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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 15.01.2016

BAIL APPLN. 2787/2015

NARESH CHADHA

..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate with
Mr. Neeraj Chaudhari, Mr. Akshay
Chandra and Mr. Bharat Kapoor,
Advocates

versus

STATE

.... Respondent

Through: Ms. Radhika Kolluru, APP with SI
Ashwani Kumar, EOW

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.) seeking regular bail in FIR No.208/2011, under Sections 420/465/467/471/120-B IPC, registered at Police Station-EOW, District Crime & Railways.

2. The applicant has been in judicial custody since 09.11.2015. I am informed by Ms. Radhika Kolluru, learned APP appearing on behalf of the

police that the charge sheet against the applicant herein has since been filed before the concerned Court. According to the subject charge sheet, the applicant along with his co-accused is stated to have cheated the complainant in relation to a property transaction. The applicant is stated to be the main conspirator and beneficiary in the afore-stated transaction.

3. In a landmark decision of the Supreme Court in **Sanjay Chandra vs. Central Bureau of Investigation** reported as **2012 (1) SCC 40**, the Hon'ble Supreme Court crystallized the law in respect of grant 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 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.”

4. Following the decision of the Hon’ble Supreme Court in *Sanjay Chandra (supra)*, this Court in *Rajat Sharma vs. State of NCT of Delhi* reported as **2015 (3) JCC 1493**, 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.”

5. In the present case, it is observed 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 the charge sheet has already been filed cannot be lost sight of. Furthermore there is no hint or allegation 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. The applicant has already been in custody for more than one month. Consequently, I am of the opinion that the applicant is entitled to grant of bail pending trial on stringent conditions.

6. As a 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/- (Rupees One Lakh) with two sureties of the like amount to the satisfaction of the Trial Court/Duty Magistrate 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 dates fixed for hearing of the case. The applicant shall surrender his passport, if

not already surrendered, before the Trial Court/Duty Magistrate at the time of furnishing bail/surety bond.

7. The application is disposed of accordingly.

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

SIDDHARTH MRIDUL, J

JANUARY 15, 2016

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