

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Bail Appln. 2060/2017 & Bail Appln. 2070/2017**

Judgment reserved on : 19.04.2018

Date of decision : 11th June, 2018

AMANPREET SINGH Petitioner
Through: Mr. K.K. Manan, Sr. Advocate
with Mr. Ankush Narang,
Advocate.

versus

STATE (NCT OF DELHI) Respondents
Through: Mr. Raghuvinder Varma, APP
for State with IO SI Gulshan.

AND

INDERPREET SINGH Petitioner
Through: Mr. K.K. Manan, Sr. Advocate
with Mr. Ankush Narang,
Advocate.

versus

STATE (NCT OF DELHI) Respondents
Through: Mr. Raghuvinder Varma, APP
for State with IO SI Gulshan.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The Bail Application 2060/2017 & Bail Application 2070/2017 filed by the applicants thereof Amanpreet Singh and Inderpreet Singh both relate to the allegations levelled against them qua FIR No.12/2011, PS EOW, Delhi, under Sections 406/409/420/120B

Indian Penal Code, 1860 and Sections 3/4/5/6 of the Prize Chit & Money CIR Schemes (Banning) Act, 1978 and have been made on similar grounds inasmuch as both applicants are in judicial custody since 19.08.2017 having surrendered. Both the applicants are alleged to be the Directors of ABC Indya Networks Pvt. Ltd. and are alleged to have published/ launched a website of their company in the year 2009 by making false promises of giving 10% returns every month to the individual account holders without default until the individual withdrew his/her initial invested amount and that these promises were kept by the applicants only for 7 to 8 months and thereafter they stopped making the complete payments to the investors from December, 2009 and approximately Rs.40 crores invested by thousands of investors from all over the country, were fraudulently misappropriate by the applicants who had fraudulently cheated the investors of huge amounts of their money and despite several persons' having visited their office on 27.09.2010, no appropriate response was given by any of the representatives of the company and that the applicants had thus duped several persons of their hard earned money.

2. The grounds contended on behalf of the applicants and allegations levelled against them in the charge sheet being similar, it is considered appropriate to take up both the applications together for consideration.
3. The investigation in the instant case is indicated to have been completed and the charge-sheet has also already been filed.

4. Both the applicants had earlier been granted bail vide order dated 06.03.2012 by the learned ASJ in view of the submissions made on behalf of the applicants that there were a number of investors who had entrusted money to the applicants which money was not forthcoming and the learned counsel for the applicants had submitted that the applicants could not ensure the payment whilst in custody and could do so only if they were granted bail and that thus the applicants were directed to deposit their passports, if any, with directions that they would not leave the country without permission of the learned trial Court and were admitted on bail on their furnishing bail bond for a sum of Rs. One lakh each with two sureties of the like amount to the satisfaction of the Court concerned/Duty MM Link MM and were directed to assist the investigation and ensure the payment of money to the creditors. The applicants had been in custody for a period of 82 days on 06.03.2012 when it was submitted that the charge-sheet would be filed by 14.03.2012 but it was filed in the year October, 2016 and that after the applicants were released on bail, the State sought cancellation of bail of the applicants before this Court and vide judgment dated 15.03.2016 in CrI.M.C. 1922/2012 filed by the State against the present applicants, the order dated 06.03.2012 of the learned ASJ releasing the applicants on bail, was set aside with directions given to the applicants to surrender before the Investigating Officer within two days from the date of the directions dated 15.03.2016. Vide the said order dated 15.03.2016, it was categorically observed that the order dated 06.03.2012 was

not passed on merits by the learned Addl. & Sessions Judge and that the applicants had been released on bail on the assurance that they would assist the investigation and ensure the payment of money to the creditors and admittedly barring the amount of Rs.10 lakhs to one Tilak Raj (as per conclusion of SFIO), the applicants had not paid any money and that though they moved an affidavit dated 05.03.2014 that their company did not own any dues to anyone, the applicants did not comply with the order dated 06.03.2012, which was thus set aside and did not file details of any amount paid to any of the investors, it was thus apparent that they were not entitled to be released on bail.

5. The applicants assailed the order dated 15.03.2016 in Crl.M.C.1922/2012 and vide order dated 07.04.2017 in the Special Leave to Appeal (Crl.) Nos.3918-3919/2016 against the said impugned order dated 15.03.2016 in Crl.M.C.1922/2012 were dismissed, it having been observed that there was no reason to entertain the said petitions. **Vide the said order dated 07.04.2017 in Special Leave to Appeal (Crl.) Nos.3918-3919/2016, it was however observed to the effect that the applicants herein were at liberty to apply to the High Court for grant of bail upon demonstrating that they have in fact paid the amount as per the undertaking furnished by them and that there was a stay of arrest granted for a period of 15 days.** Pursuant thereto the applicants filed an application under Section 439 Cr.PC, 1973 before this Court which was also dismissed vide order dated

21.04.2017 by this Court in Bail Appln. No.674/17. Vide the said order dated 21.04.2017 it was observed to the effect that:

“9.The report of EOW which is the investigating agency handling the investigation of the FIR in which context the present application has been BAIL APPLN. 674/2017 Page 5 of 6 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 BAIL APPLN. 674/2017 Page 6 of 6 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 CrI.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”.

and the bail applications were thus dismissed.

6. The subsequent bail application filed before the learned CMM (West), THC, by the applicants was declined vide order dated 20.03.2017, whereafter the applicants filed Bail Appln. 4493 before the Sessions Court, which also was declined vide order dated 07.10.2017 by the 2nd Link ASJ-03, West/Delhi observing to the effect that after the order dated 21.04.2017 of this Court, there have been no change of circumstances whatsoever.
7. Through the present applications, the applicants submit that the charge sheet has been filed and that the applicants are not required for any purpose whatsoever and there are 5760 complainants in the case and that the trial will take considerable period of time and the applicants cannot be kept behind the bars for an indefinite period in the company of hardened criminals and that earlier the applicants had been on bail for more than five years and had never misused the liberty granted and that the applicants have deep roots in the society and there are no chances of their absconding and tampering with the prosecution witnesses.
8. A catena of verdicts was relied upon on behalf of the applicants with specific reliance on the verdict of this Court in Sanjay Chandra Vs. CBI (2012) 1 SCC 4 to contend that in the said case even though the accused therein were charged with economic offence of huge magnitude with it having observed vide para-28 of the verdict thereof by the Hon'ble Supreme Court to the effect that the offences alleged, if proved, may jeopardize the economy of the country, yet it was observed by the Hon'ble Supreme Court in the said case to the effect that the factum that Investigating Agency

had already completed the investigation, could not be lost sight of especially as the charge-sheet had already been filed and that the presence of the accused in that case was thus not necessary for further investigation and thus they were allowed to be granted bail pending trial on stringent conditions and it has thus been contended on behalf of the applicants that conditions may be imposed on the applicants for grant of bail.

9. The status report submitted by the State categorically delineates the alleged culpability of the applicants to the effect that the applicants had designed a website in the name and style of www.abcindya.com to induce the victims by mentioning that the company is a leading company in the network marketing industry and to give publicity to the schemes, they also conducted several seminars, induced many victims to invest their money and assured them a return of about 10% to 25% of their invested amount coupled with other incentives in the form of incentives/commission to be given to the subscriber and showed brochures of the alleged company to the general public to induce them and that they were both authorized signatory of the alleged company of their bank account related with the said alleged recovery, siphoned off the fund from the account of the said alleged company and were the main beneficiaries thereof and that the said alleged company did not have any assets in its name neither at the time of the scheme nor after the scheme and did not have any product as claimed in the brochure and did not have any business and could not do any non-

banking financial activity including acceptance of public deposits without obtaining the certificate from the RBI.

10. It has been submitted on behalf of the State that 40,715 investors have been victims in the matter with the cheated amount being Rs.44 crores. Out of 40,715 investors, 5737 investors filed the written complaint to the EOW, Delhi and the cheated amount was Rs.11,97,62,000/- and that the applicants collected money from investors without any business which showed that they had the intention to cheat the investors from the beginning from the alleged scheme which was launched by the alleged company. Despite the grant of bail vide order dated 06.03.2012, they did not refund any money to any creditor nor had they provided any document which could prove that they had refunded any money to the creditors and that the Serious Fraud Investigation Office (SFIO) had on direction of this Court conducted investigation with regard to the affairs of the company and the money siphoned off from the said company and concluded that:

- A. The company had accepted deposits in the guise of online gaming.
- B. There is material mis-statement in Balance Sheet and Profit & Loss Account of the company. Both accused persons and CA Shri CK Garg, auditor of the company has filed the balance sheet with ROC knowing them to be false.
- C. The company was involved in the activity of money circulation as defined in Section 2C of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, and it is a banned activity under the said Act.
- D. The alleged company has launched the alleged scheme only with intention to cheat general public.

E. The following amounts have been siphoned away from the company:

(a) Rs.80 lakhs shown as advance recoverable in cash or kind by Inderpreet Singh, Managing Director.

(b) Rs.10 lakhs by Shri Tilak Raj Sharma.

(c) Rs.3.41 crore of TDS and service tax payable to the Govt. by Inderpreet Singh.

and that the SFIO report was silent in relation to return of money to the creditors. It was also submitted by the State through the status report dated 31.10.2017 under signature of Virender Singh, the then ACP, Section-1, EOW, New Delhi that after the dismissal of the bail application of both the applicants vide detailed order dated 21.04.2017, there was no change of circumstances whatsoever that may merit even the consideration of the grant of bail.

11. It is essential to observe that the verdict of the Hon'ble Supreme Court in *Virupakshappa Gouda & Ors. Vs. The State of Karnatkata & Ors.* 2017 (2) ACR 1627 categorically observes vide para-13 thereof that the filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution and that on the contrary, the filing of the charge-sheet establishes that after due investigation, the investigating agency having found materials, has placed the charge-sheet for trial of the accused persons.

12. Furthermore, that the factum of the special leave petition having been filed before the Hon'ble Supreme Court for grant of bail having not been entertained, the nature of accusation, the nature of evidence supported thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibilities of securing the presence of the accused on trial, the reasonable

apprehension of the witnesses being tampered with and the larger interest of public/State and other similar considerations have to be kept in mind.

13. The verdict of the Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Ors.*** (2011) 1 SCC 694 categorically observes to the effect that

“the Court considering the bail application should try to maintain fine balance between the societal interest vis-à-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent Court”.

14. It is essential to observe that in ***Virupakshappa Gouda & Ors. Vs. The State of Karnataka & Ors.*** (supra) it has been categorically observed to the effect that the observations in ***Sanjay Chandra*** (supra) to the effect that at the time of consideration of bail, one ought not to lose sight of the fact that any imprisonment/conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson and that deprivation of the liberty of a person should only be upon the belief that he would tamper with the eye witnesses if left at liberty except in the most extraordinary circumstances, which circumstances would depend upon the nature of the crime and the manner in which it was committed and that the relevance of the passage in ***Sanjay Chandra*** (supra) cannot be made applicable in each and every case for the grant of bail.

15. The Hon'ble Supreme Court in *Subrata Roy Sahara Vs. Union of India & Ors.* in W.P. (CrI.) 57/2014 vide a verdict dated 06.05.2014 categorically observes and also lays down to the effect that the Code of Criminal Procedure, 1973 provides for the enforcement of a financial liability by way of arrest and detention.
16. On a consideration of the rival submissions made on behalf of either side, the status report put forth by the State and the factum that the public had at large been deprived approximately of a sum of Rs.44 crores and the manner in which the offence is alleged to have been effected with their being no funds and no assets with the applicants' company from the inception of the company bring forth the alleged publicity in the commission of the crime beyond a reasonable doubt, there is nothing brought forth to indicate any change of the circumstances qua the applicants after filing of the charge sheet.
17. In the facts and circumstances of the case, thus it is held that there is no infirmity in the orders of the learned trial Court dated 20.09.2017, nor of the ASJ dated 07.10.2017 in the instant case and that there is no ground for the grant of bail to the applicants and thus the Bail Applns. i.e. Bail Appln. 2060/2017 & Bail Appln. 2070/2017 are rejected.

ANU MALHOTRA, J.

JUNE 11, 2018

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