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via Video-conferencing

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

**Date of Decision : 04th August 2020**

+ **BAIL APPL. 1606/2020**

**ASHOK PANWAR @ ASHOK PAWAR** .....Petitioner/Applicant  
Through: **Mr. Rajesh Raina, Advocate.**

versus

**STATE (GNCT OF DELHI)** .... Respondent  
Through: **Mr. Tarang Srivastava, APP for the State.**

**CORAM:**  
**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

### **J U D G M E N T**

**ANUP JAIRAM BHAMBHANI, J.**

By way of the present application, the applicant, who is an undertrial in case FIR No.63/2020 dated 11.02.2020 registered under sections 420/467/468/471/511/120-B/34 IPC at PS: Karol Bagh, New Delhi, seeks regular bail.

2. Status report dated 24.07.2020 has been filed in the matter. Nominal roll dated 27.07.2020 has also been received from the Jail Superintendent.

3. Charge-sheet dated 30.03.2020 is stated to have been filed in the matter on 04.04.2020.
4. There are 10 accused persons in the matter, the applicant being one of them. The FIR was registered on the complaint of one Rupesh Raushan, Chief Manager, Punjab National Bank (PNB), Gurudwara Road, Karol Bagh, New Delhi. The essence of the allegation is that two persons namely Abhishek Kumar and Ashok Panwar (the applicant) visited the PNB Branch on 10.02.2020 and deposited a fraudulently altered cheque of one M/s Everest Bank Ltd. in the amount of Rs.12 crores in the bank's cheque deposit machine, in an attempt to transfer money to one M/s WJ Care Centre Trust. It is further alleged that thereafter the said persons again visited the bank on 11.02.2020 to enquire about the credit of the amount; whereupon, on being suspect, they were arrested on 11.02.2020 itself; the case was registered; and the applicant has been in judicial custody since 12.02.2020.
5. During the course of investigation, the names of 08 other accused persons, namely : Kamal Kesar, Kul Bhushan @ Sonu, Lokender Rao, Amit Markan, Jyotika Bhosle, Abdul Kadir, Sarwan Yadav and Prem Narayan Pandey came to be disclosed, all of whom were also subsequently arrested.

6. Mr. Rajesh Raina, learned counsel for the applicant submits that without entering into the factual controversy and the evidence, since the position is that charge-sheet in the matter has been filed; the allegation is of ‘attempt’ to commit cheating, forgery and fabrication; allegations under sections 34 and 120-B IPC have also been made; co-accused Abdul Kadir, who is alleged to have been the ‘originator’, from whom the allegedly forged cheque was recovered, has already been admitted to regular bail *vidé* order dated 27.04.2020 by the learned Magistrate; and co-accused Kamal Kesar, Kul Bhushan and Amit Markan have also been granted interim bail; therefore no purpose will be served by keeping the applicant in custody; and on the foregoing grounds, including that of parity, the applicant also deserves to be enlarged on regular bail.
7. Mr. Raina further submits that though charge-sheet has been filed, by reason of the restricted functioning of courts due to the prevailing coronavirus pandemic, it is unlikely that trial will commence anytime soon.
8. Mr. Tarang Srivastava, learned APP for the State opposes grant of bail *inter alia* citing the high value of the cheque i.e. Rs.12 crores; and also arguing that applicant Ashok Panwar was one of the two accused who actually presented the cheque for encashment. Mr. Srivastava submits that it is necessary to detain the applicant in

custody also to deter other people from committing similar offences, that is, to send a message that those involved in financial forgery and fraud will be dealt with strictly.

9. Status report dated 24.07.2020 *inter alia* reads as follows:

*“Subsequently during the course of investigation it came to be known that the cheque with above mentioned details was exchanged between many accused persons and the same was given to accused Ashok Panwar and Abhishek by accused Kamal Kesar after obtaining from Lokender Rao and accused Kulbhusham suggested about accused Kamal Kesar for involving this crime for obtaining 10% commission each. Further after giving the same cheque to Kamal Kesar, Lokender Rao also sent the details of cheque to Kulbhushan through whatsapp as compliance.*

*It is further submitted that this cheque was received by Kamal Kesar from Lokender Rao near GTB Nagar Metro Station. Hence on the same day with the help of mobile phones remaining 4 accused were also arrested.”*

(emphasis supplied)

10. The status report further says :

*“Total six accused were arrested and during sustained interrogation of accused persons accused Amit Markan disclosed about receiving the above mentioned cheque from Abdul Kadir and the same was provided to Amit Marken through Jyotika Bhosle. Because Jyotika Bhosle directed to Abdul Kadir for giving the cheque to Amit Markan after obtaining from Sarwan Yadav and Prem Narayan Pandey. She was continuously touch with all accused persons namely Amit Markan, Abdul Kadir, Sarwan Yadav and Prem Narayan Pandey through mobile phone and during giving the same cheque to Amit Markan, Abdul Kadir prepared the video by his mobile including the image of cheque and also seen the face of Accused Amit Markan in a hotel. So the accused*

*Jyotika has the vital role for commission this crime. Subsequently these four accused were also arrested on 13/02/20.*”

(emphasis supplied)

11. The main apprehension expressed by the State in its status report is the following:

*“Hence the bail application of the accused Ashok Panwar strongly opposed on the following grounds.*

- 1. If granted Bail, the applicant/accused may influenced the witnesses and affected the investigation.*
- 2. If granted Bail, the applicant/accused may **jump the Bail and abscond away.***
- 3. The offence committed is glaring example of Cheating.”*

12. Nominal roll dated 27.07.2020 shows that the applicant has no other or previous criminal involvement and that his jail conduct is ‘satisfactory’.

13. A brief conspectus of the fundamental principles of bail would not be out of place at this point. Extracts from some judicial precedents on this point are set-out below.

14. Outlining the considerations for grant or refusal of bail, in ***Ash Mohammad vs. Shiv Raj Singh & Anr.***<sup>1</sup> the Supreme Court expressed itself as follows :

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<sup>1</sup> (2012) 9 SCC 446

*“8. In Ram Govind Upadhyay v. Sudarshan Singh<sup>2</sup>, it has been opined that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependent on the factual matrix of the matter. In the said case the learned Judges referred to the decision in Prahlad Singh Bhati v. NCT, Delhi and stated as follows: (Ram Govind case, SCC p. 602, para 4)*

*“(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*

*(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.*

*(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*

*(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

*“9. In Chaman Lal v. State of U.P.<sup>3</sup> this Court while dealing with an application for bail has stated that certain factors are to be considered for grant of bail, they are: (SCC p. 525)*

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<sup>2</sup> (2002) 3 SCC 598

<sup>3</sup> (2004) 7 SCC 525

“... (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and (iii) prima facie satisfaction of the court in support of the charge.”

“10. In *Masroor v. State of U.P.*<sup>4</sup>, while giving emphasis to ascribing reasons for granting of bail, however, brief it may be, a two-Judge Bench observed that: (SCC p. 290, para 15)

“15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case.”

“11. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*<sup>5</sup> it has been observed that (SCC p. 499, para 9) normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail of the accused, however, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point.

“9. ... among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;

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<sup>4</sup> (2009) 14 SCC 286

<sup>5</sup> (2010) 14 SCC 496

- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced;
- and
- (viii) danger, of course, of justice being thwarted by grant of bail.”

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“20. Having said about the sanctity of liberty and the restrictions imposed by law and the necessity of collective security, we may proceed to state as to what is the connotative concept of bail. In Halsbury's Laws of England it has been stated thus:

“166. Effect of bail.—The effect of granting bail is not to set the defendant (accused) at liberty, but to release him from the custody of the law and to entrust him to the custody of his sureties, who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law, and he will then be imprisoned....”

“21. In *Sunil Fulchand Shah v. Union of India*<sup>6</sup> Dr A.S. Anand, learned Chief Justice, in his concurring opinion, observed: (SCC pp. 429-30, para 24)

“24. ... Bail is well understood in criminal jurisprudence and Chapter 33 of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control

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<sup>6</sup> (2000) 3 SCC 409

*could still be exercised through the conditions of the bond secured from him. The literal meaning of the word 'bail' is surety.*

(emphasis supplied)

15. In **Ashok Sagar vs. State**<sup>7</sup> the Delhi High Court has said this :

*“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:*

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*“(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.*

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*“(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*

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<sup>7</sup> 2018 SCC OnLine Del 9548

*paragraph of Dataram Singh (supra) - that every accused is presumed to be innocent until proved guilty.”*

*(emphasis supplied)*

16. In a recent decision in *Sanjay Chandra vs. CBI*<sup>8</sup> the Supreme Court has held that :

*“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*

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<sup>8</sup> (2012) 1 SCC 40

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”.”

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“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)

17. Most recently, in *P. Chidambaram vs. CBI*<sup>9</sup> the Supreme Court has held :

“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*). 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. ....”

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“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

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<sup>9</sup> 2019 SCC OnLine SC 1380

*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)

18. Furthermore in ***P. Chidambaram vs. Directorate of Enforcement***<sup>10</sup>, the Supreme Court has explained the concept and application of ‘gravity’ of an offence in the following way :

*“12. .... The gravity can only beget the length of sentence provided in law and by asserting that the offence is grave, the grant of bail cannot be thwarted. The respondent cannot contend as if the appellant should remain in custody till the trial is over.”*

(emphasis supplied)

19. Another aspect which deserves attention is the effect that pre-trial detention has on an accused, especially on his right to brief and consult his lawyers and to prepare his defence, in order to afford to the accused a real and not merely a chimerical right to fair trial, as guaranteed under Article 21 of the Constitution.
20. Commenting on the consequences of pre-trial detention, in ***Moti Ram vs. State of M.P.***<sup>11</sup> the Supreme Court said :

*“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*

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<sup>10</sup> 2019 SCC OnLine SC 1549

<sup>11</sup> (1978) 4 SCC 47

defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.”

(emphasis supplied)

21. In ***Babu Singh vs. State of U.P.***<sup>12</sup> the Supreme Court observed :

*“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)

22. A query was put to Mr. Srivastava as to what purpose will be served by keeping the applicant in custody any further since investigation is complete and charge-sheet was filed back in April 2020. The response is, that considering the bold and brazen attempt on the part of the accused persons to present for encashment a forged cheque in the large sum of Rs.12 crores, the accused persons need to be ‘dealt with firmly’ so that it acts as a deterrent to others. Mr. Srivastava however suggests no timeline

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<sup>12</sup> (1978) 1 SCC 579

or threshold, after which in a matter such as this, an undertrial accused may be enlarged on bail to serve as an effective deterrent to others. The answer forthcoming is that it would depend on the facts of the case and the gravity of the offence.

23. The status report records that three of the co-accused were granted interim bail on 12.04.2020; and Abdul Kadir, whose role appears to be central to the alleged offence, has been admitted to regular bail on 27.04.2020. Accordingly, even if parity is never the sole ground for grant or denial of bail, in the opinion of this court, the fact that several of the other co-accused persons were granted bail in April 2020 cannot be ignored, especially when section 34 IPC is also being invoked by the State.
24. Moreover, even assuming that there is any warrant for keeping a person accused of a grave offence in prison as an undertrial ‘to deal with him strictly’, this court is unable to fathom as to what would be the ‘*appropriate*’ *pre-trial detention period* to deal with an accused ‘strictly’, as the State would want. When an investigating agency asks that an accused be kept in judicial custody so that he may not interfere with investigation, that gives a rationale, threshold and timeline upto which the accused may be detained as an undertrial, so that a certain process in the criminal justice system may be completed without let or hinderance. However, once investigation is complete and charge-sheet has

been filed, it is difficult to discern any other threshold or timeline upto which it would be ‘proper’ to detain an undertrial in judicial custody.

25. Any type of ad-hocism in deciding the appropriate pre-trial detention period would be anathema to the rule of law. While there will inevitably be some subjectivity in such decision, it must be ‘judicial subjectivity’, based on some material or reason or rationale that arise in a given case; and again, it must be in accordance with well-worn and well-understood principles of bail, as reiterated *inter-alia* in the judicial precedents cited above. ‘Judicial subjectivity’ must never be confused with an individual judge’s whim.
26. Upon a conspectus of the aforesaid facts and circumstances of the case, and applying the law and principles of bail as set-out in the afore-cited precedents, this court is persuaded to admit the applicant to *regular bail* upon the following terms and conditions:
  - a. The applicant shall furnish a personal bond in the sum of Rs.50,000/- with 01 surety in the like amount from a family member, to the satisfaction of the Jail Superintendent;
  - b. Till such time cognizance of the offence is taken and the applicant is summonsed by the trial court, the applicant shall present himself before the I.O./SHO PS: Karol Bagh, New

Delhi on every alternate Friday between 11 am and 11:30 am to mark his presence. However, the applicant will not be kept waiting for longer than an hour for this purpose;

- c. The applicant shall furnish to the I.O./SHO a cellphone 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;
  - d. If the applicant has a passport, he shall surrender the same to the Jail Superintendent;
  - e. The applicant shall not contact, nor visit, nor offer any inducement, threat or promise to the first informant/complainant or to any of the prosecution witnesses. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending matter.
27. Nothing in this judgment shall be taken as an expression of opinion on the merits of the matter.
28. The bail application is allowed in the above terms; and the applicant is directed to be released subject to the above conditions, if not required in any other case.
29. The application stands disposed of in the above terms.

30. Other pending applications, if any, also stand disposed of.
31. A copy of this judgment be sent to the concerned Jail Superintendent.

**ANUP JAIRAM BHAMBHANI, J**

**04th August, 2020**  
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