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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 18th September, 2015

+ BAIL APPLICATION 1881/2015

ROMESH SAHU

..... Applicant

Through

Mr. Amit Gupta and Mr. A.K. Singh,
Advocates

versus

STATE THROUGH E.O.W.

..... Respondent

Through

Mr. Rajat Katyal, APP for the State
SI A.K. Singh, P.S. EOW

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an application under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of regular bail in FIR No. 114/2009 under Sections 420/406/120B IPC registered at Police Station- Economic Offences Wing (Crime Branch), Delhi.

2. The applicant has been in judicial custody since the 17th February, 2015.

3. Mr. Amit Gupta, counsel appearing on behalf of the applicant states that the applicant has been declared as a proclaimed offender by way of

order dated 1st October, 2013 incorrectly although he has been a resident of Munirka Village, New Delhi throughout. Counsel further states that the subject FIR is the outcome of a commercial transaction between him and the complainant which has been imparted the colour of a criminal offence.

4. Counsel appearing on behalf of the applicant lastly states that the National Stock Exchange has exclusive jurisdiction over the commercial transaction entered into between the parties in the subject FIR and that the jurisdiction of the Police is ousted as a consequence of an arbitration agreement.

5. The case of the prosecution is that the applicant took physical possession of certain shares registered in the name of the complainant and also some share certificates, delivery instruction slips, cheques and forms from the complainant on the pretext that he would open a DEMAT account in the name of the complainant.

6. The allegation is that instead of opening the DEMAT Account, the applicant transferred the shares registered in the name of the complainant to the account of his brother-in-law Debashish Biswal and the total value of the shares is stated to be the tune of Rs. 11 lakhs.

7. The present application is being opposed on behalf of the State in view of the circumstance that the applicant had been evading arrest since the date of the registration of the subject FIR and has, in fact, been declared as a proclaimed offender by way of order dated 1st October, 2013 passed by the concerned CMM, Delhi. Mr. Rajat Katyal, learned APP appearing on behalf of the official respondent vehemently urges that the said order passed by the concerned CMM has neither been challenged by the applicant nor set aside in accordance with law.

8. In the unreported decision of this Court in ***Bail Application No. 279/2015*** titled ***Rajat Sharma vs. State of NCT of Delhi/(2015) SCC Online Del 8914*** decided on 21st April, 2015, the Court has enunciated that the object of bail is to secure the appearance of the accused person at his trial. The Hon'ble Supreme Court in ***Sanjay Chandra vs. CBI*** reported as ***(2012) 1 SCC 40***, has held that pre-conviction detention should not be resorted to except in cases of necessity in order to secure attendance of the accused at the trial or upon material that the accused will tamper with the witnesses if left at liberty.

9. In the case of ***State of U.P. vs. Amaramani Tripathi, (2005) 8 SCC 21***, one of the parameters that was considered necessary for consideration at

the time of determining an application for bail was whether there is a danger of the accused absconding or fleeing, if released on bail.

10. In the case of ***Gurcharan Singh vs. State (Delhi Administration)*** reported as **(1978) 1 SCC 118**, the Hon'ble Supreme Court *inter alia* observed that one of the two paramount considerations while considering an application for grant of bail in a non-bailable offence, is the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. The above consideration is dictated by the necessity of ensuring a fair trial.

11. In the present case, it is observed that since the time of the registration of the subject FIR, the applicant has steadfastly refused to join investigation. Even in response to the process under Section 82 of the Code of Criminal Procedure, 1973, the applicant kept himself away from the Court. The applicant was consequently declared as a proclaimed offender by way of order dated 1st October, 2013 passed by the concerned CMM, Delhi.

12. Apart from these considerations, in the present case, there is prima facie a reasonable ground to believe that the applicant has committed the offence.

13. Furthermore, although the charge-sheet under Sections 419/420/406/409/120B/174A IPC has been filed against the applicant, the case is at the stage of arguments on charge.

14. In view of the above said facts and circumstances, it is not going to be possible to ensure the presence of the applicant to stand trial, if he is released on bail.

15. The present bail application is dismissed.

SIDDHARTH MRIDUL, J

SEPTEMBER 18, 2015/sd