#34

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

Date of decision: 02.02.2016

+ BAIL APPLN. 2369/2015 and CRL. M. (BAIL) 8039/2015

TEJ PAL GUPTA ..... Applicant

Through: Ms. Geeta Luthra, Sr. Advocate with Mr. Nitin Mittal, Ms. Shivani Lohiya and Mr. Pranav Vashishth, Advocates

Versus

STATE ..... Respondent

Through: Mr. M.S. Oberoi, APP for the State
Inspector Parveen Ahlawat, P.S. Rani Bagh, Delhi
Mr. M.N. Dudeja, Adv. 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.) read with Section 482 Cr.P.C. seeking regular bail in FIR No. 979/2014, under Sections 406/420/120B IPC, registered at Police Station- Rani Bagh, Delhi.

2. At the outset, it is noticed that the applicant has been in judicial custody since 10th March, 2015 and that the charge-sheet in the subject FIR has been filed on 11th May, 2015 after a thorough investigation.

3. The opposition on behalf of the police as well as the complainant to the grant of regular bail to the applicant herein stems from an assertion that the latter is a flight risk and that Non-bailable Warrants had been issued against him which were eventually executed in Hubli, Karnataka.

4. In a landmark decision in ***Sanjay Chandra vs. Central Bureau of Investigation*** reported as **(2012) 1 SCC 40,** the Hon'ble Supreme Court of India 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.
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> **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.

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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 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 ally 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."

5. In ***Rajat Sharma vs. State of NCT of Delhi*** reported as **2015 3 JCC 1493,** this Court was pleased to observe in paragraph 7 of the report 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."

6. In the present case, there is no gainsaying the circumstance that the applicant has been charge sheeted for an economic offence. However, the investigating agency has already completed investigation and the circumstance that the charge-sheet has already been filed cannot be lost sight of. The assertion made on behalf of the official respondent as well as the complainant that the applicant herein is a flight risk can be dealt with by imposing stringent conditions whilst enlarging the applicant on regular bail. Therefore, in my view, the presence of the applicant in further custody is not

necessary since the applicant has already been in custody for over eleven months. Consequently, it is directed that the applicant be released on regular bail pending trial on his 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 subject to the further conditions that:-

(i) The applicant shall not leave the National Capital Territory of Delhi without the prior permission of the Trial Court;

(ii) The applicant shall remain present before the Trial Court on the dates fixed for the hearing of the case;

(iii) 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.

(iv) The applicant shall also surrender his Passport, if any, before the Trial Court at the time of furnishing bail bond/surety bond.

7. With the above directions, the present bail application is disposed of. Pending application for interim bail also stands disposed of.

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

SIDDHARTH MRIDUL, J

FEBRUARY 02, 2016
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