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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 897/2018

SHEIKH SHEHZAD

..... Petitioner

Through: Mr. Saleem Ahmed, Adv. with
Ms. Charu Dalal &
Mr. Ajay Pratap Singh, Advs.

Versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Amit Chadha, APP for State.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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26.07.2018

The petitioner seeks bail in FIR No.40/2016 registered under sections 489(B)/489(C)/34 IPC with Police Station, Special Cell. He has been in custody since 25.06.2016. Two co-accused have been granted bail on 15.10.2016 and 06.05.2017. The petitioner states that on parity, he too may be granted bail. The allegation against him is that Fake Indian Currency Notes (FICN) amounting to Rs.2,50,000/- were recovered from him. Two co-accused had been granted bail as they had given their consent to provide their voice sample. The petitioner had refused to give his voice sample and sought protection under Article 20(3) of the Constitution of India as he cannot be compelled to give self-incriminatory evidence.

The learned counsel for the petitioner relies upon the decision of the Supreme Court in *Ritesh Sinha vs. State Of U.P.& Anr.* 2013 (2) SCC 357, which held that no person can be coerced to give a voice sample. He has

also referred to the judgment of this Court in **K. Lal vs. CBI** 2013(137)DRJ 669 to contend that no adverse inference can be drawn if an accused does not give his voice sample.

Mr. Amit Chadha, the learned counsel for the State has opposed the bail on the ground that the petitioner had been charged for a grave offence, that is, trading in FICN under section 489B IPC, therefore, the gravity of the offence against the petitioner cannot be said to be on parity with the two co-accused, who have been enlarged on bail.

Refuting the contention, the learned counsel for the petitioner refers to the Chargesheet in which the petitioner and all the co-accused had been identically charged, i.e. under sections 489(B)/489(C) and section 34 IPC. It is another matter that charges were framed, apropos the ones released on bail, only under section 489(C) IPC. Nevertheless, he contends that the classification of nature of the offence itself would not be a ground for refusing bail. He refers to the judgment of this Court in **H. B. Chaturvedi vs.C.B.I.** in Bail Appln No. 572/2010 & CrI. M. (Bail) No.459/2010, wherein the Court held as under:-

“12. Bail, it has been held in a catena of decisions, is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted. Furthermore, there is no justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. It cannot, therefore, be said that bail should invariably be refused in cases involving serious economic offences.”

According to the learned counsel for the petitioner, only three prosecution witnesses have been examined so far. The remaining witnesses are either police officials or government officials, who may primarily depose and testify apropos the records and documents.

In view of the above, the petitioner is enlarged on bail on his furnishing a personal bond in the sum of Rs.1 lac with two sureties each of the like amount, out of which one surety will be from Delhi, to the satisfaction of the learned Trial Court concerned, subject to the following conditions:-

- (i) the petitioner will regularly appear on each and every date of hearing to be fixed by the Trial Court concerned; and
- (ii) in case of change of his new address or contact number, the petitioner will promptly intimate to the SHO/IO of the case and intimate the Trial Court.

The petition stands disposed-off in the above terms.

Nothing stated in this order shall be deemed to be an adjudication on the merits of the case.

The Registry is directed to send a copy of this order to the Jail Superintendent concerned for compliance. Additionally, a copy of the same shall also be delivered upon the Jail Superintendent through police.

A copy of this order be given *dasti* to the learned counsel for the parties.

NAJMI WAZIRI, J.

JULY 26, 2018/ak