint of the Tehsildar, Chanakya Puri, New Delhi pursuant to a raid conducted by the Sub-Divisional Magistrate of the concerned area, the applicant was found illegally attesting affidavits on behalf of a Notary Public one Mr. Sunder Lal.

4. Charge sheet in the subject FIR has already been filed. The charge sheet places reliance on the report obtained from the Forensic Science Laboratory to the effect that the said Mr. Sunder Lal, the Notary Public, did not sign the subject documents.

5. Mr. Shahid Azad, learned counsel appearing on behalf of the applicant states that the said affidavits were in fact attested by the said Mr. Sunder Lal and not by the applicant. Needless to say, the same would be a matter for determination at the ensuing trial.

6. In **H.B. Chaturvedi vs. C.B.I.** reported as **2010 3 JCC 2109** in paragraph 12 thereof, this Court observed as follows:-

“12. Bail, it has been held in a catena of decisions, is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted. Furthermore, there is no justification for classifying offences into different

categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. It cannot, therefore, be said that bail should invariably be refused in cases involving serious economic offences.”

7. In a landmark decision in *Sanjay Chandra vs. Central Bureau of Investigation* reported as (2012) 1 SCC 40 the Hon’ble Supreme Court crystallized the law in respect of regular bail in the following paragraphs:-

“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.

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.

XXXX XXXX XXXX XXXX

XXXX XXXX XXXX XXXX

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 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 the 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 Rs 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 of 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 learned Special Judge, CBI, that fact should also be supported by an affidavit.
- (e) We reserve liberty to 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.”

8. In *Rajat Sharma vs. State of NCT of Delhi* reported as **2015 3 JCC**

1493 this Court observed as follows:-

“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 present cases as aforementioned, the charge sheet has already been filed and the applicant is, therefore, not required for any purpose. It is also observed that the evidence has already been collected qua the applicant and that the applicant has been in custody since 24.07.2015. There is no gainsaying the fact that the object of bail is to secure the appearance of the accused person at the trial. It is further observed that the object of bail is neither punitive nor preventative and that and that deprivation of liberty must be considered a punishment unless it is required to ensure that the accused person will be available to stand trial when called upon to do so. Denial of bail in these circumstances would amount to punishment pre-conviction, which is contrary to the concept of personal liberty enshrined in the Constitution of India. There is neither any hint nor allegation that the applicant shall not be available to stand trial or that she will tamper with the evidence.

10. Therefore, in my view, the presence of the applicant in further custody is neither necessary nor warranted. I am of the opinion that the applicant is entitled to grant of bail pending trial on the following conditions:-

- (i) The applicant shall be released on bail on her furnishing 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.
- (ii) The applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the present case so as to dissuade them from disclosing such facts to the Court or to any other authority.
- (iii) The applicant shall also surrender her Passport, if any, before the trial court at the time of furnishing bail/surety bond.

The application is disposed of accordingly.

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

SIDDHARTH MRIDUL, J

SEPTEMBER 23, 2015

dn