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

\+   BAIL APPL.No.1155/2020

Judgment reserved on : 07.08.2020
Date of decision: 12.11.2020

SAIMUL HODA ..... Applicant

Through: Mr.Ravi Gupta, Advocate.

Versus

STATE .....Respondent

Through: Mr.Kewal Singh Ahuja, APP for State with SI Narender Kumar, Cyber Cell Crime Branch.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant, vide the present application seeks the grant of bail in relation to FIR No.189/2017, PS Crime Branch, New Delhi under Section 420 of the Indian Penal Code, 1860 submitting *inter alia* to the effect:-

- that he has been incarcerated since 15.11.2019;
- that he has been falsely implicated in the instant case;

- that two other co-accused persons namely Samir Tantubai and Manoj Hari who were the main and only beneficiaries, have already been granted bail;
- that the charge sheet in the matter has been filed;
- that the applicant was not even named in the main charge sheet;
- that the matter is at the stage of evidence and in the prevailing pandemic, the trial would take time;
- that the applicant has clean antecedents and has never been convicted previously and that he has been falsely implicated in other unsolved FIRs;
- that the applicant's father is aged more than 87 years and suffers from acute spinal injury, and had met with an accident and is confined to bed;
- that the younger daughter of the applicant aged 5 years suffers from kidney disease and that both the father and daughter of the applicant need proper care, attention and presence of the applicant;
- that the applicant undertakes to join the Court proceedings regularly.

2. Notice of the application was issued to the State and accepted by the learned APP on behalf of the State.

3. Pursuant to proceedings dated 08.06.2020, 19.06.2020, 02.07.2020, 09.07.2020, 20.07.2020, the status reports dated

15.06.2020, an undated status report, 30.06.2020, 07.07.2020, 27.07.2020 and written submissions dated 08.07.2020 and the chart of details of numbers utilized in the alleged commission of crime were submitted on behalf of the State.

4. Written submissions have also been submitted on behalf of the applicant along with the copies of rulings sought to be relied upon on behalf of the applicant.

5. As regards the aspect of the ailment of the father of the applicant and the ailment of the daughter of the applicant vide order dated 19.06.2020, it has been specifically observed to the effect that the document which the applicant had submitted in relation to his daughter's ailment related to the year 2017 and could thus not be considered qua the submission made on behalf of the applicant that the applicant's daughter still continues to suffer with the kidney disorder.

6. As regards the ailment of the father of the applicant and the number of persons available at the house of the applicant to look after his father, the State was directed to submit a status report vide order dated 19.07.2020. The status report dated 30.06.2020 under the signatures of the ACP, Cyber Cell, Crime Branch, Delhi indicates that

though the father of the applicant undoubtedly is bed ridden due to broken hip joint & fracture in femur (left leg), further enquiries have revealed that there are four other family members of the petitioner including his two younger brothers namely Faizul Hoda (Age-32 Years), Jaimul Hoda (Age-27 Years), and his mother and his wife are available there to take care of his father and the elder brother of the petitioner namely Khairul Hoda @ Babblu Hoda also resides in the same locality. Thus, qua the aspect of the ailment of the father of the applicant too, the prayer made by the applicant, cannot be granted.

7. The allegations in the instant case emanate from a complaint lodged by Smt.Bhanu Prabha Gupta alleging that she received a call on 15.07.2017 on her mobile no. 9868929619 from mobile no.9563221857 in which the caller masqueraded himself as being a bank employee and asked her the details of her ATM card in the name of the activation of the blocked card and that the complainant followed the instructions of the caller and shared her SBI ATM CARD details due to which she received an OTP on her mobile number. The caller is then alleged to have asked the complainant the OTP, on which she had informed the caller of the receipt of the OTP on the same mobile

number on which the caller had called her and that she did not know how to open the message during the call, as a consequence of which the caller had asked her for another mobile number and the complainant gave the caller another mobile no 9873797825 on which the caller called her and got an OTP, whereafter, a sum of Rs.8,000/- was deducted from the account of the complainant. The caller is then alleged to have asked the complainant whether she had another bank account, on which the complainant replied in the affirmative and shared the details of another account of the Indian Bank Account due to which an amount of Rs.31999/- was deducted from her account and thus she was duped to the tune of Rs.39999/- from her two bank accounts, as a consequence of which the case was registered.

8. It is indicated vide the status report dated 15.06.2020 that during the course of investigation on 15.07.2017, an amount of Rs.5,000/- and Rs.3,000/- were found to be loaded into two online wallets of Kitecash 8617354860 and Transaction Analysts wallets of Kitecash 8617354860 and Transaction Analysts 9411269180 respectively by using the details of the debit card of complainant's SBI Bank account and that further on 15.07.2017, an amount of Rs.5,000/-

was found to be transferred into the SBI Bank account bearing a/c no. 20015318020 of the accused Manoj Hari R/o Distt. Burdwan, W.B. During the investigation that was conducted it was found that on 15.07.2017, an amount of Rs.10,000/-, Rs.19,999/- and Rs.2,000/- were found to be loaded into three online wallets of Ola Cab 9134757185, the Mobile Wallet 7031681439 and Transaction Analysts 9411269180 respectively by utilizing the details of the debit card of the complainant's Indian Bank account.

9. As per the said status report, the investigation conducted indicated that on 15.07.2017, an amount of Rs.9948/- was found to be transferred into the Central Bank of India account bearing No. 3567085615 of the co-accused Samir Tantubai from Ola Cab wallet 9134757185. A further sum of Rs.5118/- was found to be transferred into the Central Bank of India account bearing No. 3567085615 of the said co-accused Samir Tantubai from the mobile wallet 7031681439 and Rs.5000/- was further found to be transferred into the *Mobikwik wallet* 8617092880 from *the mobile* wallet 7031681439 and a further amount of Rs.4,600/- was found to be transferred into the Central Bank of India account bearing A/c No. 3567085615 of the accused

Samir Tantubai from Mobikwik wallet 8617092880. A further sum of Rs.4881/- was stated to be transferred into the Mobikwik wallet 9134757186 from the mobile wallet 7031681439 and a further amount of Rs.4750/- was found to be transferred into the SBI account bearing a/c no 20015318020 of the accused Manoj Hari from Mobikwik wallet 9134757186. A further sum of Rs.5,000/- is stated as per investigation conducted to have been transferred into the *Kitecash* wallet 9609966609 from the *mobile wallet* 7031681439 and a further amount of Rs.5,000/- was found to be transferred into the SBI account bearing A/c No. 20015318020 of the accused Manoj Hari from Mobikwik wallet 9609966609.

10. As per the said status report dated 15.06.2020, the accused Chandan Mandal who made the call to the victim and transferred the cheated money into different online wallets and bank accounts and co-accused Manoj Hari were arrested on 04.10.2018 and 21.08.2018 respectively in FIR No.110/2017, PS Crime Branch under Sections 420/467/468/471/201/120B of the Indian Penal Code, 1860 and are stated to be on Court bail in the said case. The co-accused Samir

Tantubai who is stated to have been arrested on 14.10.2019 is also stated to have been released on Court bail.

11. As per the status report dated 15.06.2020, it was submitted vide paragraphs 11, 12, 13 & 14 further to the effect:-

"11. During the further course of investigation details of below mentioned four alleged mobile numbers were obtained from concerned mobile operators and found to be issued in the name of below mentioned subscribers from the shop of "Lalu Telecom", Girjapara, MP Road, Asansol, Paschim Bardhman, :-

S.No.	*Mobile Number & Role*	*Name, Parentage & Address*	*Shop*	*Date of activation*
1.	*8617354860 (Jio) registered in Kitecash Wallet Received Rs.5,000/-*	*Rishikesh Das S/O Rameshwar Das R/O Kath Gada Raniganj AMC At Raniganj, Bardhman, WB.*	*Lalu Telecom, Girjapara, MP Road, Asansol, Paschim Bardhman*	*29.05.17*
2.	*9134757185 (Idea) Registered in Ola Cab Wallet Received Rs, 10000/-.*	*Shukuntala Gope W/O Babu Lal Pal R/O Egera, Harabhanga, EgarabKumarkhala, WB-713323*	*Lalu Telecom, Girjapara, MP Road, Asansol, Paschim Bardhman*	*05.07.17*
3.	*8617092880 (Jio) Registered in Mobikwik Wallet Received Rs.5000/-*	*Sekh Salamat S/O Sekh Alem R/O Rajnagar, Rajnagar Birbhum, West Bengal.*	*Lalu Telecom, Girjapara, MP Road, Asansol, Paschim Bardhman*	*18.05.2017*
4.	*9134757186 (Idea) Registered in Mobikwik Wallet Received*	*Shyamal Kumar Das S/O Sridharchandra Das R/O Babuisole Colony PO Baktar Nagar Andal Ondal*	*Lalu Telecom, Girjapara, MP Road, Asansol,*	*05.07.2017*

	Rs.4881/-	*Bardhman WB-713321*	*Paschim Bardhman*	

12. During the further course of investigation subscribes of Mobile Numbers 8617354860, 9134757185 and 9134757186 were interrogated in present case and they were asked about the mobile numbers issued on their respective names but they were found to be unaware about the issuance of above-mentioned mobile numbers issued on their names. Further mobile number 8617092880 found to be issued on fake address.

13. During the further course of investigation search of owner of "Lalu Telecom" Girja Para, MP Road Asansol (from where four alleged mobile numbers 8617354860, 9134757185, 9134757186 and 8617092880 were issued), was made and it came to know that owner of Lalu Telecom, accused Md. Saimul Hoda @ Lallu had already been arrested by PS Ranigang Police, on 14.09.2019, in Case Fir No. 324/2019, Dated 13.09.2019 U/S 419/420/467/ 468 IPC. During the further course of investigation on 15.11.2019, accused Saimul Hoda @ Lallu S/O Md. Nurul Hoda R/O Girjapara, PS Raniganj, Paschim Bardhman, West Bengal, Age 32 Years was arrested formally in present case in pursuance of production warrant got issued from Hon'ble Court. After detailed interrogation, disclosure statement of accused Saimul Hoda @ LaHu was recorded separately. During the interrogation accused Md. Saimul Hoda @ Lallu disclosed the name of his accomplice as Rajesh Mondal, who used to sit at his shop with him and he (Rajesh Mondal) was the retailer of some mobile companies. Efforts were also made to trace/search his accomplice Rajesh Mondal in Egara, Raniganj, West Bengal during police remand of accused Md. Saimul Hoda @ Lallu, but could not be found. Efforts are still going on to arrest accused Rajesh Mondal.

14. During the further course of investigation involvement of accused Md. Saimul Hoda @ Lallu has also been found in following cases:-
a) Case FIR No. 48/2019, U/S- 420/379 IPC, PS- Nagar Sahayak, District- Katihar, Bihar, in which Bihar Police is in the process to take the custody of accused Md. Saimul Hoda @ Lallu.

b) Case FIR No. 110/2017, U/S- 420/467/468/471/120B/201 IPC, PS Crime Branch, Delhi, in which he has been formally arrested on 10.06.2020.

c) Case FIR No. 188/2017, U/S- 420/467/468/471/120B/201 IPC, PS Crime Branch, Delhi. In Case FIR No. 110/2017 & 188/2017 PS Crime Branch, Delhi accused Md. Saimul Hoda @ Lallu, in which he has been formally arrested on 10.06.2020.*", and it was thus, alleged by the State that the applicant/petitioner is deeply involved in the nexus and has played a vital role in the conspiracy by providing the mobile SIMs issued on fake IDs or without the knowledge of the subscribers, to the alleged cheats for committing the crime.*

12. Vide order dated 09.07.2020 thus, it was observed to the effect that it was essential to peruse the documents that the State had collected during the investigation which related to the applicant/petitioner having issued the mobile SIMs on fake IDs or without the knowledge of the subscribers and the State was thus directed to submit on record the updated status report and all documents in relation thereto for the next date of hearing.

13. On the date of hearing on 20.07.2020, a chart was submitted by the State which reads to the effect:-

Mobile No. Used In The Case	**Name Of The Subscriber**	**Status Of Subscriber/ Statement U/S. 161 Cr.P.C**	**Amount Received In E-Wallet**	**Transfer To Bank Account**	**Status Of Bank A/C Holder**
8617354860	Rishikesh Das s/o Rameshwar Das R/O Kath Gada Raniganj	During investigation effort to trace and interrogate Rishikesh Das was made and notice was served upon him to join the	8617354860 was registered in Kitecash Wallet and Received Rs.5000/-	Rs.5000/- was transferred in SBI a/c no. 20015318020.	Accused Manoj Hari has been granted bail by the Tis Hazari court on

	AMCat Raniganj, Distt. Paschim Bardhman, West Bengal.	investigation on 21.10.19 but he didn't turn up. He filed his anticipatory bail application before Ld. ASJ Tis Hazari Court, listed on 02.03.2020. The Ld. ASJ ordered Rishikesh Das to join the investigation on 18.03.2020 and in compliance of the same he was interrogated regarding mobile no. 8617354860 he stated that in May 2017, he went to his nearby shop "Lallu Telecom" for taking a JIO SIM where during the issuance of mobile no. 8617348808 he was asked to give his thumb impression 3-4 times by saying machine not reading the impression properly and he stated that he never used SIM of mobile no. 8617354860. He was also shown the alternate number(9851797762) mentioned in the Customer Application form of mobile no. 8617354860, to which he stated that the alternate number doesn't belong to him. The alternate number 9851797762 was found to be registered in the name of the accused/petitioner Md. Saimul Hoda.(copies of CAF of mobile no.	(Pg. no. 10 of the main chargesheet)	(Pg. no. 10 of the main chargesheet) The SBI a/c no. 20015318020 is registered on the name of accused Manoj Hari. (Pg. no. 11 of the main chargesheet)	15.01.19 (Para 3 on Pg. no. 1 of the status report dt: 07.07.2020)

		8617354860, 8617348808 and 9851797762 are attached as Annexure-B on Pg. no.10-12) (Pg. no. 1-2;Para 2 : Status report dt: 18.02.2020)			
9134757185	Shakuntala Gope w/o Babu Lal Pal R/o Egera Harabhanga , Kumarkhala, Bardhman, West Bengal.	**Statement of Shakuntala Gope u/s. 161 Cr.P.C she stated that she has never used the number 9134757185 that is registered on her name, however, she has purchased an Idea SIM in July 2017 from the shop of "Lalu Telecom" in Raniganj which couldn't be activated. She stated that she returned the SIM to the shopkeeper and shopkeeper kept the SIM and she was asked to come after 2-3 days. Later on as she inquired again, the shopkeeper about the SIM, he returned her the fee saying that the SIM couldn't be activated due to some problem. (Pg. no. 13 : Annexure-C of the status report 18.02.2020)**	Rs.10,000/ transferred to Ola cab wallet registered on 9104757185 (Pg. no. 11 of the main chargesheet)	From the Ola cab wallet Rs.5,235/- and Rs. 4713/- transferred in a/c of Central bank of India bearing a/c no. 3567085615. (Pg. no. 11 of the main chargesheet) The Central bank of India bearing a/c no. 3567085615 registered on the name of accused Samir Tantubai. (Pg. no. 12 of the main chargesheet)	Accused Samir Tantubai has been granted bail by Hon'ble High court of Delhi vide order dated 13.01.2020. (Para 4 on Pg. no. 2 status report dt:07.07.2020)
9134757186	Shyamlal Kumar Das S/o Sridhar	Statement of Shyamlal Kumar Das U/s. 161 Cr.P.C on whose name mobile	Rs.4881/- transferred to online wallet on	Rs.4750/ transferred to SBI bearing	Accused Manoj Hari has been

	Chandra Das R/O Babui Sole Colony,PO Baktar Nagar Andal, Bardhman, West Bengal.	no. 9134757 186 was registered stated that he is mini bus driver on the route of Raniganj to Binachiti and earlier on route of Asansol to Deoghar. He further stated that he has no information about said number being registered on his name and he has never used that number. He stated that he is using only two numbers of Airtel and Vodafone form last 8-10 years. He further stated that he had lost his Aadhar card somewhere in Asansol in year 2017 and someone might have misappropriated that only. (Pg. no. 14 : Annexure-D of the status report 18.02.2020)	Mobikwik 9134757186 (Pg. no. 10 of the main chargesheet)	a/c no. 20015318020 registered on the name of Manoj Hari	granted bail by the Tis Hazari court on 15.01.19 (Para 3 on Pg. no. 1 of the status report dt: 07.07.2020)
8617092880	Sekh Salamat S/O Sekh Alem R/O Rajnagar, Birbhum, West Bengal.	**During investigation on 12.10.2019 search for Sekh Salamat was made at Rajanagar, district Birbhum, West Bengal, but he could not be traced due to incomplete address. (Para I; Pg.no. 12 : Supplementary chargesheet)** **Application Form of mobile no. 8617092880 was Analysed** ***(Pg. no.15 of the status report dt: 18.07.20, as Annexure-E),*** **in which an alternate contact number was found as 9800001015 which was found to**	Rs.5000/- transferred to online wallet on Mobikwik registered on number 8617092880 (Pg. no. 10 of the main chargesheet)	Rs.4,600/- transferred from online wallet on Mobikwik of number 8617092880 to Central Bank Of India bearing a/c no. 3567085615 registered on the name of Samir	Samir Tantubai has been granted bail by Hon'ble High court of Delhi vide order dated 13.01.2020 (Para 4 on Pg. no. 2 of the status report dt:07.07.2020)

		be issued in name of the accused/petitioner Md. Saimul Hoda.(Pg. no. 4; para 5 :Status Report Dt. 18.07.2020)		Tantubai.	

The said chart submitted by the State indicates allegedly to the effect that the mobile numbers utilized in the alleged commission of the crime were issued in the names of persons who stated that they did not belong to them or had never utilized the same but were also registered in alternate numbers in the name of the present applicant and monetary transactions were then allegedly effected with monies withdrawn and transferred into the account No.8617354860 qua which the applicant herein had an alternate number i.e. 9851797762 and the amount transferred into the account number 8617092880 is indicated to have an alternate mobile number i.e. 98000001015 in the name of the applicant.

14. It has thus been submitted by the State that during the course of the investigation, the search of the owner of '*Lalu Telecom*" Girja Para, MP Road Asansol (from where four alleged mobile numbers 8617354860, 9104757185, 9134757186 and 8617092880 were issued),was made and it was learnt that the owner of *'Lalu Telecom'* is

the applicant herein who had been arrested by PS Raniganj Police on 14.09.2019 in case FIR No. 324/2019 registered under Sections 419/420/467/468 of the Indian Penal Code, 1860, whereafter, the applicant was formally arrested in this case but the investigation under Section 173(8) of the Cr.P.C., 1973 was kept pending qua the absconding accused Rajesh Mondal and Rishikesh Das and others.

15. *Inter alia* the State has submitted that apart from the applicant being wholly involved in the nexus and having played a vital role in the conspiracy by providing mobile numbers issued by him on fake IDs or without the knowledge of the subscribers to the co-accused for the purpose of commission of the crime and apart from the applicant being the owner of *'Lalu Telecom'* from where the four alleged mobile numbers i.e. 8617354860, 9104757185, 9134757186 and 8617092880 used in commission of the crime were issued, the recovery at the instance of the applicant is also stated to have been made on 22.11.2019 from his shop now known as *'Heena Telecom'* which was earlier known as *'Lalu Telecom'* which recovery was to the effect:-

> ***"i. One Biometric thumb impression machine make SAFRAN MORPHO, colour Red & Black, Model: MSO 1300 E2.***

ii. One Biometric thumb impression machine make SAFRAN MORPHO, colour Red & Black, in which other details are not visible/clear.

iii. One Biometric thumb impression machine make STARTEK ENG. INC, colour white, Model No. FM220, Barcode No. B47501555.

*iv. One visiting card plastic box containing 5 cards of Lalu telecom with following details, Mob. 9800001015, 9333338619 Lalu Telecom All Kinds of Mobile Sale & Service All Company Voucher & Easy Recharge Available Here Burn's Club More, Girjapara, Raniganj with logo of Airtel, Jio, Vodafone, BSNL, Reliance, Aircel and Idea" and 10 cards of Hena telecom with following details *Mob. 9933491360, 9333338619 Hena Telecom SALES & SERVICING All Kinds of Mobile Voucher, SIM, Head Phone, Recharge Available Here Burn's Club More, Girjapara, Raniganj - 713347, Dist-Paschim Bardhaman with logo of Samsung, Nokia, Jio, Vodafone, Airtel, BSNL and Idea."*

16. *Inter alia* it has been submitted by the State that at the behest of the applicant were recovered visiting cards from his shop in the name of Lalu Telecom and Heena Telecom with the applicant having submitted that he was running his shop in the name of Lalu Telecom from March 2009 to January 2018, whereafter, he changed the name of his shop from Lalu Telecom to Heena Telecom in January 2018 after receipt of notices from police of other States as per his alleged disclosure statement dated 15.11.2019 and 20.11.2019. **The State thus seeks to submit that the applicant has been issuing fake**

mobile SIMs in the name of different innocent customers who used to come to the shop to purchase mobile SIMs and fraudulently obtained SIMs to call innocent persons to cheat them and that the applicant was a part of a profession racket engaged in cheating the innocent persons at large all over the country by impersonating themselves as bank employees and on the pretext of updating their ATM cards.

17. On behalf of the applicant, it has been submitted that there is no *prima facie* documentary evidence against him that he is involved in the matter, that his retracted confession in police custody in meaningless, that it was Rajesh Mondal and the employee of the applicant who were the master mind, in as much as, he was authorized to sell the SIMs and there is a specific code and ID without which the SIMs could not have been activated and the said Rajesh Mondal has not been apprehended and that the applicant cannot be convicted before trial.

18. Reliance is sought to be placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***"Sanjay Chandra Vs. Central Bureau of Investigation" 2011 (4) JCC 2913*** and on the

verdict of this Court in ***"Jitender Kumar Vs. Govt. of NCT of Delhi" 2016 (1) JCC 652*** to contend to the effect that the applicant be released on bail. *Inter alia* it has been submitted on behalf of the applicant that he falls within the ambit of the minutes of the meeting of the Hon'ble High Powered Committee of this Court dated 18.05.2020 and that he be thus released on bail.

19. On a consideration of the submissions that have been made on behalf of either side, this Court is of the considered view that in the instant case, the shop 'Lalu Telecom' from which the alleged fake mobile SIMs were issued or were alternatively also issued in the name of the applicant were allegedly mis-utilized by the applicant, which ipso facto negates the grant of bail to the applicant in the instant case. No explanation appears to be forth coming on behalf of the applicant qua the issuance of alternate mobile numbers in the name of the applicant.

20. Furthermore, the applicant is also allegedly involved in relation to FIR No.48/2019 under sections 420/379 IPC PS Nagar Sahayak, District-Katihar, Bihar FIR No.110/2017 PS Crime Branch under Sections 420/467/468/471/120B/201 IPC and FIR No.18082017 PS

Crime Branch under Sections 420/467/468/471/120B/201 IPC and thus does not fall within the ambit of the minutes of the meeting of the Hon'ble High Powered Committee of this Court dated 18.05.2020. The severity of the impact on members of the public being cheated and duped of their money cannot be ignored in the facts and circumstances of the instant case.

21. The application is thus, declined.

22. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial in the instant case.

ANU MALHOTRA, J.

NOVEMBER 12th, 2020
'neha chopra'