

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 19th November, 2015

BAIL APPLN. 2490/2015

SUBHASH

..... Applicant

Through: Mr C.S.Dahiya, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr M.S.Oberoi, APP with SI Vishwa
Nath, PS- Lahori Gate.
Mr Rajesh Khanna, Advocate for
Complainant.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

CRL.M.A. 16787/2015 (Exemption)

Exemption is granted subject to all just exceptions.

The application is disposed of accordingly.

BAIL APPLN. 2490/2015

1. The present is an application under Section 439 of the Code of Criminal Procedure, 1973 on behalf of the applicant/accused Subhash

seeking regular bail in FIR No.197/2014 registered at Police Station- Lahori Gate, Delhi, under Sections 420/467/468/471/201/120B IPC.

2. At the outset, it is noticed that the applicant has been in judicial custody since 26.11.2014 and that the charge-sheet in the subject FIR has been filed on 23.03.2015 after investigation.

3. Learned counsel appearing on behalf of the applicant would urge that in view of the decision of the Supreme Court in **Sanjay Chandra v. Central Bureau of Investigation: 2012 (1) SCC 40** and in view of the decision of this court in **Rajat Sharma v. State of NCT of Delhi: 2015 (3) JCC 1493**, no useful purpose shall be served by detaining the applicant in judicial custody. Counsel appearing on behalf of the applicant would further urge that no recovery has to be made from the applicant and that the latter has clean antecedents. Lastly, it would be urged on behalf of the counsel for the applicant that the latter has been in judicial custody for almost a year and that he has a young wife and a son who are stated to be abnormal and require constant care and attention.

4. On the contrary Mr M.S.Oberoi, learned APP appearing on behalf of the State, would urge that keeping in view the seriousness of the allegations and the severity of punishment in the event of conviction, the present is not a

fit case for grant of regular bail.

5. As per the prosecution, the applicant, who was assigned the responsibility of managing the accounts of the complainant-firm and collection of cheques from debtors, is alleged to have deposited the amounts received on behalf of the complainant into an account operated by the applicant in the name of the complainant-firm.

6. In *Sanjay Chandra (supra)* the Hon'ble Supreme Court has crystallized the law in respect of 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.

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.”

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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 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 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.

(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.”

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. However, the circumstance that the investigating agency has already completed investigation and the charge-sheet has already been filed cannot be lost sight of. Further, 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. The applicant has already been in custody for almost a year. Consequently, I am of the opinion that the applicant is entitled to grant of bail pending trial on stringent

conditions.

9. In the 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 date fixed for hearing of the case. The applicant shall surrender his passport, if any, before the trial court at the time of furnishing bail/surety bond. The application is disposed of accordingly.

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

NOVEMBER 19, 2015

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SIDDHARTH MRIDUL, J