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

**Date of decision: 24.02.2016**

**+ BAIL APPLN. 2707/2015 and Crl. M. (BAIL) No. 8361/2015**

**JITENDER KUMAR**

..... Applicant

Through: Mr. Sunil K. Mittal, Mr. Kartickay  
Mathur, Mr. Sanket Gupta and  
Mr. Anshul Mittal, Advocates

Versus

**GOVT. OF NCT OF DELHI**

..... Respondent

Through: Mr. M.S. Oberoi, APP for the State  
Inspector Arun Dev Nehra, P.S. Amar  
Colony  
Mr. Aman Lekhi, Sr. Advocate with  
Mr. Gurpreet Singh, 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.) on behalf of the applicant- Jitender Kumar seeking regular bail in FIR No. 219/2014, under Sections 420/467/468/471/120B/34 IPC, registered at Police Station- Amar Colony, Delhi.

2. At the outset, it is noticed that the applicant has been in judicial custody since 19<sup>th</sup> April, 2015. The charge sheet in the subject FIR has been filed on 27<sup>th</sup> January, 2015 and order on charge has been rendered on 12<sup>th</sup> February, 2016.

3. As per the prosecution, the applicant along with his co-accused Dhiraj Prasad and other associates have cheated the complainant- Rishabh Gupta to the tune of Rs. 2.10 crores by preparing forged documents to establish their title to the subject land admeasuring 430 acres. The prosecution further states out of the total cheated sum of Rs. 2.10 crores, a sum of Rs. 1.10 cores has been paid through banking challans to the M/s JMD Techinfra Private Limited and the balance was paid in cash.

4. I have heard Mr. Sunil K. Mittal, learned counsel appearing on behalf of the applicant and Mr. M.S. Oberoi, learned APP appearing on behalf of the official respondent. I have also been assisted by Mr. Aman Lekhi, learned senior counsel appearing on behalf of the complainant in the subject FIR.

5. In a nutshell, it is contended on behalf of the prosecution as well as the complainant that the conduct of the applicant herein disentitles him from

being enlarged on regular bail. The aforesaid conduct is summarized as follows:-

- a) The applicant had at the time of securing bail before the learned Additional Sessions Judge undertaken to refund the sum of Rs. 1.10 crores as recorded in the order dated 9<sup>th</sup> July, 2014 and subsequently, resiled from making the said payment for one reason or the other.
- b) Subsequent to the dismissal of the bail application by the Sessions Court and the miscellaneous applications seeking extension of time for making the payment as undertaken before the Sessions Court on 27<sup>th</sup> January, 2015, the applicant allegedly evaded arrest till the 19<sup>th</sup> April, 2015 when he was finally arrested in execution of the Non-Bailable Warrant issued by the Court.
- c) The applicant has previous involvement, inasmuch as, another FIR bearing no. 225/2011 under Sections 420/467/468/471/120B/34 IPC has been registered at Police Station- Economic Offences Wing, Delhi against him and he is already been charge-sheeted in that case.
- d) The applicant has no permanent address in Delhi and there is a distinct possibility that he shall not be available to stand trial.

6. 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:-

“20. The appellants are facing trial in respect of the offences under Sections 420-B, 468, 471 and 109 of the Penal Code, 1860 and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Bail has been refused first by the Special Judge, CBI, New Delhi and subsequently, by the High Court. Both the courts have listed the factors, which they think, are relevant for refusing the bail applications filed by the applicants as seriousness of the charge; the nature of the evidence in support of the charge; the likely sentence to be imposed upon conviction; the possibility of interference with the witnesses; the objection of the prosecuting authorities and the possibility of absconding from justice.

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 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.

24. In the instant case, we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating the scales of justice”.

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in

general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.

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39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the

court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

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43. There are seventeen accused persons. Statements of witnesses run to several hundred pages and the documents on which reliance is placed by the prosecution, are voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that the accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.

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.”

7. At this juncture, it has been brought to my notice by Mr. Aman Lekhi, learned senior counsel appearing on behalf of the complainant that in *Sanjay*

**Chandra (supra)**, the Supreme Court had enlarged the applicant in that case on bail in view of the circumstance that the maximum sentence that could be awarded to that applicant in the event of conviction was seven years.

8. This issue is no longer *res integra*.

9. This Court, in a decision rendered on 16<sup>th</sup> February, 2016 in **Bail Application 1753/2015** titled **Ashok Kumar vs. State (NCT of Delhi)**, whilst dealing with an identical submission, in paras 7 to 10 observed as follows:-

“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.”

10. From a plain reading of the above decisions, the following legal position emerges, insofar as is relevant for the determination of the present bail application:-

- a) Gravity of the offence alone cannot be a decisive ground to deny bail.
- b) The protection of personal liberty has to be weighed with the object of securing attendance of the accused at trial.

- c) The accused is presumed to be innocent until he is found guilty and convicted.
- d) The Court must consider the unnecessary burden on the State to keep in custody a person who is yet to be proved guilty.
- e) Personal liberty is constitutionally protected unless necessity requires detention.
- f) The enlargement on bail is the rule and committal to jail, an exception.

11. At this stage, Mr. Aman Lekhi, learned counsel appearing on behalf of the complainant would urge that the expression “bail is the rule and committal to jail, an exception” is too expansive.

12. It is pertinent to mention here that each case, however, has to be decided in the context of its own facts and circumstances. A balanced approach must be taken and it is preferable to grant bail on stringent conditions rather than to keep an individual in detention for an indefinite period. The State is always at liberty to seek cancellation/modification of bail if the applicant violates the conditions imposed on him.

13. In **Rajat Sharma vs. State of NCT of Delhi** reported as **2015 3 JCC 1493**, this Court whilst following the dictum in *Sanjay Chandra (supra)* was pleased to observe in paragraphs 7, 8 and 9 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.

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.”

14. In **H.B. Chaturvedi vs. C.B.I.** reported as **2010 3 JCC 2109** in paragraph 12 thereof, this Court observed as follows:-

“12. Bail, it has been held in a catena of decisions, is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted. Furthermore, there is no justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. It cannot, therefore, be said that bail should invariably be refused in cases involving serious economic offences.”

15. Mr. Lekhi has also invited my attention to the decisions of the Supreme Court in *N. Kannapan vs. State (Union Territory) Andaman and Nicobar Islands* reported as (2013) 2 SCC 177 and *State of U.P. Through CBI v. Amarmani Tripathi*, reported as (2005) 8 SCC 21 to urge that the stage for consideration of enlargement of the applicant on bail is once the material witnesses have been examined before the trial Court in view of the gravity of the alleged offence.

16. There can be no quarrel with the proposition urged on behalf of Mr. Aman Lekhi, learned senior counsel appearing on behalf of the complainant. However, in my view, the same are not apposite in the factual matrix of the present case, inasmuch as, in *Amarmani Tripathi (supra)*, the applicant had been charged with murder and tampering of evidence, manipulating, threatening witnesses and abusing his influence as a Member of Parliament. So far as the accusations in *Kannapan (supra)* are concerned, the applicants therein were accused of bringing in excessive amount of explosives in a clandestine manner and employing them unauthorizedly in violation of Explosive Substances Act.

17. The present case, as is evident from the facts extracted hereinabove, is that the applicant has been charged with an economic offence which cannot by any stretch of the expression be called a heinous offence of the category of which the applicants had been charged in the decisions cited by Mr. Aman Lekhi hereinabove.

18. In the present case, it is observed that there is no material to suggest that the applicant was tampering with the evidence. There is also no hint or allegation that he will influence the witnesses. The applicant has already been enlarged on bail in FIR No. 225/2011, under Sections

420/467/468/471/120B/34 IPC and is not stated to have abused the terms and conditions of that order of bail.

19. The submission made on behalf of the prosecution to the effect that the applicant's son Sanjay Kumar was evading arrest and that circumstance disentitles the applicant from grant of bail, is not tenable, inasmuch as, the latter has already been enlarged on bail by the concerned Magistrate.

20. Furthermore, the contention of the prosecution that the applicant had evaded arrest on an earlier occasion is not sustainable, inasmuch as, no proceedings under Sections 82 and 83 Cr.P.C. had admittedly been instituted against him at any point of time.

21. Consequently, I am of the opinion that the applicant is entitled to grant of bail pending trial on stringent conditions. Also, the circumstances that the investigating agency has already completed investigation; the charge sheet has been filed; order on charge has been rendered on 12<sup>th</sup> February, 2016; and the applicant has been in judicial custody since 19.04.2015 cannot be lost sight of. Therefore, in my view, the presence of the applicant in further custody is not necessary.

22. In view of the foregoing, 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.

23. With the above directions, the present bail application is allowed and disposed of accordingly.

24. Copy of this order be given dasti under signature of the Court Master to counsel for the parties.

**FEBRUARY 24, 2016/sd**

**SIDDHARTH MRIDUL, J**