

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

BAIL APPLN. 1607/2019

Reserved on : 22.11.2019

Date of Decision : 27.11.2019

VIKASH KUMAR SHARMA Petitioner

Through: Mr. Anil Kumar Mishra, Advocate

Versus

STATE Respondent

Through: Ms. Radhika Kolluru, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present application has been filed seeking regular bail in FIR No.37/2016 registered under Sections 489B/489C/120B IPC and Sections 15(a) (iii a) of the Unlawful Activities (Prevention) Act,1967, at Police Station Special Cell, Delhi.

2. Learned counsel for the petitioner submitted that the petitioner is in custody since 19.06.2016. It is further submitted that the petitioner has been falsely implicated in the aforesaid FIR. It is submitted that the prosecution, in support of its case, has relied on the CDR details between Baljinder Singh, Manga Singh and Vishnu. It is also submitted that the prosecution has only relied upon the CDR details and there is no conversation which has been recorded to prove the conspiracy between the petitioner and the co-accused. It is further submitted that the only material against the present petitioner is the recovery of FICN of Rs.2 lakhs from his possession. Learned counsel for the petitioner has further submitted that even if the

prosecution case is believed, no case of 'circulation' is made out.

3. Learned counsel for the petitioner further submitted that as per the prosecution case it has been alleged that the petitioner came to receive the consignment on behalf of Baljinder Singh. However, neither Baljinder nor Manga Singh have been made accused but were later cited as witnesses. It is further stated that the intercepted calls between Manga Singh, Baljinder Singh and Vishnu do not mention the name of the present petitioner. It was further argued that the location of the mobile of the petitioner did not match with the place of the arrest and has referred the statement of PW-7 in this regard. In support of his submissions, he has relied upon the decision Syed Abbas Mehdi vs. State reported as **2005 (82) DRJ 570**, Umashanker vs. State of Chhattisgarh reported as **2001 (9) SCC 643**, Kanchan Mishra @ Anu vs. State (NCT of Delhi) reported as **2012 (130) DRJ 646** and State of Kerala vs. Raneef reported as **(2011) 1 SCC 784**.

4. Learned counsel for the petitioner submitted that the petitioner was the *mukhiya* and *sarpanch* of the village and has deep roots in the society.

5. Learned APP for the State, on the other hand, has vehemently opposed the grant of bail and has submitted that petitioner is a member of syndicate and has been found in possession of "high quality counterfeit notes" and proviso to Section 43(D)(5) of UAPA is attracted in the present case. It is submitted that Baljinder Singh and Manga Singh came in touch with each other during their custody in jail where they hatched the conspiracy to circulate the FICN with the help of one Vishnu who sent the same through Moti Lal. In turn, Baljinder Singh had asked the petitioner to collect the same from Moti Lal. The petitioner came in the car of Baljinder Singh. It is submitted that the petitioner was caught when he had received

the said FICN of Rs. 2 lakhs (two wads of FICN of the denomination of Rs.1,000/-) from co-accused Moti Lal from whose possession another FICN of Rs.1 lakh was recovered. It has been submitted that the call detail records establish that the petitioner was in touch with Baljinder Singh as well as Moti Lal. It is submitted that the prosecution has intercepted the voice calls between Baljinder Singh and Manga Singh and the voice samples taken during investigation have matched. It has been further submitted that the investigation with respect to Baljinder Singh @ Lala and Manga Singh has been kept pending. It is submitted that in the Status Report it has been stated that both of them have not been examined and rather that a supplementary charge-sheet against Baljinder Singh @ Lala and Manga Singh will be filed in due course. It was further submitted that the location of the petitioner is not contrary to the prosecution case. Learned APP has also handed over an additional status report indicating that the petitioner has not been involved in any other previous case.

6. Learned counsel for the petitioner, in rebuttal, reiterated that besides the alleged recovery of FICN of Rs.2 lacs, the only other material against the petitioner is the phone call details between him and Baljinder Singh/Moti Lal. There is no interception of the voice calls of the petitioner. Further, there is no mentioning of the name of the petitioner in the voice call between Baljinder Singh and Manga Singh.

7. I have heard learned counsel for the petitioner and learned APP for the State and have also gone through the case records.

8. In Umashankar (*supra*), it was held that for the offence to fall under Section 489(B), 489(C), the necessary mens rea of “*knowing or having reason to believe currency notes or bank notes are counterfeit*”, is required.

Reliance placed by the counsel for the petitioner on the case of Syed Abbas Mehdi (*supra*) is also misplaced since in that case it was held that the accused had not passed the currency note to the shopkeeper and the transaction of sale was not completed.

9. In Raneef (*supra*), the role attributed to the accused was of treating one of the injured assailants by suturing his wounds on the back after applying local anaesthesia at a place 45 km away from the place of the incident. The Court noted that there were no allegations that the accused was one of the assailants. Similarly, in Kanchan Mishra (*Supra*), it was noted that the documents in the handwriting of the accused did not reveal incitement for violent activities.

10. In the present case, the petitioner's earlier bail applications filed before this Court was dismissed vide orders dated 18.09.2017 and 12.02.2019.

11. Section 43D(4), (5) & (6) of The Unlawful Activities (Prevention) Act, 1967 reads as under:-

“43D. Modified application of certain provisions of the Code-

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(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.”

12. As per the aforesaid Section, there is a twin requirement of giving an opportunity of hearing to the prosecutor and forming an opinion that there are reasonable grounds for believing that the accusation against the accused person is prima facie true.

13. In National Investigation Agency Vs. Zahoor Ahmad Shah Watali, reported as **2019 5 SCC 1**, while setting aside the order granting bail to the accused for the offences punishable under UAPA Act, the Court held as under:-

“23. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is “not guilty” of the alleged offence. There is degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is “not guilty” of such offence and the satisfaction to be

recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is “prima facie” true. By its very nature, the expression “prima facie true” would mean that the materials/evidence collated by the Investigating Agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is “prima facie true”, as compared to the opinion of the accused “not guilty” of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.

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26. Be it noted that the special provision, Section 43D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof. To wit, soon after the arrest of the accused on the basis of the FIR registered against him, but before filing of the charge-sheet by the Investigating Agency; after filing of the first charge-sheet and before the filing of the supplementary or final charge-sheet consequent to further investigation under Section 173(8) Cr.P.C., until framing of the charges or after framing of the charges by the Court and recording of evidence of key witnesses etc. However, once charges are

framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 of Cr.P.C.), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

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47. The fact that there is a high burden on the accused in terms of the special provisions contained in Section 43-D(5) to demonstrate that the prosecution has not been able to show that there exists reasonable grounds to show that the accusation against him is prima facie true, does not alter the legal position expounded in K. Veeraswami, to the effect that the charge-sheet need not contain detailed analysis of the evidence. It is for the Court considering the application for bail to assess the material/evidence presented by the Investigating Agency along with the report under Section 173 of Cr.P.C. in its entirety, to form its opinion as to whether there are reasonable grounds for believing that the accusation against the named accused is prima facie true or otherwise.

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53.....The High Court ought to have taken into account the totality of the material and evidence on record as it is and ought not to have discarded it as being inadmissible. The High Court clearly overlooked the settled legal position that

at the stage of considering the prayer for bail, it is not necessary to weigh the material, but only form opinion on the basis of the material before it on broad probabilities. The Court is expected to apply its mind to ascertain whether the accusations against the accused are prima facie true”
(Emphasis added)

14. As per the prosecution case, a conspiracy was hatched between Baljinder Singh and Manga Singh pursuant to which the present petitioner was sent to receive the FICN from Moti Lal. The prosecution has placed the call detail records of the petitioner’s mobile on record which show that the petitioner was in touch with Baljinder Singh, Moti Lal and Vishnu on the date of the incident as well as a day prior. On 18.06.2016 and 19.06.2016, there was as many as six calls between the petitioner and Moti Lal, two calls with Vishnu and one with Baljinder Singh. On the day of the incident, the petitioner was caught while having received FICN of Rs.2 lakhs (two wads of FICN of denomination of Rs. 1000/-) from Moti Lal. It is the case of the prosecution that even Moti Lal was found in possession of FICN of Rs. 1 lakh (two wads of FICN of denomination of Rs. 500 each). As per the prosecution case, Vishnu is the main supplier of the FICN and is yet to be arrested. As per the FSL report, the seized FICN has been opined to be “high quality counterfeit notes”.

15. It is not a simple case of unwary possession of few fake currency notes. The petitioner was found in possession of two wads of FICN of the denomination of Rs.1,000/-. The prosecution has alleged that the money was received for further circulation/trafficking. The trial court framed the following charge against the petitioner and his co-accused:-

“That on 19.06.2016 at about 1.50 pm under Delhi Metro over

bridge, ISBT, Anand Vihar, Delhi falling within the jurisdiction of PS Special Cell, you both were party to criminal conspiracy to traffic/circulate Fake Indian Currency Notes and in pursuance of the said criminal conspiracy, you were caught red handed while handing over /taking over the fake currency and thereby committed offence under section 120 BIPG and within the cognizance of this court.

Secondly, on the aforesaid date, time and place in pursuance of the above said criminal conspiracy you accused Moti Lai Basak were carrying a purple coloured small school (Pithu) bag containing four wads of Fake Indian Currency Notes out of which two wads were of denomination of Rs. 1000/- each and two wads were of denomination of Rs. 500/- each out of which you handed over two wads of Fake Indian Currency Notes of denomination Rs. 1000/- each to co-accused Vikas Kumar Sharma @ Laddi which were recovered from the possession of Vikas Kumar Sharma @ Laddi while the remaining two wads of Fake Indian Currency Notes of denomination Rs. 500/- were recovered from you accused Moti Lai Basak. Thereby you both committed the offences under sections 489-B/489-C read with section 120B IPC and within the cognizance of this court.

Thirdly, the fake Indian Currency notes recovered from you both accused Vikas Kumar Sharma @ Laddi and Moti Lal Basak were found to be circulating and in possession of high quality counterfeit notes intended to threaten the economic security of India and to cause damage to monetary stability of India and thereby you both committed the offence under section 15 (1) (a) (iii a) of the Unlawful Activities (Prevention) Act 1967 and within the cognizance of this court.”

16. As noted above, the applicant has not received the FICN in the form of loose currency but rather in the form of two wads of FICN of the denomination of Rs.1,000/-. In the case of Rayab Jusab Sama v State of Gujarat, reported as **1998 Cri LJ 942** and Shabbir Sheikh v State of Madhya

Pradesh in **Crl. Appl. No.162, 452 & 453/2015** decided on 10.02.2018, it was consistently held that possession of large numbers of fake currency notes cannot be regarded as dormant possession but would amount to active transportation of such notes. While taking note of the above decisions, a Division Bench of Calcutta High Court in the case of Sunil Pramanik @ Sonu v State of West Bengal in **CRA 562 of 2018**, decided on 22.11.2019, held as under:-

“11. Section 489B uses the phrase “or otherwise traffics in or uses as genuine”. This phrase assumes importance in the context of the fact that the term “traffics” is not defined for the purpose of Section 489B or for the IPC generally. The phrase “or otherwise traffics in or uses as genuine” is added on to a string of phrases which results in the sentence that delineates the ingredients of the offence as defined in Section 489B; the punishment for which is prescribed in that section. The activities which would amount to an offence punishable under Section 489B of the IPC are firstly, selling, buying or receiving. The provision to this effect in the section is “whoever sells to, or buys or receives from, any other person”. Therefore, the involvement of at least two persons is necessary for performing the activity of selling, buying or receiving which would amount to an offence for the purpose of Section 489B. If that be so, an important issue for consideration would be as to whether any activity which falls into the concept “or otherwise traffics in or uses as genuine” could be anything that could be treated differently from selling, buying or receiving or whether the term “traffics” has to be read ejusdem generis with “sells”, “buys” or “receives”. It was argued on behalf of the appellant on the basis of the decision of the Apex Court in Parakh Foods Limited vs. State of Andhra Pradesh and Anr. (2008) 4 SCC 584 that the term “traffics” has to be read ejusdem generis with the phrases “sells to”, “buys” and “receives from any other person” and that the junction of another person is necessary to accomplish such acts. It is here that use of the word “otherwise” gains critical importance. The

word “otherwise” is used to indicate the opposite of, or contrast to, something already stated when used as part of a phrase as “or otherwise” (see Oxford Dictionary of English-3rd Edition). Even when the word “otherwise” is used not as part of a phrase as “or otherwise”, but as an adverb or an adjective, such usages are also resorted to, to draw a contrast or distinction. The word “traffics” as well as the word “trafficking” and “trafficked” are used to describe the action of dealing or trading in something illegal. The activity or activities which would amount to “sells to”, “buys” or “receives from” any other person, may require the participation of two persons to complete any such transaction. However, any activity which would fall within the phrase “otherwise traffics in” does not indispensably require active participation of more than one person if noticeably sizable quantity of FICN is found to be in the possession of that person and such concealed possession cannot be treated as dormant possession. It is active transportation which amounts to trafficking. Any other mode of interpreting the phrase “or otherwise traffics” would dilute the rigour of law. A strict and literal interpretation of the penal provision contained in Section 489B of the IPC does not lead us to any other conclusion. Thus, the phrase “or otherwise traffics” in Section 489B of the IPC would take within its sweep, the action of dealing or trading in forged counterfeit currency note or bank note even otherwise than by selling, buying (purchase) or receiving. Therefore, the word “traffics” and the phrase “or otherwise traffics in” in Section 489B of the IPC are not to be read ejusdem generis with the words “sells”, “buys” or “receives”; but ought to be read to understand that activities other than selling, buying or receiving would also fall into the basket of the incriminating factors which constitute the ingredients of the acts and omissions which is an offence as per that Section.”

17. The petitioner has travelled in the car of Baljinder Singh from Patiala to Delhi and in this regard, a statement of Manjur Hasan, the driver of the car, has been recorded under Section 164 CrPC. Manjur Hasan is yet to be examined in the trial. The Investigating Agency has also recorded the voice

calls between Baljinder Singh and Manga Singh in which it was mentioned that a person would come and his mobile number was mentioned. The said mobile number has been found to be belonging to the petitioner. Even though in the intercepted calls, there is no mention of FICN yet the mobile number of the petitioner is mentioned. As per the Status Report, it has been specifically stated that a supplementary challan will be filed against Baljinder Singh and Manga Singh in due course. The minimum sentence for the offence punishable under Section 16 of the UAPA is five years, which may extend to imprisonment for life. The charges have been framed and 11 out of 24 witnesses have been examined so far.

18. In view of the totality of the facts and circumstances of the case and the fact that charge has been framed and also the fact that the petitioner was found in possession of FICN of Rs. 2 lakhs which have been opined to be “high quality counterfeit notes” and the CDR showing that he was in regular touch with other accused persons, the allegations against the petitioner appears to be prima facie true at this stage and the counsel for the petitioner has not been able to reverse the burden in terms of special provision under Section 43(D)(5) UAPA. Accordingly, the present bail application is dismissed.

MANOJ KUMAR OHRI, J

NOVEMBER 27, 2019

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