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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1130/2017 & CrI.M.(Bail) 1568/2017

Order reserved on : 1st September, 2017

18th September, 2017

Order pronounced on : 24th October, 2017

GHULAM RASOOL KHAN

.....Petitioner

Through: Mr. Kirti Uppal, Senior Advocate with
Mr. Sitab Ali Chaudhary, Mr. Sidharth
Chopra, Mr. Paramvir Singh Sethi,
Mr. Parvez Malik and Mr. Mohit
Bhandari, Advocates.

Versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Anita Abraham, APP for State,
Inspector Kusum Dangi with SI Karan
Singh Crime Branch.
Mr. Manoj Taneja, Advocate for the
complainant.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition, filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), the petitioner seeks **grant of regular bail** in FIR No.14/2017 under Sections 385/387/419/420/506/467/468/471/376 & 120B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 14 of the Foreigners Act, 1946 and Sections 66D/66E of the Information Technology Act, 2000, registered at P.S. Crime Branch, Delhi. The petitioner is stated to be in judicial custody since 20.10.2016. Status report is on record.

2. The facts of the present case as alleged by the prosecution are that on 19.05.2017, the complainant- an Afghan born female US Citizen, lodged a complaint of cheating, sexual assault, and extortion committed against her in India by M.K Fahim alias Hameedullah Akbar (main accused). The main accused was arrested on 03.02.2017 and during investigation several cheque books in different names and pass books of different banks including false /fake original adoption deed dated 13.01.2016 were recovered from his rented house. It is alleged that the adoption deed was prepared with the help of the petitioner to legalize his illegal stay in India and it also bears the signature of the petitioner as a witness. It is also alleged that the main accused in connivance with the petitioner has used the residential address of the petitioner at different places like Banks etc. The investigation revealed that infact all the accused persons including the petitioner were acting in connivance and conspiracy with each other thereby aiding and abetting to mislead all concerned by giving false information in order to facilitate the prolonged stay of the main accused whilst providing him a new identity.
3. Mr. Kirti Uppal, learned senior counsel for the petitioner contended that the petitioner was arrested on 19.05.2017 and has already spent more than three months in judicial custody; that medical condition of the petitioner is serious and he may not survive if he is not released on bail; that the petitioner was never in association with the main accused; that no document including the adoption deed was ever prepared, signed or executed by the petitioner; that none of the bank accounts of the main accused bear the imprint of

the petitioner; that the story of the complainant is concocted and false in as much as she herself admitted that the main accused was apprehended in an Interpol case and was a scammer but still gave him 6.850 US Dollars; that the conduct of the complainant is questionable as she knew that the main accused cheated her and still gave him money-the fact which is liable to make her an accomplice in the present case; that the other co-accused/Sagheer Ahmad Khan had been released on bail vide common order dated 30.05.2017 even though the adoption deed in question also bears his signature as a witness; that the petitioner was not a beneficiary with the main accused as no money was ever transferred into the account of the petitioner either from the complainant or from the main accused; that there are no specific allegations either in the complaint dated 01.02.2017 or in the FIR against the petitioner as the same are directed solely against the main accused/Hameedullah Akbar; hence the petitioner be granted bail.

4. In support of his contentions, the counsel for the petitioner has relied upon the judgement of this Court in ***H.B. Chaturvedi v. C.B.I. 171*** reported in ***(2010) DLT 223*** wherein the parameters for grant of bail have been extensively discussed by this Court.
5. On the contrary, Ms. Anita Abraham, learned APP appearing for the State, assisted by Mr. Manoj Taneja, counsel for the complainant, submitted that the petitioner is not entitled to bail on parity as he was closely known and was actively associated with the main accused and had intentionally aided the main accused to give him a fake identity and thereby facilitated his illegal stay in

India; that the petitioner knowingly allowed the main accused to use his residential address in several documents; that the petitioner in conspiracy with the main accused and other, had fraudulently prepared the false adoption deed in question and that the petitioner is liable for forgery of the said document as he had signed as a witness and under Explanation 2 of Section 464 of the IPC, one's own signature amounts to forgery; that there is no iota of evidence against Sagheer Ahmad Khan/co-accused apart from his signature on the said adoption deed; that only on the basis of sound incriminating material and sufficient evidence and after due satisfaction, the petitioner was arrested in the present case; and therefore, in the present facts and circumstances of the case, the bail application filed by the petitioner be rejected.

6. I have heard the learned counsel for the parties and perused the material available on record.
7. As is evident from the record, the previous bail application of the petitioner was rejected by the court of Chief Metropolitan Magistrate vide order dated 30.05.2017, whilst ascribing the role of an "*accessory-active participant*" to the petitioner in the alleged offences alongwith the main accused.
8. The petitioner is stated to have been an attesting witness to the **adoption deed** dated 13.01.2013 by which the main accused was alleged to be adopted by Smt. Ansari Begum, who is the mother of the petitioner. However, it is pertinent to mention here that, in her statement under Section 161 Cr.P.C., Smt. Ansari Begum has specifically stated that she never adopted any person as her son nor has she ever signed any such adoption deed which was shown to

her at the time of recoding her statement. Smt. Mubina, daughter in law of Smt. Ansari Begum, has also deposed on similar lines.

9. Investigation for verifying the authenticity of the alleged Adoption Deed was undertaken and a report bearing No. OI/551/1/2017, dated 28.03.2017 was obtained from the Attestation Cell of the Ministry of External Affairs. In the said Report it has been stated that the document submitted for attestation by the main accused was an 'Affidavit' and not an 'Adoption Deed' and that the seal of SDM was not real but photo-fixed on the document. The present petitioner has himself attested the alleged adoption deed that has been verified to be a forged one.
10. The fact that the adoption deed in question was prepared at the instance of the present petitioner is further apparent from the statement under Section 161 Cr.P.C., of the Director of the company of the main accused/Bhagat Singh who stated that the petitioner/Ghulam Rasool who was also employed in the same company had helped the main accused/Hameedullah Akbar in preparing an adoption deed. He also stated that the petitioner alongwith the main accused had used the said adoption deed during a business deal with one person so as to show that the main accused was an Indian citizen.
11. Also, the advocate, from whom the petitioner got the adoption deed prepared, has stated under Section 161 Cr.P.C. that the present petitioner requested him to draft an adoption deed on stamp paper showing adoption of Hameedullah Akbar by the mother of the petitioner and that the petitioner also paid Rs.11000/- towards his professional fees and took the said deed on 13.1.2016.

12. The present petitioner has also himself stated in his disclosure statement, recorded on 19.05.2017, that when the main accused wanted an adoption deed to be made, the petitioner assisted him by getting the same made in the name of his mother and also received Rs.25,000/- which was to be given to the advocate who would prepare the same.
13. Further the Additional Session Judge, while dismissing the bail application of the main accused/Hameedullah Akbar, vide order dated 30.03.2017 observed that *"The document i.e. the adoption deed relied by the counsel for accused during arguments that he is adopted child does not favour the accused. Firstly, prima facie, it is a forged document and secondly Muslim Law does not recognize adoption of a major male or by a person who is already having children."*
14. By virtue of the said false adoption deed, the main accused has been able to open accounts in several banks and has also secured several **important documents** in his name which include an I-card issued by Election Commission of India, Pan Card, Leave and License Agreement dated 21.09.2016 and an Agreement to Sell dated 31.12.2016. In one of the statement of account held by the main accused, the present petitioner has been named as a "Nominee" and in the relation column he has been stated to be the "Brother" of the main accused.
15. Moreover the present petitioner has knowingly permitted the main accused to use his **residential address** in the aforesaid documents and has also attested the said Lease and License

Agreement and the Agreement to Sell-entered into by the main accused, as a witness.

16. It has also been revealed in the Supplementary Chargesheet placed on record that on the basis of the above mentioned documents, the main accused had also formed and floated a **company** with one Sh. Bhagat Singh, by the name of M/s Sunlight World Trade Pvt. Ltd. The present petitioner was also employed in the said company of the main accused and derived his salary therefrom.
17. Further CAF and CDR's in respect of the two **mobile phone no.'s** used by the main accused provides that one of them was registered in the name of Gulam Naki- who is the elder brother of the present petitioner.
18. It is undisputed that the main accused was an Afghan national and the Visa permitting his stay in India had duly expired on 31.12.2013. From the aforementioned observations it can be well understood that the petitioner maintained active and complacent relations with the main accused/Hameedullah Akbar despite knowing the fact that the main accused was an Afghan National and was illegally staying in India after due expiry of his Visa. Also the preparation of the false/forged adoption deed was a deliberate attempt on the part of the petitioner who, acting in connivance with the main accused, aided his illegal stay in India by providing him a new identity i.e. of a legally adopted brother of the petitioner.
19. In view of the above, the petitioner cannot claim parity with the co-accused Sagheer Ahmad Khan and on that basis claim to be released on bail as there is no incriminating material against the co-accused, except his signature on the adoption deed in question.

Whereas the evidence placed on record shows direct involvement of the petitioner with the main accused in commission of the alleged offences. In criminal jurisprudence, every case stands on different footing as a result of which no straightjacket formula can be adopted to adjudicate upon the facts of every individual case. It is only when upon the examination of a particular case it emerges that the facts and circumstances of the case of the applicant is identical to that of the other accused who has been released on bail, the ground of parity shall be invoked to enlarge the applicant on bail. Hence parity is not the sole ground for granting bail in a case where the other co-accused has already been released on bail.

20. In ***Central Bureau of Investigation v. V. Vijay Sai Reddy*** reported in ***AIR 2013 SC 2216*** the Supreme Court observed as under:-

"While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the Accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words reasonable grounds for believing instead of the evidence which means the court dealing with the grant of bail can only satisfy itself as to whether there is a

genuine case against the Accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the Accused beyond reasonable doubt."

21. Moreover, the latest Medical Report dated 12.10.2017 of the petitioner provides that: *"At present, the general condition of inmate is good and satisfactory. All the medicines are being provided to him from Jail Dispensary itself."* Hence the question of granting bail on medical grounds is also ruled out.
22. Keeping in view the principles laid down by the Apex Court and after careful scrutiny of the facts and circumstances of the present case, the contents of the FIR in question and other material placed on record and in view of the serious allegations against the petitioner and other factors including severity of the punishment prescribed in law, I find no sufficient ground to grant bail to the petitioner. Accordingly, the present application filed by the petitioner is dismissed.
23. Before parting with the above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.
24. Accordingly, the petition and the application stands disposed of.

SANGITA DHINGRA SEHGAL, J

OCTOBER 24, 2017

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