

#29

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 16.02.2016

BAIL APPLN. 1753/2015 & CRL.M.A.18075/2015

ASHOK KUMAR

..... Petitioner

Through: Mr. N. Hariharan, Sr. Advocate with
Mr. Deepak Gandhi, Mr. Sahil Paul,
Mr. Amartya Kanjilal and Mr.
Siddharth S. Yadav, Advocates

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Radhika Kolluru, APP with SI
Sanjiv Verma, EOW
Mr. Jayant K. Sud, Advocate with Mr.
Honey Khanna, Advocate for the
Complainant

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 (Cr.P.C.) on behalf of the applicant Ashok Kumar seeking regular bail in FIR No.48/2015, under Sections

403/409/417/418/420/421/477/120-B IPC, registered at Police Station-EOW Cell.

2. At the outset, it is noticed that the applicant has been in judicial custody since 13.04.2015. The charge sheet in the subject FIR has been filed on 10.07.2015 and charges have also been framed against the applicant on 08.02.2015.

3. Mr. Hariharan, learned Senior Counsel appearing on behalf of the applicant invites my attention to the decision of the Supreme Court in **Sanjay Chandra vs. Central Bureau of Investigation** reported as **2012 (1) SCC 40** as well as the decisions of this Court in **Rajat Sharma vs. State of NCT of Delhi** reported as **2015 (3) JCC 1493** **Sharad Kumar vs. CBI** reported as **2011 (4) JCC 3078** to urge that in view of the circumstance that charges have already been framed against the applicant, no useful purpose shall be served by detaining the applicant in custody.

4. Ms. Kolluru, learned APP appearing on behalf of the State on the contrary would urge that the applicant *inter alia* been charged for an offence under Section 409 IPC, which upon conviction entails a sentence which may extend up to life and consequently, the Court ought to be circumspect in releasing such an accused on bail. In this behalf, Ms. Kolluru would urge

that the Hon'ble Supreme Court of India did not consider the circumstance that the applicant in that case had been charged with offence under Section 409 IPC, while enlarging them on regular bail. It is also urged on behalf of the prosecution that the co-accused of the applicant is still at large.

5. In *Sanjay Chandra (supra)* the Hon'ble Supreme Court held as follows:-

“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 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 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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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 applicants 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) The applicants 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.”

6. In *Rajat Sharma (supra)* 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 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 not already surrendered, before the trial court at the time of furnishing bail/surety bond. The application is disposed of accordingly.”

7. Insofar as the submissions made on behalf of the prosecution to the effect that the Hon’ble Supreme Court is silent on the sentence of life imprisonment, which the offence of Section 409 of IPC entails, upon conviction, is concerned, it would be profitable to refer to the decision of a Coordinate Bench in *Sharad Kumar* (*supra*) wherein in paragraph 22, 23 and 24 of the report it was observed as follows:-

“22. Seen in the aforesaid backdrop, the question which arises for consideration is as to whether the petitioners who are charged for an offence of conspiracy under Section 120B IPC read with Section 409 IPC apart from other offences etc., which carry life imprisonment ought to be released on bail notwithstanding the fact that the order of the Apex Court is silent about the life imprisonment which the offence carries. In this regard, I feel merit in the contention of Mr. Ahmed, the learned senior counsel for the petitioners that although the Apex Court order does not find the mention of the word 409 IPC or the factum of life imprisonment which could be imposed for the said offence in the order, but it was cognizant of the fact that the all co-accused persons in the bail applications which were under its consideration were charged so. In addition

to this, while dealing with the facts of the case in the batch of applications of Sanjay Chandra's case (supra) it had taken the charges against all the co-accused as a whole and not individual charges, therefore, if that be the position, this Court ought not to deny the bail to the petitioners on account of the omission, though inadvertent, in the order of the Apex Court. I am of the view that when the Supreme Court has reproduced the facts of the case, given the magnitude of the offence, the severity of the punishment which it entails, it has taken into note of the fact of the accused persons in general being charged for an offence under Section 409 IPC or the conspiracy thereof which carry life imprisonment. If despite the aforesaid facts, the Supreme Court has released the coaccused persons Sanjay Chandra's case (Supra) on bail, the said benefit cannot be denied to the petitioners on the grounds of parity. Moreover, the offences of which the petitioners in general have been charged, carries a punishment of five years under Prevention of Corruption Act or the IPC in comparison to the accused persons in Sanjay Chandra's case (supra) where it carried 7 years. So in a way petitioners stand is on better footing, therefore, they ought not to be denied the benefit of bail. Moreover, the Supreme Court order, which is passed in Sanjay Chandra's case (supra) is binding on the High Court. The High Court cannot while considering the bail applications of the present accused persons do hair splitting of the order of the Supreme Court and make out a distinction when there is none so as to deny the benefit of said order to the petitioners by saying that the petitioners are charged for the offence of conspiracy under Section 120B IPC read with section 409 IPC which carries the life imprisonment. It will be also in my view would be violative of Article 141 of the Constitution, which lays down that the High Court being the subordinate to the Supreme court must show compliance and the respect to the orders of the Apex

Court. In this regard, I am tempted to reproduce para 6 of the case titled Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. & Ors., (1985) 1 SCC 260, wherein it has been stated as under:-

“.....It will never be necessary for us to say so again that „in the hierarchical system of courts“ which exists in our country, „it is necessary for each lower tier“, including the High Court, „to accept loyally the decisions of the High tiers“. „It is inevitable in hierarchical system of courts that there are decisions of the Supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary..... But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted.“ The better wisdom of the court below must yield to the higher wisdom of the court above. This is the strength of the hierarchical judicial system.”

23. Similarly, in case titled M/s Bayer India Ltd. & Ors. Vs. State of Maharashtra & Ors., (1993) 3 SCC 29,, the Apex Court has observed as under:-

“While we certainly respect the independence of the High Court and recognize that it is a co-equal

institution, we cannot but say, at the same time, that the constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of this Court which are binding on all courts within the territory of India.”

24. Mr. Altaf Ahmed, the learned senior counsel has also cited number of other judgments to impress on this Court, the question that the omission to mention of Section 409 IPC or the absence of the word „life imprisonment“ in the Supreme Court order cannot be interpreted in a manner which may be detrimental to the interest of the petitioners on account of Article 141 of the Constitution of India as the Supreme Court has dealt with the facts of the case as a whole and was cognizant of the fact that the charges against all the petitioners had crystallized. It was also aware that common charges with regard to the commission of offence were framed against all the accused persons, which entailed imposition of life imprisonment, yet it consider the case of the co-accused Sanjay Chandra’s Case (supra) fit to grant bail. These judgments are Official Liquidator Vs. Dayanand & Ors. (2008) 10 SCC 1, State of Bihar Vs. Kalika Kuer @ Kalika Singh & Ors. (2003) 5 SCC 448, Ajmer Singh Vs. State of Haryana, (2010) 3 SCC 746, Izharul Haq Abdul Hamid Shaikh & Anr. Vs. State of Gujarat, (2009) 5 SCC 283, Dinbandhu Sharma Vs. State, 87 (2000) DKT 149, Director of Settlements, A.P. & Ors. Vs. M. R. Apparao & Anr., (2002) 4 SCC 638, Saganthi Suresh Kumar Vs. Jagdeeshan, (2002) 2 SCC 420 and Indian Airlines Vs. Union of India & Ors., 128 (2006) DLT 505 (DB).”

8. Consequently, the contention raised on behalf of the prosecution is not tenable.

9. Mr. Sud, learned counsel appearing on behalf of the complainant would invite my attention to the decision of the Supreme Court in **Gautam Kundu vs. Manoj Kumar** reported as **2015 SCC OnLine SC 1333**. The judgment relied on behalf of the complainant does not come to their aid, inasmuch as, the applicant in that case was *inter alia* charged with violation of provisions of Prevention of Money Laundering Act, 2002.

10. It is also noticed that the decision of the Supreme Court in **Sanjay Chandra** (*supra*) had not been brought to the notice of the Hon'ble Supreme Court in **Gautam Kundu** (*supra*). Even otherwise, in the light of the observations of the Hon'ble Supreme Court in the case of **Sanjay Chandra** (*supra*), in my view it is not open to this Court to differentiate between the facts of that case and the present case by invoking the provisions of Section 409 of IPC to hold that since the offence under Section 409 IPC carries the sentence of life imprisonment, therefore, the benefit of the ratio in the afore-stated judgment cannot be extended to the applicant, on the basis of parity.

11. In the present case, it is evident that the applicant has been charged with an economic offence of some magnitude. However, the fact that the

investigating agency has already completed investigation and filed the challan; the circumstance that charges already stand framed against the applicant; and the circumstance that the applicant has been in judicial custody since 13.04.2015, cannot be lost sight of. Furthermore, it has not been urged on behalf of the prosecution that the applicant 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.

12. Consequently, I am of the opinion that the applicant is entitled to grant of bail pending trial on stringent conditions.

13. As a result, it is directed that the applicant be released on bail on his executing a personal bond in the sum of Rs.5,00,000/- (Rupees Five Lacs Only) 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 not already surrendered, before the trial court at the time of furnishing bail/surety bond.

14. The application is disposed of accordingly.

15. Dasti.

SIDDHARTH MRIDUL, J

FEBRUARY 16, 2016

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