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

% ***Date of Decision: 3rd August, 2017***

\+ BAIL APPLN. 2472/2016

HARE KRISHNA MISHRA ..... Petitioner

Through: Mr. Vikas Pahwa, Sr.Adv. with Mr. Kamal Kant Jha, Adv. and Ms. Kinnori Ghosh, Adv.

versus

STATE ..... Respondent

Through: Mr. Hirein Sharma, APP for State

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

JUDGMENT

I.S. MEHTA, J.

1. By way of the above captioned application, the petitioner seeks regular bail under Section 439 Cr.P.C. in the case FIR No. 110/2015 dated 21.08.2015, under Sections 201/409/420/467/468/477A/120B IPC, registered at Police Station- Economic Offences Wing, New Delhi.

2. In the instant petition, the petitioner is in judicial custody since 28.09.2015 and the charge sheet has been filed by the learned Trial Court on 01.10.2016.

3. The learned senior counsel appearing on behalf of the petitioner submits that the petitioner is an innocent person and the allegations alleged in FIR No.110/2015, under Sections 201/409/420/467/468/477-A/120 B IPC, registered at Police Station-Economic Offences Wing, New Delhi is false.

4. He has further submitted that the petitioner was working as a Manger in Indian Overseas Bank in its branch at New Rajinder Nagar and the petitioner was promoted to the post of Senior Manager in the month of June, 2015 and he was ordered to be transferred to Bikaner Branch of Indian Overseas Bank (Rajasthan). He has further submitted that instead of giving the relieving order to the petitioner, some highly placed bank officials played a game with the petitioner and got him involved in a false case and spoiled the unblemished career of the petitioner. He has further submitted that the petitioner was suspended by the Bank on 29.06.2015 by sending a suspension order at the residential address of the petitioner without giving him an opportunity to explain the facts. He has further submitted that a bare perusal of the charge sheet reveals that a sum of rupees two crores was deposited in the account of M/s. Power Paints (India) Pvt. Ltd and investigation against Director of the company namely Mr.Ved Prakash Jaitley and his driver Satish Kumar, as per the contents of the supplementary charge sheet filed against the petitioner, is pending.

5. He has further submitted that there is no whisper in the charge sheet that any amount is lying with the petitioner and the same is to be recovered from him. He has further submitted that the entire

evidence against the petitioner is the so called documentary evidence which has been filed against the petitioner along with the charge sheet. He has further submitted that charge has already been framed against the petitioner. He has further submitted that the petitioner is in judicial custody since 28.09.2015 and not required for further investigation in the present case. He has further submitted that trial is not likely to conclude in near future and the continued incarceration of the petitioner will not serve any purpose and prays that the petitioner be released on regular bail. In support of his submissions, learned senior counsel for the petitioner has relied upon the following judgments:

i. ***Dipak Shubhashchandra Mehta v. CBI & another, (2012) 4 SCC 134.***
ii. ***Ajay Madan v. State, 2015 SCC Online Del 12764.***
iii. ***Poojakhanna v. State, 2015 SCC Online Del 12763.***
iv. ***Suresh Kalmadi v. CBI, 2012 (127) DRJ 588.***
v. ***Jagdish Gupta v. State, 2015 SCC Online Del 12497.***
vi. ***Jitendra Kumar v. Govt. (NCT of Delhi), 2016 SCC Online Del 1170.***
vii. ***Ashok Kumar v. State (NCT of Delhi), Bail Application No.1753/2015.***
viii. ***Anand Swaroop Arora v. State, 226 (2016) DLT 266.***
ix. ***Sanjay Chandra v. CBI, AIR 2012 SC 830.***
x. ***Manoranjana Sinh @ Gupta v. Central Bureau of Investigation, AIR 2017 SC 769.***

6. On the other hand, learned APP for the State has vehemently opposed the bail application and has submitted that the allegations alleged against the petitioner are very serious in nature and there is every possibility of the petitioner tampering with the evidence and absconding in the event of his release, as during investigation his missing report was lodged by his family members.

7. According to the prosecution, the petitioner being an employee of the bank misappropriated the money entrusted to the bank and also cheated the complainant bank. He has further submitted that the petitioner had committed a fraud by wrongfully utilizing the deposits of (unsuspecting account holders) account holders.

8. The learned APP for State has further submitted that the petitioner diverted an amount of more than Rupees Four Crores from different accounts to the 12 fictitious/fake bank accounts and misappropriated the same along with co-accused. He has further submitted that the petitioner had fraudulently diverted an amount of USD 484986 to other accounts by getting a fake bill (RUBF 24/14) discounted which was purportedly applied by one of the customers viz. M/s Digi Export Venture Private Ltd. and for this purpose the petitioner had forged a document labelled as spot rate for bill purchase dated 21.11.2014.

9. He has further submitted that as per the FSL report, the signature on the said document has been confirmed to be the signature of the petitioner. He has further submitted that the petitioner being the officer of the bank with an intent to defraud the bank and others, falsified the accounts/entries in the system of the

bank so as to facilitate transfer/diversion of funds to various accounts including the 12 fake accounts.

10. The learned APP for State has further submitted that the petitioner destroyed the original vouchers and documents relating to the aforesaid 12 fake accounts and caused disappearance of evidence with the intention to screen himself and other offenders from penal action. He has further submitted that an amount of Rs.2.25 crores was diverted into the account of M/s. Power Paints India Pvt. Ltd. and an amount of Rs.1.58 crores was misappropriated and utilized by the petitioner himself for the purchase of a flat in his wife's name.

11. The Apex Court in the case of ***Ram Govind Upadhay v. Sudarshan Singh and Others***, **(2002) 3 SCC 598** has held that

> "***Grant of bail though is a discretionary order-but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained***. *While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same ought always to be coupled with other circumstance warranting the grant of bail.* ***The nature of the offence is one of the basic considerations for the grant of bail-more heinous is the crime, the greater is the chance of rejection of the bail,*** *though, however, dependent on the factual matrix of the matter."*

12. The Apex Court further in the case of ***State of U.P. vs. Amarmani Tripathi*, (2005) 8 SCC 21,** has observed as under:-

> *" 18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv)* ***danger of the accused absconding or fleeing, if released on bail;*** *(v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail ..."*

13. In the present petition, it is an admitted position that the petitioner has been charged under Section 409/420/467/471/477A/201/120-B IPC. After filing four successive bail applications before the learned Trial Court which ended in dismissal, the petitioner has moved the present application for grant of regular bail before this Court.

14. As per the available facts on record, it suggests that the petitioner was posted as Branch Manager at New Rajendra Nagar Branch, of Indian Overseas Bank in Delhi, later he was ordered to be transferred as Senior Manager at Bikaner Branch at the state of Rajasthan. In the meanwhile, the then Branch Manager of New Rajendra Nagar Branch of the said Bank, Mr. Kirpal Singh on 26.06.2015 receives a call from Central Office of Indian Overseas

Bank, Chennai for non-payment of export bill RUBF-24/2014 amounting to USD484296/- in the name of M/s Digi Export Venture Private Limited. This fact was brought to the notice of Mr. Devdutt Padhi, the Chief Regional Manager, Delhi Region of the Indian Overseas Bank/complainant. The Chief Regional Manager Mr. Devdutt Padhi gave instructions to Mr. C.K. Sathianathan, Chief Manager and Mr. Vipin Kumar Arora, Senior Manager of Inspection Department of the Indian Overseas Bank, Rajendra Place for making enquiry for non-payment of the said bill i.e. RUBF-24/2014 amounting to USD484296/- in the name of M/s Digi Export Venture Private Limited till date.

15. During the inspection, by the aforesaid officials, it was revealed that the petitioner herein opened 12 unauthorised/fictitious accounts. The details of the accounts are:

a) Cash Credit Account (CDCC 3469) in name of Krishna Impex.
b) Cash Credit Account (CDCC 3480) in name of Gupta Marketing.
c) Cash Credit Account (CDCC-3516) in name of SK Enterprises.
d) Cash Credit Account (CDCC-3544) in name of Rajesh Enterprises.
e) Cash Credit Account (CDCC-3543) in name of Shiva Traders.
f) Demand Loan Account (DL-00025) in name of Rajesh Kumar.

g) Demand Loan Account (DL-00066) in name of Krishna Subedi.

h) Demand Loan Account (DL-00037) in name of Satish Kumar.

i) Demand Loan Account (DL-00009) in name of Saral Communication.

j) Demand Loan Account (DL-00026) in name of Subash Goyal.

k) Demand Loan Account (DL-00017) in name of Atul Puri.

l) Demand Loan Account (DL-00048) in name of Satish Kumar.

16. It is further alleged that the present petitioner wrongfully utilized deposits of FDR account holders and fraudulently opened demand loan accounts against the FDR without intimating the FDR holders and without obtaining any Form 60 H duly signed by the account holders. The details of demand loan against marking of lien are as follows:

a) DL No. 34103151400025 of Rajesh Kumar with Rs.65,00,000/- against wrongful marking of lien on the NRE deposit of Mr. Dilmohan Singh Bhasin and Sukhvinder Singh Bhasin on 31.05.2014.

b) DL No. 34103151400026 of Krishna Subedi with Rs. 25,00,000/- against wrongful marking of lien on NRE deposit of Mr. Dilmohan Singh and Sukhvinder Singh Bhasin on 04.06.2014.

c) DL No. 34103151400037 of Satish Kumar with Rs. 4,50,000/- against wrongful marking of lien on the deposit of Rajhans Oil Extraction Pvt. Ltd. on 30.08.14.

17. It is further alleged that the petitioner illegally and fraudulently diverted the funds of the account holders which is more than Rs. 4 Crores as on 27.10.2014. The details of the amounts are as under:

a) Cash Credit (CDCC 3469) Rs.95,10,000/-
b) Cash Credit (CDCC 3480) Rs.88,60,000/-
c) Demand Loan (DL 34103151400025) Rs.68,59,288/-
d) Demand Loan (DL 3410315140026) Rs.26,34,394/-
e) Demand Loan (DL 34103151400037) Rs.4,59,527/-Rs.2,83,23,209/-

18. The petitioner herein further on 27.10.2014 made entry pertaining to fictitious bill RUBF- 24/2014 (purportedly of M/s Digi Export Venture Private Limited amounting to USD 484296 @ Rs.61.05 i.e. equivalent to Rs. 2,96,08,395/-) by debiting GL Code 4051 (known as foreign bill purchase, RUBF) and credited a sum of Rs.2,96,08,395/- to Current Account no. CDCC No.3385 of M/s Digi Export Venture Private Limited.

19. During the course of enquiry qua the petitioner, M/s Digi Export Venture Pvt. Ltd., a customer of the Bank, revealed that no such bill was forwarded by them to the Bank for purchasing/discounting the bill RUBF- 24/2014.

20. During the enquiry, it is further revealed, that all the demand loans were closed and cash credits were adjusted on the very same date i.e. 27.10.2014, by debiting CDCC 3385 unauthorizedly for Rs.2,83,23,209 and making unauthorized credit which is as under :

(a) CDCC 3469 with Rs. 95,10,000/-
(b) CDCC 3480 with Rs. 88,66,000/-
(c) DL 34103151400025 with Rs. 68,59,288/-
(d) DL 34103151400026 with Rs. 2634394/-
(e) DL 34103151400037 with Rs.4,59,527/-

21. During the enquiry, it is further revealed that the petitioner herein opened the 12 fake accounts in New Rajendra Nagar Branch of Indian Overseas Bank to circulate and siphon off the cheated amount. The entire conspiracy was carried out in such a way that the transaction ID of the petitioner has remained on statements of fake accounts which could not be altered by the petitioner.

22. The petitioner was involved in clearance of the entry on the system in the fake accounts which could not be altered by the petitioner. The petitioner also destroyed the original vouchers/papers related to transactions in these forged accounts which were missing from the Bank. It is a procedure followed in the Bank that for any transaction to be completed on the system, ID of two employees of

Bank is required. It is coming on the face of the record that other than the present petitioner, IDs of 12 more employees were there and their roles is currently under probe.

23. During the enquiry, in the status report, it is mentioned that the cheated amount was used for two purposes by the petitioner. First, to save the Cash Credit account of M/s Power Paints India Pvt. Ltd. to become a Non Performing Assets and for this purpose, more than Rs. 2.5 Crores were transferred in this account. The said company is a customer of the Indian Overseas Bank and for recovery of this fund search of its Director V.P. Jaitley and his driver Satish Kumar were carried out, who were absconding and were declared Proclaimed Offenders by the learned Trial Court. The second purpose, was to purchase a flat of Rs. 1.83 Crores in Malviya Nagar, Delhi by circulating the cheated amount in the account of Jammu and Kashmir Bank, Karol Bagh Branch from where loan was sanctioned to the wife of the petitioner and the loan was subsequently cleared by the same cheated amount.

24. During the enquiry, the role of the petitioner who was the then manager of the said Bank has been clearly established as the signature of the petitioner on the alleged documents was confirmed by expert opinion of forensic lab and his transaction ID 38420 was there on account statements of the fake accounts.

25. It was also revealed during the enquiry that the petitioner herein was missing since the fraud was detected in the Branch and his missing report was lodged on 28.06.2015 at P.S. Malviya Nagar to mislead the Police.

26. The contentions of the learned counsel for the petitioner that the petitioner should not be kept in jail for indefinite period and he should be released on bail by putting certain conditions and if at all those conditions are violated, the opposite party i.e. State has got power to seek cancellation /modification of Bail, whether this petition deserves such order ?

The answer is:- **Not in this petition**.

The reasons are stated below:

i. The petitioner is admittedly a well educated person who was working as a Branch Manager of Indian Overseas Bank at New Rajendra Nagar Branch but, it is astonishing fact coming on record that he being the Branch Manager opened Cash Credit and Demand loan accounts in fictitious names.

ii. That the petitioner opened 12 fake Cash Credit and Demand Loan accounts and sanctioned loans in these accounts against the third party fixed deposit, which were closed by the fictitious Bill of Digi Export.

iii. That all the alleged entries related to the transactions in these forged accounts were having the ID of the petitioner herein and the original vouchers /documents related to these transactions were not available in the Bank.

iv. The expert opinion of forensic lab have verified the signature on the fictitious bill of Digi Export and have confirmed that **it was the signature of the petitioner on said bill**. The directors of Digi Export have revealed during investigation that such bill was not applied by them.

v. The petitioner along with his associates has caused wrongful loss to the Indian Overseas Bank and wrongful gain to themselves to a tune of more than Rs.4 Crores.

vi. The petitioner herein was missing since the fraud was detected in the Branch and his missing report was lodged on 28.06.2015 at P.S. Malviya Nagar to mislead the Police.

27. 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."*

28. In the instant petition, the offence alleged to be committed seems to be with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the

community/banking institution. The petitioner seems to deviated himself from his official banking duties and violated banking rules and regulations which resulted into lost of faith on his person. If the petitioner is released on bail, he may further tamper the prosecution evidence or abscond himself. Reliance is placed on the judgment of the Apex court in ***Nimmagadda Prasad v. CBI, AIR 2013 SC 2821.***

29. Therefore, the Bail Application is rejected at this stage. However, it is made clear that nothing stated in this order shall be considered as an expression of an opinion on the merits of this case.

I.S.MEHTA, J

AUGUST 03, 2017