

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on : 4th March 2016

+ BAIL APPLN. 431/2016
FAREED AHMED

..... Petitioner

Through: Mr. Santosh Kumar Suman, Advocate

versus

THE STATE (GOVT OF NCT DELHI)

..... Respondent

Through: Mr. Amit Chadha, Additional Public
Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

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P.S. TEJI, J.

1. Petitioner seeks bail in FIR No. 166/2015 under Section 3/9 of Official Secrets Act, 1923 registered at Police Station Crime Branch, by filing the present petition under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.).

2. As per prosecution, the petitioner is involved in providing secret information to co-accused who used to forward the same to Pakistan based intelligence operatives (PIO), for monetary gains. The prosecution case, in nutshell, is that on meeting a secret informer met the Duty Officer, PS Crime Branch, Malviya Nagar, Delhi, in the office of ISC, Crime Branch Chanakyapuri, Delhi, and he gave information regarding anti social activities supported by Pakistan based

intelligence operatives (PIO). As per the informant, the PIO is having an Indian handler who is collecting information regarding the deployment of army and BSF in Jammu & Kashmir and passing the same across the border which can be hugely detrimental for national security. The handler is believed to have a pan India network of informers who comprise of security personnel. Being a matter of national security, the concerned mobile number was taken on interception and two characters namely Kafaitullah Khan and Abdul Rasheed have surfaced. As per intercepts Kafaitulla Khan is based in Rajouri District of Jammu & Kashmir and Abdul Rashid is serving in border security force and working as per the instructions of PIO. Abdul Rasheed is passing on secret information to Kafaitullah Khan in lieu of money. The said information obtained can be directly or indirectly used by enemy country. Accordingly they have committed prima facie an offence under Section 3/9 of the Official Secrets Act, 1923.

3. During investigation, Kafaitullah Khan disclosed the name of the petitioner, who is a permanent resident of Jammu & Kashmir and retired from Indian Army and was arrested by police on 06.12.2015 and since then he is in judicial custody.

4. Mr. Santosh Kumar Suman, counsel for the petitioner contended that one of his uncles was working in Police Department, J&K, and two other uncles retired from Indian Army and all the family members of the petitioner are serving the Nation. It is contended that the petitioner belongs to Islam religion therefore the

Government of Jammu & Kashmir supported by Central Government, intentionally passed the direction to the authorities of Crime Branch to torture the petitioner. It is further contended that the petitioner is a constable and has to do duties of the constable only for safety of his office and for compliance of the higher officer and at no point of time he was in possession of any document/ article/ secret information of Department. The petitioner has not been named in the FIR and nothing has been recovered from the possession of the petitioner. However, it is contended that the police falsely planted the recovery from the house of the petitioner. Counsel for the petitioner further contended that there is no evidence to conclude the guilt of the petitioner. In such a situation, the petitioner ought to be granted bail in the present case.

5. Mr. Amit Chadha, learned Additional Public Prosecutor for the State submitted that the petitioner is involved in the offence relating the national security and the information passed by the petitioner include (1) documents containing details of Sector Commanders meeting, (2) ORBAT of 25 Division, (3) Details of Section Commanders Course taken from booklet named Military Law Instructions, (4) Army Postal PIN Codes of 25 Infantry Division and (5) copy of a letter on directions from the timing of Switch On and Off of the lights in the Unit. In addition, it is stated that at the time of passing of the information the petitioner was posted as Company Clerk at 17 JAKLI, Poonch, J&K and he was having full access to the secret files of the office. It is further submitted that the petitioner had received Rs.20,000/- from ISI Agent Faisal ur Rehman for providing

the said information. It is further submitted that the petitioner had passed the information regarding Indian Army to ISI Agent Faisal ur Rehman through his associates namely Munawar, Kaifaitullah Khan and Saber. It is further informed that during the investigation one Audio CD containing conversation of all the accused persons including the petitioner herein was recovered from the house of Kaifaitullah and the same was seized as a piece of evidence. The same is however sent to FSL, Rohini for matching alongwith the voice samples of the accused. It is submitted on behalf of the State that there is every likelihood that the applicant may misuse the liberty of bail either by fleeing from justice or by tampering with evidence or by indulging again in anti national activities, therefore, the petitioner ought not to be granted bail in the present case.

6. I have heard the submissions of learned Senior Counsel appearing on behalf of the petitioner as well as the submissions of learned Additional Public Prosecutor for the State and also gone through the material placed on record.

7. After careful scrutiny of the case, going through the contents of the petition as well as FIR, this Court observes that the name of the petitioner is disclosed by the main accused Kaifaitullah Khan who was the ISI Agent.

8. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* (2010) 14 SCC 496, the Hon'ble supreme Court dealt with the basic principles laid down in catena of judgments on that point. The Court proceeded to enumerate the factors:

9. ... among other circumstances, the factors [which are] to be borne in mind while considering 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 accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

9. In the light of the facts and circumstances of the present case, this Court is of the view that the allegations against the petitioner are very serious in nature, he is involved with other co-accused persons in supplying the information relating to Indian National Security to Pakistani Intelligence Agency ISI. In the kind of cases, in which the petitioner's involvement is disclosed by the main accused and recovery of documents from the petitioner, in the considered opinion of this Court the submission of learned Additional Public Prosecutor for the State regarding misuse of liberty of bail either by fleeing from

justice or by tampering with evidence or by indulging again in anti national activities, cannot be ruled out at this stage, especially when the trial is at an initial stage.

10. In view of the aforesaid reasons, this Court is not inclined to grant bail to the petitioner – Fareed Ahmed at this stage. Accordingly, the bail application filed by the petitioner is hereby dismissed.

11. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioners. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

12. With aforesaid observations, the present bail application stands disposed of.

P.S.TEJI, J

MARCH 04, 2016

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