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

% ***Judgment delivered on: 12th October, 2017***

\+ BAIL APPLN. 631/2017 & CRL.M.A. (Bail) 637/2017

PRAMOD KUMAR GOIL ..... Applicant

Through: Mr.Vikas Pahwa Sr. Advocate, Mr.Gurpreet Singh, Ms. Kinnori Ghosh & Mr. Tushar Aggarwal, Advocates

versus

STATE ..... Respondent

Through: Mr. Kamal Kumar Ghei, APP for State with Inspector Nitin Kumar E.O.W. Mandir Marg, New Delhi.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I.S. MEHTA, J.

1. By way of the above captioned application, the applicant seeks regular bail under Section 439 Cr.P.C. in the case FIR No. 268/2009 dated 26.12.2009, under Sections 406/420/467/468/471/120-B IPC, registered at Police Station-Economic Offences Wing, New Delhi.

2. In the instant application, the applicant is in judicial custody since 29.11.2016 and the charge sheet has been filed in the learned Trial Court on 24.02.2017.

3. The brief facts stated are that the applicant/accused is one of the directors of M/s Shree Bihari Forgings Pvt. Ltd. (*hereinafter referred to as the 'said company'*) and the complainant- Mr. Lalit Aggarwal is the other director of the said company. The company was incorporated on 15th March, 2004 and has been engaged in the business of manufacturing and dealing with metal forging. The said company had raised some loans in the past from Canara Bank with the consent of both the directors for its day-to-day business activities. However, for the last 4-5 years there were certain disputes between the directors of the company regarding the management and the working of the said company as a result of which the proceedings before the Company Law Board were initiated by both of them against each other. Subsequently, the complainant received information from various banks and financial institutions that the applicant/accused, who is the brother-in-law of the complainant had taken loans in the name of the said company.

4. Thereafter, on enquiry, the complainant found that the applicant/accused and his family members (other accused persons) took loan of Rs.1.35 Crores after forging the signatures of the complainant and the statutory auditor of the said company. The complainant was also shown as the applicant/guarantor in three loan documents. The details of the loans taken from all the seven banks/financial institutions are as under:-

i. Bajaj Finance, Jagannath Dudhadhra Complex, Opp. Maharaja Agrasen Hospital, Rohtak Road, New Delhi- Loan amount of Rs. 15 lakhs.

ii. India Bulls Financial Services Limited, A-1, FF, Hamilton House, Connaught Place, New Delhi- Loan amount of Rs. 25 lakhs.

iii. Magma Fincorp Limited, A-1/93, Basement, Okhla Indl. Area, Phase-I, New Delhi- Loan amount of Rs. 15 lakhs.

iv. Kotak Mahindra Bank, Amba Deep Building, Kasturba Gandhi Marg, New Delhi- Loan amount of Rs. 15 lakhs.

v. Standard Chartered Bank, 10, Sansad Marg, Jeevan Deep Building, New Delhi- Loan amount of Rs. 25 lakhs.

vi. ABN Amro Bank, 15, Barakhamba Road, Connaught Place, New Delhi- Loan amount of Rs. 20 lakhs.

vii. Religare Finvest Ltd, 1/7, East Patel Nagar, Near 178, Metro Pillar, New Delhi- Loan amount of Rs. 20 lakhs.

5. During investigation, it came to light that the applicant herein had taken loans from the above mentioned banks and financial institutions. The Chartered Accountant of the company Mr. Mahesh Gupta was examined and stated that he worked as a Statutory Auditor

for the said company i.e. Shree Bihari Forging Pvt. Ltd. for the financial year 2004-05 to 2006-07. After that he has not signed any balance sheet. The balance sheet of 2007-2008 is forged as he has not signed it.

6. The specimen signatures of the accused persons, chartered accountant, admitted signature and specimen signatures of complainant along with all original documents collected from banks and financial institutions were deposited for expert opinion. As per the FSL report, signatures of complainant-Mr. Lalit Aggarwal and Mr. Mahesh Gupta, Chartered Accountant used on loan applications to obtain loan from different banks and financial institutions in the name of said company were forged. The signature of applicant-Pramod Goil and other accused persons on the loan applications were found to be genuine.

7. The applicant/accused took the loan on behalf of the said company on the basis of forged documents. The applicant/accused was the guarantor against the above mentioned loans and was also the share holder of the company. His signature on the loan application forms were found to be genuine.

8. The applicant/accused was arrested in this case on 21.08.2012 and he was granted bail on the same day by the court of learned ACMM, Patiala House Court, New Delhi on the ground they are negotiating for the settlement but the applicant did not settle the matter as submitted in the learned Trial Court while obtaining the bail.

9. On 26.07.2012, the applicant was arrested in another FIR No.290/2011 under Sections 420/467/468/471 IPC registered at P.S. 20, Noida and vide order dated 21.08.2012, the applicant was granted bail in the present FIR No. 268/2009 and further was sent to Dasna Jail with respect to two other FIRs i.e. FIR No. 290/2011 and FIR No. 405/2011.

10. The applicant was granted bail by the Hon'ble High Court of Allahabad vide order dated 28.09.2012 in FIR No. 290/2011 under Sections 420/467/468/471 IPC registered at P.S. Sector- 20, Noida and was also granted bail in FIR No. 405/2011 under Sections 408/465/468/471/477A IPC registered at P.S. Kotwali, Ghaziabad by the Hon'ble High Court of Allahabad vide order dated 18.10.2012 and was released from jail on 19.10.2012.

11. In the mean time, the complainant filed an application under Section 437 (5) Cr.P.C. for cancellation of bail granted to the applicant/accused vide order dated 21.08.2012 in the present FIR No. 268/2009 before the learned ACMM, which went in dismissal on 19.10.2012.

12. Thereafter, the complainant filed an application under Section 439 (2) Cr.P.C. before the learned ASJ for cancellation of bail granted to the accused/applicant in the present case, which was allowed by the learned ASJ vide order dated 22.04.2013.

13. Aggrieved by the said order, the applicant herein filed Crl. M.C. 1621 of 2013 under Section 482 Cr.P.C. in this Court for quashing of the order dated 22.04.2013.

14. This Court vide judgment and final order dated 09.02.2016 set aside the order dated 22.04.2013 passed by the learned ASJ and admitted the present applicant on bail subject to certain conditions.

15. The applicant herein challenged the said order of this Court before the Hon'ble Supreme Court and the same was dismissed vide order dated 07.04.2016.

16. The applicant was consequently arrested before the learned Trial Court by the investigating officer on 29.11.2016.

17. Thereafter, the applicant moved an application for bail before the learned ACMM, Patiala House Courts for grant of bail but the same went in dismissal on 10.02.2017.

18. Subsequently, the applicant/accused filed a bail application before the learned ASJ which was dismissed vide order dated 18.03.2017.

Hence the present application.

19. The learned senior counsel appearing on behalf of the applicant has submitted that since 29.11.2016 the applicant is in judicial custody. The charge sheet is already been filed and there is no evidence *qua* the applicant, the allegations alleged against the applicant are false and the trial will take sufficient time. No purpose would be served if he is kept in jail. The allegation *qua* the applicant though false is that the applicant obtained loan of Rs. 1.35 Crores in the year 2008-09, after forging the signature of the complainant.

20. As per the charge sheet, the applicant has paid the entire loan amount due to all the banking institutions. The Complainant and statutory auditor of the company's signatures were forged.

21. The learned senior counsel has submitted that the money has been paid to the bank and there is nothing due against the company. The only problem in the present case is the non-deposit of Rs.50 lakhs in terms of order dated 09.02.2016 passed by this Court. Since the applicant could not comply with the condition, the applicant should not be given so harsh punishment as till date the applicant is in custody for 10 months and the applicant is unable to procure the amount of Rs.50 lakhs as ordered and prays that the right of the applicant should not be taken on his bonafide to pay the same to the complainant. In support of his arguments, the learned senior counsel for the applicant has relied upon the judgment of this Court i.e. ***Jitender Kumar v. Govt. (NCT of Delhi),*** **2016 SCC OnLine Del 1170.**

22. Per contra, the learned APP has opposed the bail application and submits that the applicant himself obtained and volunteered to pay the said amount. Initially, he cheated the complainant and later he cheated the Court. There were six conditions imposed by this Court while granting bail to the applicant herein in its order dated 9th February, 2016 and none of the conditions has been fulfilled, the order has been confirmed by the Hon'ble Supreme Court in SLP CRL. No. 2764/2016 vide order dated 07.04.2016 and this order is confirmed. Despite that, the applicant did not surrender and started

evading arrest and ultimately, he surrendered before the Ghaziabad Court in a different case and his own son withdrew the surety given in the Court.

23. I have given my thoughtful consideration to the submissions made by learned counsel for both the parties and have also perused the material on record.

24. In the present bail application, it is an admitted fact emerging on record that the applicant has been charged under Sections 406/420/467/468/471/120-B IPC. After filing several successive bail applications before the learned Trial Court which ended in dismissal, the applicant has moved the present application for grant of regular bail before this Court.

25. As per the available facts on record, the applicant herein is one of the Director of M/s. Shree Bihari Forging Pvt. Ltd. and the allegations alleged against the applicant is that he had taken financial loan of Rs. 1.35 Crores from various banks and financial institutions in the name of the said company by forging the signatures of complainant- Mr. Lalit Aggarwal, who is one of the Director of said company and the statutory auditor of the said company-Mr. Mahesh Gupta.

26. During the investigation, it was found that the balance sheet of the year 2007-08 was forged and the loan obtained from various banks and financial institutions were utilized by the applicant and the other accused persons in their own business and thereby misappropriated the amount. The FSL report is also against the

applicant. The FSL report clearly states that the signatures of the complainant and the auditor of the said company used on loan applications were found to be forged and the signatures of applicant/accused and other accused persons were found to be genuine.

27. It is also an admitted fact, that the applicant/accused was arrested in this case on 21.08.2012 and he was granted bail on the same date by the court of learned ACMM, Patiala House Court, Delhi on the ground that they will settle the matter, however, the applicant herein did not settle the matter as submitted in the Trial Court while obtaining the bail.

28. Thereafter, when the bail of the applicant was cancelled by the learned court of ASJ, Patiala House Court, Delhi, the applicant herein preferred a petition against said cancellation of bail before this Court and vide judgment and final order passed by this Court in Crl. M.C. 1621 of 2013 on 09.02.2016, the applicant/accused was admitted to bail subject to six conditions, which is reproduced hereunder:

> "*41. Therefore, under these circumstances, it would be appropriate to put the conditions while granting bail to Mr. Pramod Goil. The bail is granted but subject to the following conditions:*
>
> *(i) Trial in the matter is expedited;*
>
> *(ii) Pramod Goil as well as other petitioners in bail application shall join the investigation and produce all relevant documents which are required by the police which are in their power and possession;*
>
> *(iii) The petitioner shall not dispose of Company's property without the*

> *permission of the Court if the said property at any point of time is released from the attachment;*
>
> *(iv) The petitioner shall not approach any witness and tamper the record of the Company and shall not leave the country without the permission of the Court;*
>
> *(v) The petitioner shall fully cooperate with the Administrator appointed by this Court and shall produce the entire record available with them; and*
>
> *(vi) Without prejudice, Mr. Pramod Goil shall also deposit a sum of Rs. 50 lac with the trial court by way of bank drafts as a security as despite of statement made by him for settlement from time to time, he failed in his commitment. The said amount shall be deposited within eight weeks. On deposit, the trial court shall invest the said amount in fixed deposit initially for the period of one year."*

29. As per the Status Report, the applicant herein did not fulfill the above mentioned six conditions. He did not join the investigation despite service of notice twice. The applicant also did not deposit the amount of Rs.50 Lakhs with the Trial Court within eight weeks as imposed by this Court. The applicant was also directed to cooperate with the Administrator for auditing the accounts of the said company but the applicant did not cooperate, he did not produce the account books despite repeated reminders and ceased appearing before the Administrator. As a result, the learned administrator was constrained to resign and *suo moto* proceedings for contempt against the

applicant herein were directed by this Court in CO.A (SB) 32 of 2014 vide order dated 11.03.2016.

30. The applicant herein had also approached the Hon'ble Supreme Court against the conditional bail order passed by this Court dated 09.02.2016 but the same was dismissed vide order dated 07.04.2016 in SLP (Crl.) No. 2764 of 2016, with the following observation:

> "*No ground for interference is made out to exercise our jurisdiction under Article 136 of the Constitution of India.*
> *The Special Leave Petition is dismissed.*"

31. Thereafter, the complainant filed an application for cancellation of bail of the applicant/accused under Section 437(5) Cr.P.C as the applicant had not complied with the conditions imposed by this Court. <u>The learned Trial Court issued notice to the applicant for 16.05.2016 and 20.05.2016, but the applicant did not appear before the learned Trial Court in person and did not surrender himself before the learned Trial Court. Consequently, the bail order of the applicant was cancelled vide order dated 14.07.2016. The learned Trial Court issued NBW against the applicant on 22.08.2016 and he was arrested in this case on 29.11.2016.</u>

32. The argument of the learned senior counsel for the applicant that since the applicant could not deposit Rs.50 Lakhs in terms of order dated 09.02.2016 passed by this Court, he surrendered himself before the learned Trial Court and since he has already spent 10 months in jail, <u>he should be admitted to bail does not hold ground as it is evident from the conduct of the applicant that he was evading his</u>

arrest and his bail application has been finally rejected by the Hon'ble Supreme Court in SLP (Crl.) No. 2764/2016 on 07.04.2016.

33. The Hon'ble Supreme Court while dealing with the case of ***Himanshu Chandravandan Desai & Ors. V. State of Gujrat*** reported in **2006 Cr.L.J. 136** had made the following observation:-

> *"Accused a Director of Bank and others involved in Bank Scam - Siphoned off funds of Bank worth crores by bogus loans and fictitious letters of credit in name of their friends, relatives etc. - Offence is very serious - Evidence showing their prima facie involvement in offence - Having regard to huge amounts involved there is danger of accused absconding, if released on bail, or attempting to tamper with evidence by pressurizing witnesses - Refusal of bail is proper."*

34. If the present applicant/accused is released on Bail, there is every possibility that he may tamper the prosecution evidence and may again abscond himself. Reliance is placed on the judgment of the Apex court in ***Nimmagadda Prasad v. CBI***, **AIR 2013 SC 2821** wherein the Court made the following observation with respect to economic offences:

> *"25. **Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail**. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a*

> *whole and thereby posing serious threat to the financial health of the country."*
>
> *(emphasis supplied)*

35. Consequently, I find no merit in the present Bail Application and the same is rejected at this stage. However, it is made clear that nothing stated in this judgment shall be considered as an expression of an opinion on the merits of this case.

36. The Trial Court is directed to expedite the trial as soon as possible. Let one copy of this order be sent to the concerned Court.

37. All the pending applications (if any) are disposed of accordingly.

I.S.MEHTA, J

OCTOBER 12, 2017