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via Video-conferencing

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

Date : 18th June 2020

+ **BAIL APPL. 913/2020**

NAVENDU BABBAR

.....Petitioner/Applicant.
Through : Ms. Rebecca M. John,
Senior Advocate with Ms.
Manisha Parmar and Mr.
Swapnil Aeron, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent
Through : Mr. G.M. Farooqui, APP for
State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

The applicant is an accused in case FIR No. 88/2015 dated 30.06.2015 registered under sections 420/467/468/471/120-B of the Indian Penal Code, 1860 (IPC) at PS : Economic Offences Wing (EOW), Crime & Railways, Delhi and has been in judicial custody since 22.02.2020. By way of the present application, the applicant seeks regular bail during pendency of the trial.

2. To give a brief overview of the matter, the subject FIR came to be registered at the instance of complainant Arjun Singh who complained that in May, 2014 that one Kailash Bhatt approached the complainant

and represented that his employer Navendu Babbar (the applicant) wishes to purchase an apartment, which however he cannot purchase in his own name. According to the complainant, Kailash Bhatt persuaded the complainant to purchase the apartment in the complainant's name and thereafter transfer it to the applicant within 6 months. The complainant alleges that on this pretext Kailash Bhatt took certain identity documents from the complainant; and on 09.05.2014, Kailash Bhatt and the complainant approached Punjab National Bank, Mayur Vihar Branch, Delhi for a loan along with the applicant and one Ravi Kumar. At the bank, on the directions of Kailash Bhatt and the applicant, the bank officials got the complainant to put his signatures on several documents, which documents the complainant did not understand.

3. Other details apart, the complainant alleges that later he received a letter dated 09.01.2015 from the bank to the effect that he owed Rs.49,04,960/- to the bank against an equitable loan facility availed by him against property bearing No. L-2/19 Mohan Garden, Uttam Nagar, Delhi; and if the complainant did not repay the loan amount, the bank would take possession of the property. According to the complainant, he had never taken any loan from the bank and had nothing to do with the property. The complainant accordingly filed a complaint with PS : Economic Offences Wing, New Delhi, on the basis of which the subject FIR has come to be registered.
4. There are 05 accused persons in the matter : Kailash Bhatt (complainant's neighbour), Ganesh Singh (Bank Manager), Ravi Kumar

(sole proprietor of one M/s Heico Electronics), Sheetal Garg (Chief Manager of the bank) and Navendu Babbar/applicant (sole proprietor of M/s Harshit Enterprises).

5. The essential allegations in the FIR are that on 05.04.2014 a savings bank account was opened; and on 06.05.2014 a housing loan account was opened at the bank in the complainant's name ; that a loan of Rs.46,50,000/- was sanctioned against equitable mortgage of House No. L-2/19 Mohan Garden, Uttam Nagar, Delhi ; that a sale deed in respect of that property was executed by Ravi Kumar in favour of the complainant and registered at the concerned Sub-Registrar of Assurances, Delhi. The sale deed is alleged to be 'fake' in that it pertains to a non-existent property ; and it is also alleged to be forged, inasmuch the complainant denies his signature/thumb impression on the document. The concerned Sub-Registrar of Assurances has also said that the sale deed is not on the official records of that office.
6. It is nobody's case however that the applicant has signed the sale deed. The allegation is that the loan amount of Rs.46,50,000/- was credited by the bank to the complainant's account; and was then disbursed to an account in the name of Ravi Kumar; who then further credited an amount of Rs.46,40,000/- (i.e. Rs. 10,000/- less than the loan amount) to the account of M/s Heico Electronic, which is the sole proprietorship firm of Ravi Kumar, which is engaged in the trade of electronic goods. Furthermore, it is alleged that on 07.05.2014, the sum of Rs.46,40,000/- was transferred from the account of M/s Heico Electronics to the account

of M/s Harshit Enterprises, which is the applicant's sole proprietorship firm at the Development Credit Bank, Preet Vihar, Delhi.

7. Accordingly, the main allegation against the applicant is that he is the ultimate recipient of Rs.46,40,000/- taken by way of a loan from the bank, against an equitable mortgage, on the basis of a sale deed which is alleged to be fake and forged.
8. In this backdrop, the applicant moved an anticipatory bail application under section 438 Cr.P.C., in which *vidé* order dated 31.07.2017, the learned Additional Sessions Judge made the following order:

“Accordingly, it is hereby directed that in the event of arrest, applicant be released on bail till 31.8.17 subject to his furnishing personal bond in sum of Rs.50,000/- with one surety of like amount to satisfaction of arresting officer/SHO, PS EOW. Applicant is further directed to join investigation as and when he is called upon to do so and in this regard he shall firstly join investigation on 1.8.2017 at 3.00 PM and shall contact the IO/SHO, PS EOW in this regard. He is further directed to join investigation as and when he may be called upon to do so in writing thereafter.”

(Emphasis supplied)

9. Subsequently, the applicant moved another anticipatory bail application, in which *vidé* order dated 31.08.2017, the following order was made:

“On basis of information furnished by SI Surjeet and as was mentioned in the report of SI Bhanwar Singh, it is informed by Id PP that although applicant had joined investigation on five occasions and had submitted some documents, still he had not yet furnished any document reflecting that a sum of Rs.46.5 Lac was due to him from co-

accused Ravi Kumar nor any document to the effect that tax had been duly paid on the said amount. As per ld. PP these facts had been submitted on behalf of the applicant on 31.7.17 and had helped him secure anticipatory bail.”

x x x x x

“Keeping in view the aforesaid, applicant is directed to refurnish / furnish to the IO the requisite documents regarding dues to him from Ravi and regarding payment of tax on the said amount. Needful in this regard be done by the applicant within 14 days from today. Accordingly, it is hereby directed that in the event of arrest, applicant be released on bail till 22.9.2017 subject to his furnishing personal bond in sum of Rs.50,000/- with one surety of like amount to satisfaction of arresting officer/ SHO PS EOW. Application stands disposed of accordingly.”

(Emphasis supplied)

10. Then again, the applicant moved yet another anticipatory bail application which was disposed of *vidé* order dated 27.09.2017 with the following observations:

“Sh. Taneja has delivered the original signed office copies of invoices dated 28.03.2014, copies whereof are available on page 19 & 20 of the present bail application, to the IO, who proposes to provide him the requisite seizure memo.

*Since IO needs to investigate the matter about veracity of these invoices and other limbs connected thereto, it is deemed appropriate that in the meanwhile **the applicant be released on bail till 31.10.2017 in the event of his arrest in this case, on furnishing personal bond in the sum of Rs.50,000/- and one surety of like amount to the satisfaction of arresting officer/SHO.**”*

(Underscoring supplied, bold in original)

11. According to the State, after the ‘term’ or ‘validity’ of order dated 27.09.2017 ran-out on 31.10.2017, the applicant went missing and did not join or cooperate with the investigation. It is the State’s contention that in view of the applicant’s abscondence, appropriate application was moved to have him declared ‘proclaimed offender’ and upon his arrest on 22.02.2020 in a different case in Mumbai, he was brought to court in Delhi and *vidé* order dated 25.02.2020, the following was ordered :

“Accused has been arrested by the IO in this case and IO has submitted that police investigation has been completed. As far as present accused is concerned, he is not required for any custodial interrogation and he be sent to J.C. It is further stated that accused has been declared P.O. in this case.”

*Considering the submissions made and also the grounds mentioned in the application, the accused is **remanded to J.C. for fourteen days.***

As regards, application for production of accused before Ld. Special Court, CBI, vide order dated 20.02.2020, it has been directed by Ld. Special Court to restore the custody of the accused as and when the investigation is over.

Under such circumstances, IO is directed to produce the accused before Superintendent, Arthur Road Jail for further proceedings and duly intimate the said fact to Ld. Special Court, CBI.”

(Underscoring supplied, bold in original)

12. It is in these circumstances that the applicant came to be remanded to judicial custody in Delhi ; and was subsequently transferred to Mumbai, where he is presently lodged at the Arthur Road Jail.
13. Status report dated 20.05.2020 discloses that the applicant is involved in 06 cases in all, with the following particulars:

S.No	Case Reference	Date of FIR	Police Station	Provisions of Law	Status
1	FIR No. 88/2015	30.06.2015	Economic Offences Wing, Crime & Railways	Under sections 420/467/468/471/ 120-B IPC	(Present case) Charge-sheet and supplementary charge sheet filed.
2	CR No. RC BA 1/2018/A0016	27.06.2018	Anti-Corruption Bureau, CBI, Mumbai	Under sections 120-B read with 409/ 420/ 467/ 468/ 471 IPC and section 13(2) read with section 13(1) (c) & (d) of PC Act	In custody in Mumbai ; charge-sheet filed.
3	FIR No. 492/2015	22.07.2015	Pandav Nagar, Delhi	Under section 420 IPC	Pending investigation
4	FIR No. 790/2015	16.08.2015	Ghazipur, Delhi	Under sections 406/420/467/468/ 471/ 120-B IPC	Closure report filed; pending consideration of court.

5	FIR No. 405/2015	28.04.2015	Vivek Vihar, Delhi	Under sections 420/468/471/120- B IPC	Charge-sheet filed on 22.04.2019; declared proclaimed offender
6	FIR No. 794/2015	17.08.2015	Ghazipur, Delhi	Under sections 406/420/467/468/ 471/120-B IPC	Pending investigation

14. Ms. Rebecca M. John, learned senior counsel for the applicant submits :

- a. that though the applicant was named in the FIR, his name did not appear in charge-sheet dated 24.05.2017 filed in the matter;
- b. that however, in supplementary charge-sheet dated 21.05.2020, the applicant's name was added;
- c. that the sum of Rs.46,40,000/- received by the applicant in the account of his sole proprietorship firm from M/s Heico Electronics was towards payment of goods supplied to M/s Heico Electronics under invoice/s dated 28.03.2014 and towards other dues, which money was received on 07.05.2014; and the applicant had nothing to do with the loan transaction that is the subject matter of the complainant's allegations;
- d. that the applicant did not abscond and in fact he joined investigation several times when called ; but he was never summoned thereafter for investigation. As it appears from the

record, between 2017 and 2019 the I.O. attempted to serve notice on the applicant to join investigation at the applicant's (erstwhile) office address in Vivek Vihar, whereas the applicant had closed that office; but service was never attempted at the applicant's residential address in Preet Vihar, which address was available with the I.O. In fact, it is contended that the record of proceedings before the Sessions Court shows, that subsequently the I.O. moved an application before the Sessions Court to get NBWs served upon the applicant at his Preet Vihar address;

- e. that in any case, the issue of alleged abscondence and subsequent declaration of the applicant as 'proclaimed offender' is now subject matter of a charge under section 174A IPC, which the applicant will defend; and that aspect cannot count towards consideration of bail;
- f. that evidently, upon filing of the supplementary charge-sheet, the investigation in the matter insofar as the applicant is concerned, is complete; that the case would proceed essentially on documentary evidence ; and that therefore no purpose will be served in keeping the applicant in judicial custody; and
- g. that all co-accused in the matter, except Sheetal Garg who is absconding, have been admitted to bail in the matter. Kailash Bhatt was granted bail *vidé* order dated 17.07.2017 by the Sessions Court ; Ganesh Singh and Ravi Kumar were granted bail by a

common order dated 31.07.2017 by the Sessions Court ; and it is only the applicant whose application for bail, including on the ground of the prevailing pandemic COVID-19, has been dismissed *vidé* order dated 28.04.2020 by the Duty Magistrate, North West, Rohini Courts.

15. Learned senior counsel has relied upon the following judicial precedents in support of the applicant's case :

(a) ***Prabhakar Tiwari vs. State of U.P.***¹, to submit that the Supreme Court has observed that although the offence alleged (in that case under section 302 IPC) may be grave and serious and there may be several criminal cases pending against the accused, these facts by themselves cannot be basis for refusal of bail;

(b) ***Ashok Sagar vs. NCT of Delhi***², to argue that the gravity of the offence alleged has a limited role to play while adjudicating an application for bail;

(c) ***Sanjay Chandra vs. CBI***³, to argue that the object of bail is not punitive but to secure the presence of the accused for trial ; and although the severity of the punishment is also to be considered and the offences alleged are serious, the charge-sheet

¹ 2020 SCC OnLine SC 75; para 6 and 8

² 2018 SCC OnLine Del 9548; para 35 (ii) & (iv)

³ (2012) 1 SCC 40; para 21-24, 39 & 46

has already been filed ; and therefore the applicant deserves to be enlarged on bail ;

(d) ***P. Chidambaram vs. CBI***⁴, to point-out that where the accused is in custody, while co-accused have been granted bail and charge-sheet has been filed and the allegations of influencing witnesses are without basis, bail should be granted ;

(e) ***Aman Verma vs. State***⁵, to submit that incarceration of an accused causes deprivation of his right to legal defence;

(f) ***Moti Ram v. State of M.P***⁶, to say that the consequences of pre-trial detention are grave ; and that jailed defendants are prevented from contributing to the preparation of their defence, which burden falls on their innocent family members;

(g) ***Babu Singh v. State of U.P***⁷, to argue that a person on bail has a better chance of preparing and presenting his case than one remanded in custody; and that unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible;

⁴ 2019 SCC Online SC 1380; para 22 & 33

⁵ 2011 SCC Online Del 5593; para 27

⁶ (1978) 4 SCC 47 ; para 14

⁷ (1978) 1 SCC 579 ; para 18

(h) ***Hussainara Khatoon (I) v. Home Secy., State of Bihar***⁸, to submit that the discriminatory nature of the bail system becomes all the more acute by reason of the mechanical way in which it is customarily operated;

(i) ***Bhulabai v. Shankar Barkaji Matre***⁹, to urge that denial of bail is a restriction on the freedom of the accused, access to lawyers and preparation of defence; and that presumption of proof of guilt requires clear justification for depriving a person of their liberty before conviction.

16. Opposing the grant of bail, Mr. G.M. Farooqui, learned APP for the State contends as follows :

- a. that the applicant absconded after obtaining anticipatory bail orders from the Sessions Court; and as recited in status report dated 27.05.2020, the applicant is the main beneficiary of the money involved in the crime, since he ultimately received Rs.46,40,000/-, from the money that was illegally taken as loan from the bank;
- b. that, as is evident from status report dated 27.05.2020, the applicant did not join investigation after 15.09.2017 and notices issued to him remained undelivered since he was not found available at any of his addresses. Furthermore, efforts were

⁸ (1980) 1 SCC 81 ; para 3

⁹ 1999 SCC OnLine Bom 315 ; para 9

made to apprehend him; and it is alleged that in an effort to apprehend the applicant, raids were conducted on 16.10.2017, 23.10.2017, 08.03.2018, 09.05.2018, 19.09.2018, 13.12.2018 and 22.04.2019 at his given addresses which were all found locked. Enquiries made from neighbours also did not reveal his whereabouts ; that in this background NBWs were obtained against the applicant ; that subsequently process under section 82 Cr.P.C. was issued; and on 30.11.2019, the applicant was declared ‘proclaimed offender’;

- c. that the applicant has still not furnished to the I.O. the ‘original invoices’ and other documents, on the basis of which the applicant claims that money was received against alleged sale of goods to M/s Heico Electronics ;
- d. that the applicant diverted funds released by way of a loan against equitable mortgage, since all procedures for grant of such loan were ignored; and for which reason bank officials are also arrayed as accused in this case;
- e. that the applicant is a habitual offender ; that there are several cases registered against him; and considering the magnitude of the offence, regular bail should not be granted.

17. Some extracts from the relevant judicial precedents may now be cited :

Prabhakar Tiwari v. State of U.P. & Anr. (supra) :

“6. We have considered the respective submissions. The facts highlighted by the appellant are that the case involves offence under

Section 302 read with Sections 120-B/34, 147, 148 and 149 of the Penal Code, 1860. The accused has several criminal cases pending against him and has been named in the statement forming the basis of the FIR on the date of occurrence itself. ”

x x x x x

“8. On considering the submissions of the learned counsel for the parties. Having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. ”

(Emphasis supplied)

Ashok Sagar v. State (supra) :

“35. Authorities on bail, and the jurisprudence relating thereto, are in overabundance, and it is hardly necessary to multiply references thereto. The principles governing exercise of judicial discretion in such cases, appear, however, to be well-settled. The following principles may immediately be discerned, from the aforementioned authorities:

x x x x x

(ii) While examining the issue, courts are not to presume that the accused would flee justice, were he to be released, and search for evidence indicating to the contrary. Logistically, every accused, who is released during trial, has the potentiality of fleeing. Were this potentiality to be allowed to influence the mind of the court, no accused would be entitled to bail.

x x x x x

(iv) *Given this legal position, the nature of the offence committed necessarily has a limited role to play, while examining the merits of an application for bail. This is for a simple reason that the application being examined by the court is not for suspension of sentence, but for release during trial. If the court were to allow itself to be unduly influenced by the nature of the charges against the accused, and the seriousness of the crime alleged to have been committed by him, it would result in obliterating the distinction between grant of bail and suspension of sentence. Inasmuch as the applicant, in a bail application, has yet to be found guilty of the offence with which he is charged, the significance of the nature of the offence stand substantially reduced, while examining the application for bail. Courts have to be alive to the legal position - underscored in the very first paragraph of Dataram Singh (supra) - that every accused is presumed to be innocent until proved guilty.*

(Emphasis supplied)

Sanjay Chandra v. CBI (supra) :

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”

“22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted

persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

“23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before 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.”

“24. In the instant case, we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating the scales of justice”.

x x x x x

“39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary

ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.”

x x x x x

“46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

(Emphasis supplied)

P. Chidambaram v. CBI (supra) :

“22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the

prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide Prahlad Singh Bhati v. NCT, Delhi (2001) 4 SCC 280). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner.”

“33. The appellant is not a “flight risk” and in view of the conditions imposed, there is no possibility of his abscondence from the trial. Statement of the prosecution that the appellant has influenced the witnesses and there is likelihood of his further influencing the witnesses cannot be the ground to deny bail to the appellant particularly, when there is no such whisper in the six remand applications filed by the prosecution. The charge sheet has been filed against the appellant and other co-accused on 18.10.2019. The appellant is in custody from 21.08.2019 for about two months. The co-accused were already granted bail. The appellant is said to be aged 74 years and is also said to be suffering from age related health problems. Considering the above factors and the facts and circumstances of the case, we are of the view that the appellant is entitled to be granted bail.”

(Emphasis supplied)

Moti Ram v. State of M.P. (supra) :

“14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than

are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.”

(Emphasis supplied)

Babu Singh v. State of U.P. (supra) :

“18. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.”

(Emphasis supplied)

18. Upon a careful consideration of the allegations made, cross-referenced with the material on record, and after balancing the rights of the accused on the one hand, the victim on the other as also the role of the State as the proponent of public justice, at this stage when only the applicant’s bail plea is being considered, the following relevant aspects emerge:
 - i. That typically, the rationale and reasons for permitting judicial custody of an undertrial accused are :
 - (a) To prevent the accused from committing any further offence;

- (b) To conduct further investigation;
 - (c) To prevent the accused from tampering with evidence or causing disappearance of evidence;
 - (d) To prevent the accused from extending any inducement, threat or promise to the complainant/first informant or to the victim or to any other person, to dissuade them from disclosing facts to the investigating agency or the court or from deposing without fear or coercion during trial ; and/or
 - (e) To ensure the presence of the accused to face trial.
- ii. That in the present case, which arises from an FIR that was registered on 30.06.2015, that is nearly 5 years ago, *presumably* investigation was going-on ever since and the charge-sheet was originally filed on 24.05.2017, in which the applicant's name was not included. Subsequently, further investigation was conducted and a supplementary charge-sheet was filed on 21.05.2020 in which the name of the applicant appeared. Clearly, upon filing of the supplementary charge-sheet, investigation insofar it relates to the applicant, stood concluded.
- iii. That while the State argues, that the applicant has not 'cooperated' in the investigation, the only aspect cited is that the applicant did not give to the I.O. original documents relating to the sale of goods against which money was received by the applicant/M/s Harshit Enterprises from M/s Heico Electronics. However, this demand of the I.O. must be taken as answered on point of fact, when the original, signed 'office copies' of invoice/s dated 28.03.2014 were delivered by the applicant's counsel to the I.O. in court, as recorded in order dated

27.09.2017 made by the Sessions Court; and copies thereof were also placed on the court record. It is reasonable to assume that the 'original invoices' would have been delivered to the person upon whom the invoices were raised, in this case M/s Heico Electronics, and would therefore not have been available with the applicant.

- iv. That the I.O.'s allegation that the applicant was not 'cooperating' in the investigation also needs to be put in legal perspective. Is the I.O. saying that an accused would be taken to be 'not cooperating' in the investigation till he furnishes all material that the I.O. thinks is necessary to nail the accused ? We must remember that under our system of criminal jurisprudence, an accused has a right of silence, apart from a fundamental right against self-incrimination under Article 20(3) of the Constitution. What would happen if an accused says that no other material is available, whereas the I.O. thinks or says that other material exists and must be delivered-up before the accused is granted bail ? In such case, would the court be persuaded to keep an accused in judicial custody endlessly, till this impasse is resolved ? Consider another scenario : what if an accused wants to produce some exculpatory evidence in his defence during trial; and fears, that if the exculpatory material is shared with the I.O. during investigation, the I.O. may either not produce such material before the court or destroy it, so that it is not available to the accused for his defence ? While in theory, it is the duty of the I.O. to collect *all* evidence, *whether inculpatory or exculpatory*, during investigation and to place it before

the court, it would be naive for a court to assume that this theory is put into practice by investigating agencies. It is also well within the rights of an accused to bring-out defence evidence only during trial. This is one of the reasons why, in a criminal trial, an accused is *not* required to furnish a written statement of his defence nor to file any affidavit disclosing the evidence he proposes to adduce during trial. While in a civil trial, it is impermissible to spring a surprise on an opposing party, there is *no such bar on an accused* in a criminal trial. The I.O. therefore cannot be heard to say that till the applicant hands-over to him every shred of evidence, *which the I.O. think exists*, the applicant should be kept in prison as an undertrial.

- v. That on another note, if it is the investigating agency's case that the applicant has not given all documents to show that money was received towards sale of goods made to M/s Heico Electronics, then one wonders how the I.O. would obtain such material by keeping the applicant in judicial custody, where the applicant is beyond the I.O.'s custody and control. In the present case, even 5 long years after registration of the FIR, the investigating agency still appears to be saying that it has not collected *all* evidence that would give it confidence to take the case to trial.
- vi. That criminal investigation is *not* a metaphorical fishing-rod handed to an investigating agency, to indulge its penchant for 'fishing around' for evidence, at its own leisure and in the fullness of time. Investigation has to be a time-limited process, to be conducted strictly

within the structure and framework of the criminal procedure code. As of 21.05.2020, supplementary charge-sheet has been filed naming the applicant; and thereby the case to frame charges against the applicant has been laid before the trial court. The investigating agency must therefore be taken to have concluded investigation insofar as the applicant is concerned. Viewed from this perspective, no further indulgence is deserved by the investigating agency and it cannot say that the applicant be kept in prison as an undertrial since he has not cooperated in the investigation.

- vii. That insofar the allegation of the applicant having absconded is concerned, on a *prima facie* view it appears that *firstly*, the three orders dated 31.07.2017, 31.08.2017 and 27.09.2017 granting anticipatory bail to the applicant were never ‘complied with’ inasmuch the I.O. never arrested the applicant; and therefore the occasion of releasing him on bail based on those anticipatory orders did not arise. Since that occasion did not arise, the applicant did not furnish any personal bond or surety bond to bind him to the bail order. So the applicant cannot be said to have jumped bail or broken any conditions of a bail bond. Be that as it may, the applicant *was certainly expected* to join and cooperate in the investigation. On this aspect, the State says this in its status reports dated 27.05.2020 and 17.06.2020 :

3. That accused Navendu Babbar did not join investigation of the case and was found unavailable at his given addresses. Accordingly, N.B.W was got issued from Hon'ble Court on 18/05/17 returnable on 14/07/17. Thereafter, Hon'ble Court re-issued NBW of the accused Navendu Babbar on 17/07/17 returnable on 01/09/17. Meanwhile, on 31/07/17 accused was granted interim bail by the Hon'ble Sessions court till 31/08/17 with the direction to join the investigation as and when required. Though accused had joined investigation on 5 occasions but he never co-operated in the investigation of the case and never provided relevant documents which would justify the receipt of Rs. 46.5 Lac against goods supplied to co-

accused Ravi Kumar, as claimed by him. This fact of non-cooperation on the part of accused Navendu Babbar was duly apprised to the Sessions Court. Accused was further granted interim bail by the Hon'ble Sessions Court on 31/08/17 till 22/09/17 with the direction to join investigation and co-operating by way of producing his accounts and other related details. Accused again joined the investigation and submitted photocopies of 2 invoices wherein liability of Rs. 45,04,500/- was shown towards M/s Heico Electronics, firm of co-accused Ravi Kumar. Accused submitted that in lieu of outstanding

joined the investigation. Notices issued to him remained undelivered as he was not found available at any of his given addresses. Efforts have been made to apprehend him, raids were conducted at his known addresses but the same were

found locked. Enquiry from neighbours have been conducted but no clue regarding whereabouts of the accused has been found. Raids were conducted on 16/10/17, 23/10/17, 08/03/18, 09/05/18 19/09/18, 13/12/18 & on 22/04/19 at his given addresses but to no avail. Accordingly, N.B.W has been got issued from Hon'ble Court. Subsequently Process U/s 82 Cr.P.C has been issued against him by Hon'ble Court. On 30/11/19 he has been declared Proclaimed Offender in the case by Hon'ble Court. Interim Bail orders of Hon'ble Sessions

(Relevant extracts from status report dated 27.05.2020)

3. That regarding application filed before Ld. CMM/North-West, Rohini Courts, Delhi for correction of address mentioned in N.B.W dated 10.07.19 against accused Navendu Babbar, it is submitted that as accused Navendu Babbar was deliberately avoiding his arrest & absconding in the case. Accordingly N.B.W was got issued from Hon'ble Court on 10/7/19 returnable on 19/08/19. In the said application address of the accused Navendu Babbar has been written inadvertently as House No. at G-338 Vivek Vihar, Delhi instead of House No. G-338, Preet Vihar, Delhi, though search had been conducted at G-338, Preet Vihar, Delhi. Accordingly Hon'ble Court re-issued the N.B.W after correction of address, returnable on 19/08/19.

(Relevant extracts from status report dated 17.06.2020)

From the above, it is clear that while on the one hand it is said in the status reports that the applicant was not cooperating in the investigation and non-bailable warrants were issued against the applicant, on the other hand, the Sessions Court was repeatedly granting anticipatory bail to the applicant from time-to-time, which appear to be irreconcilable positions. It is also seen from the status reports, that there was confusion as to the applicant's current address as between Vivek Vihar and Preet Vihar. In view of the above, not much credence can be given to the State's allegation that the applicant was evading investigation. In any case, now that a charge has been laid against the applicant under section 174A IPC for his alleged abscondence, the applicant would be required to defend himself against that charge during trial and will face the consequences for that.

- viii. That although the applicant has 05 other cases pending against him, the pendency of those cases in itself cannot be the basis for denying bail in this case (cf. *Prabhakar Tiwari*, supra);
- ix. That the offences alleged, which are essentially economic offences, although serious, again cannot be the sole basis of denying bail since the nature of offence has a limited role to play while examining a bail application (cf. *Ashok Sagar* and *Sanjay Chandra*, supra) ;
- x. That the consequences of pre-trial detention are grave; and keeping an undertrial in jail seriously jeopardizes the preparation of his defence

(cf. *Moti Ram and Babu Singh*, supra). Further detention of the applicant in custody would necessarily impact his right to defend himself during trial inasmuch he will be denied effective consultation with his lawyers, collection of evidence in his defence and other footwork that he would require to defend himself actively and effectively. This would clearly be a denial of the right to fair trial, which is guaranteed under Article 21 of the Constitution ;

- xi. That all co-accused persons, other than the one who is absconding, have been admitted to bail in July 2017, which makes a compelling case to allow the applicant's bail plea on grounds of parity (cf. *P. Chidambaram*, supra);
- xii. That in cases such as this, in which allegations relate to forgery and fabrication of documents, transfer of monies between bank accounts through banking channels, the prosecution would turn essentially upon documentary evidence, which has already been collected and charge sheet has been filed. Again therefore, the applicant's presence in custody would not be necessary or justified (cf. *Sanjay Chandra* and *P Chidambaram*, supra) ;
- xiii. That even assuming, as the I.O. alleges, that there are some documents which the applicant has not furnished to the I.O. (though this appears contrary to what is recorded by the Sessions Court), the applicant would be well within his rights to place such documents

during his defence evidence, by confronting prosecution witnesses or through defence witnesses, at the appropriate stage;

- xiv. That to contend that the applicant should be kept in judicial custody till such time as the applicant gives to the I.O. all supposed documents that the I.O. demands, would result in endless custody of an undertrial, which cannot be permitted;
 - xv. That prison is primarily for punishing convicts; and there must be valid bases, grounds and reasons to detain undertrials in custody ;
 - xvi. That the applicant cannot be kept in judicial custody merely because some co-accused (in this case Sheetal Garg) has absconded, especially when other co-accused are already on bail ;
 - xvii. That accordingly, none of the grounds for continuing the applicant's judicial custody as an undertrial is made-out in the present case;
 - xviii. That insofar as the applicant committing any further offence is concerned, in this case that ground is purely speculative as is the ground of possible inducement, threat or promise being extended to any prosecution witness or other such person;
 - xix. That insofar as the possibility of the applicant absconding from trial, that ground also appears to be farfetched and can be taken-care of by imposing appropriate conditions of bail.
19. Upon a conspectus of the foregoing, this court is persuaded to admit the applicant to regular bail pending trial in case FIR No. 88/2015 dated

30.06.2015 registered under sections 420/467/468/471/120-B IPC at PS : Economic Offences Wing (EOW), Crime & Railways, Delhi, on the following conditions:

- a. The applicant shall furnish a personal bond in the sum of Rs.5,00,000/- with 01 surety of the like amount from a blood-relative, to the satisfaction of the Trial Court/Duty Magistrate;
- b. The applicant shall not leave the country without permission of the court and shall *ordinarily* reside in his place of residence as per prison records;
- c. The applicant shall surrender his passport to the Trial Court/Duty Magistrate;
- d. The applicant shall make a video-call every alternate Saturday between 11 am and 11:30 am to the Investigating Officer, and in case the Investigating Officer is unavailable, then to the Officer Incharge, PS : Economic Offences Wing, Crime & Railways, New Delhi and also 'drop-a-pin' on Google Maps, so that the applicant's presence and location can be verified by such officer;
- e. The applicant shall furnish to the Investigating Officer a cell phone number on which the applicant may be contacted at any time; and shall ensure that the number is kept active and switched-on at all times ;
- f. The applicant shall not contact nor visit nor offer any inducement, threat or promise to the first informant/

complainant or to any prosecution witness. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that may prejudice the proceedings in the matter ;

20. A copy of this order be sent to the Jail Superintendent, Central Jail, Tihar, Delhi as also to the Jail Superintendent, Arthur Road Jail, Mumbai.
21. The bail application stands disposed of in the above terms.
22. Other pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

June 18, 2020