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

\+ BAIL APPLN. 674/2017

INDERPREET SINGH & ANR. ..... Petitioners

Through: Mr. K.T.S. Tulsi, Sr. Adv. with Mr. A. Faraz Khan, Adv.

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Amit Chadha, APP for State. Mr. Ajit Kumar Singh, Mr. Kumar Sameer, Ms. Nidhi Singh & Mr. D.K. Sabat, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE R.K.GAUBA**

**O R D E R**

% **21.04.2017**

*1.* On the compliant of one Rajnarendra B. Badave, first information report (FIR) No. 12/2011 was registered at police station Economic Offences Wing (EOW), Crime Branch, New Delhi respecting offences punishable under Sections 409, 420, 12B of Indian Penal Code, 1860 (IPC) and Sections 3,4,5 and 6 of Prize Chit & Money Circulation Schemes (Banning) Act, 1978. During the investigation into the said FIR, the two applicants herein came to be arrested, they being directors of the company described as Abcindya Networks Pvt. Ltd. (the company) their active involvement having been alleged in day-to-day management in the course of which investments had been received from the public at large, statedly with fraudulent and dishonest intention. The applicants' applications for bail (bail applications No. 1416 & 1417) came up before the Additional Sessions Judge, Fast Track

Court (West), Delhi on 6.3.2012. It was submitted, and the learned sessions court accepted, that since there are a number of investors who had entrusted money with the applicants, the payment thereof could not be ensured with they continuing to be in custody and that this could be possible only if they were granted bail. Persuaded by these arguments, the sessions court, by order dated 6.3.2012, directed the release of the applicants on bail subject to they furnishing personal bonds in the sum of Rs. 1 lakh with two sureties each in like amount to the satisfaction of the concerned magistrate directing them to deposit their passports and not to leave the country without prior permission, to assist the investigation and, what is of import here, *"to ensure the payment of money to the creditors"*.

2. The respondent (State) representing the investigating agency, however, approached this Court invoking Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C), by Crl.M.C. 1922/2012 praying, for quashing of the above said order dated 6.3.2012. When the petition filed came up for hearing on 16.7.2012, a learned Single Judge, then in *seisin* deemed it proper to direct the Serious Fraud Investigation Office (SFIO) also to investigate into affairs of the company and to submit its report specifically on the issue as to whether any money had been siphoned off from the company or not. The respondents were directed to cooperate with the Investigating Officer of the police case as well as with SFIO.

3. On 3.10.2012, an interim report of SFIO was submitted which was taken on record. It revealed that certain tax liability on account of the company had not been satisfied. The tentative report of SFIO, as submitted to the court at that stage, also confirmed the allegations of siphoning of the funds. Certain further directions were given for further probe, *inter alia,* by

SFIO, with the applicants herein being directed to file affidavits indicating as to how many investors had been paid since the date they had been released on bail and also to ascertain as to whether they were willing to deposit the admitted money due and payable to the investors with the investigating officer.

4. No such affidavits in terms of the above said directions were immediately filed. The matter arising out of petition of the State seeking quashing of the bail order remained pending. Eventually, on 5.3.2014, a very short and cryptic affidavit was submitted by the first applicant stating that the company had already paid the net commission and incentives (out of the gross commission), adjusting the handling charges/incentive, and that it *"does not own any dues to any person"*. A typed copy of the said affidavit has been submitted (at pages 54 and 55) with the paper book. The amount of net commission and incentives that was claimed to have been paid is stated to be "Rs.--,58,80,759.72" and the amount of gross commission is indicated as "Rs.33,28,19,253.96". The learned counsel submitted that the document from which the typed copy has been prepared was illegible and, thus, there is deficiency in the copy filed on record. He clarified that in ground 'D' (at page 7) of the application, the amount already paid, as declared in the said affidavit is properly described as Rs.31.58 crore approximately.

5. The petition of the State under Section 482 Cr.P.C. came up for final hearing and disposal on 15th March, 2016. A learned Single Judge of this Court examined the issue and concluded, in the light of reports of investigating officer of EOW, and of SFIO, that after the release on bail by order dated 6.3.2012, the applicants had not made any payment. Holding that the applicants were guilty of violation of order dated 6.3.2012 as well as

order dated 3.10.2012 of this Court, he proceeded to cancel the bail and directed the applicants to surrender before the investigating officer within two days thereof. The applicants moved (Crl.M.A. 4844/2016) seeking extension of time for surrender by one month but the said prayer was declined by order dated 21.3.2016.

6. The orders dated 15.3.2016, and 21.3.2016, of this Court (in Crl.M.C. 1922/2012) were assailed before the Supreme Court by Special Leave to Appeal (Criminal) Nos. 3918-19/2016. It is submitted by the applicants through counsel that during the pendency of the said SLPs, they were granted protection against arrest but the said petitions were eventually dismissed by order dated 7.4.2017 there being no *"reason to entertain"*. But, by the said very order, the applicants were given liberty to apply to this Court *"for grant of bail"* upon demonstrating that they have in fact paid the amount as per the undertaking furnished by them, with protection against arrest afforded for 15 days.

7. The applicants have, thus, approached this Court through the application at hand under Section 439 Cr.P.C. for release on bail. By order dated 18.4.2017, while issuing notice, the respondents were directed to file their responses and updated status reports clearly indicating their position *vis-a-vis* the payment of amounts as per the undertakings earlier furnished by the petitioners. In compliance, each of the two respondents have submitted their responses.

8. The learned counsel on all sides have been heard. The material on record has been perused.

9. The report of EOW which is the investigating agency handling the investigation of the FIR in which context the present application has been

moved indicates that the investigation has revealed, *inter alia,* that 40715 persons had invested their money in the scheme launched by the company in question and, it collected, in the process, amount to the tune of Rs. 44 crore. Out of the said investors, as many as 5737 persons have made specific complaints of cheating, their investments being to the tune of Rs. 11,97,62,000. The learned senior counsel for the applicants attempted to pick holes in the report of EOW stating that it is inherently contradictory in that it refers at page 3 to the persons who had been duped to be 6,000 in number and the amount cheated to be Rs.12 crores. The submissions are meritless as it is clear that these figures are stated by rounding off the statistics mentioned earlier.

10. The additional public prosecutor representing the respondent (State) referred to a decision of Supreme Court in *Sandeep Kumar Bafna vs. State of Maharashtra & Anr. 2014 (16) SCC 623.* He argued that unless the applicants actually make an application seeking to surrender to the custody of this Court the application under Section 439 Cr.P.C. cannot be entertained. Given the fact that the Supreme Court, while dismissing the special leave petitions, granted liberty to the applicants (by order dated 7.4.2017) to approach this Court with a fresh application for bail and the fact that the applicants have surrendered to the jurisdiction of this court by moving such application at hand, the objection cannot be accepted.

11. But, the prime purpose for which the Supreme Court has granted liberty to the applicants to approach this Court once again is to give them yet another opportunity to demonstrate that they have, in fact, paid the amounts as per the undertakings furnished by them. The application at hand, however, is conspicuously silent on this crucial aspect. During the course of

hearing, the learned senior counsel for the applicants was repeatedly asked to clearly state and demonstrate the facts about payment of money, the mode and dates of such payments. He did not come up with clear answer. Instead, he referred to the report of SFIO as had been submitted during the hearing on the Crl.M.C. 1922/2012 and the complaint dated 13.3.2014 , also of SFIO, as instituted in the court of Additional Chief Metropolitan Magistrate, Tis Hazari on conclusion of its inquiry/investigation alleging offences punishable under Section 58A, 221, 233 read with Section 628 of the Companies Act, 1956.

12. It has to be borne in mind that the focus of investigation/inquiry by SFIO would not dwell on what is alleged in the instant FIR. The applicants had been arrested in the course of investigation into this FIR and they seek release on bail in the proceedings arising therefrom. There are clear allegations, and the evidence collected by the investigating agency (EOW) seems to support the case that the claim of 5737 investments alleging cheating, their outstanding dues being to the tune of Rs. 11,97,62,000 having not been taken care of. There is nothing shown to this Court indicating payments made to any of the said investors as was the purpose sought to be achieved by the assurances held out to the sessions court on when it was persuaded to release the applicants on bail by order dated 6.3.2012.

13. Thus, this Court is satisfied that the applicants have failed to demonstrate the payment of money as per the undertakings furnished by them.

14. The applications for bail is, therefore, dismissed.

**R.K.GAUBA, J**

**APRIL 21, 2017/**nk