

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

Judgment reserved on: 01.09.2020
Judgment pronounced on: 03.11.2020

+ **BAIL APPLN.-1788/2020**

KASHISH JAIN

.....Petitioner

Through: Mr. Ramesh Gupta, Learned
Sr. Advocate along with Mr.
Ajay P.Tushir, Advocate.

Versus

THE STATE

..... Respondent

Through: Mr. G.M.Farooqui,
Learned APP for the State.
SI Pradeep, PS Model Town.
Mr. Sumit Choudhary,
Learned counsel for the
complainant.

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI
JUDGMENT

BRIJESH SETHI, J.

1. The hearing has been conducted through video conference.
2. This application has been filed by the petitioner under Section 439 Cr.P.C. read with Section 482 Cr.P.C. for grant of regular bail in FIR bearing no. 341/2018, under section 420/467/468/471/34/120 IPC, registered at P.S. Model Town, New Delhi.
3. It is submitted by learned senior counsel that petitioner is innocent and has been falsely implicated in the present case. Petitioner is a young boy of 26 years and is in judicial custody since

24th November, 2018. He is suffering from various ailments and appropriate treatment is not being provided to him despite the fact that Doctor has specifically mentioned that petitioner should be kept in 24x7 supervision and jail authorities should ensure that no active suicidal means to be kept near him. The poor health condition of the petitioner make him vulnerable to Covid-19. Petitioner's father is a 53 years old diabetic patient with multiple coronary blockages and he has already undergone two stents implants and angioplasty which also makes him vulnerable to novel corona virus. Investigation in the present case has been completed and Charge-sheet has also been filed by the investigating agency on 23rd January, 2019 but since then no trial has been commenced as the charges are yet to be framed. Petitioner has not been named in the present FIR. Co-accused Naresh Jain and Simi Jain have already been granted interim protection from their arrest vide order dated 13th February, 2019. Petitioner has also been granted bail by learned trial court vide order dated 21st January, 2019 in connection with another FIR bearing No. 277/2018, registered with P.S. Sadar Bazar, in respect of the same loan transaction with Chola Mandalam Bank in which petitioner's name was allegedly involved as co-borrower.

4. It is submitted that learned Additional Sessions Judge has failed to consider that no specific role of the petitioner has been mentioned in the charge sheet except that he was allegedly partner of the firm M/S NH International whose partnership was executed on the address in question before family of the petitioner shifted in the said floor. There is no legally admissible evidence on record

which can prima facie suggest that the petitioner has committed any offence punishable under section 420/467 IPC. Learned counsel for the appellant has, therefore, prayed for grant of bail. Learned senior counsel for the petitioner has, however, clarified that he is confining his arguments on merits and so far as interim bail on medical grounds is concerned, a separate application has been filed by the petitioner.

5. Learned senior counsel for the petitioner in support of his contentions has also relied upon the following case laws:-

- a. R. Vasudevan vs. CBI, New Delhi, 2010(1) JCC 642;
- b. Moti Ram vs. State of M.P., (1978) 4 SCC 47, Hon'ble Supreme Court;
- c. Ashok Dhingra vs N.C.T. of Delhi, 2001 (1) JCC[SC] 178;
- d. Ravinder Saxena vs. State of Rajasthan, 2009 (2) JCC1498;
- e. Rajeev Choudhary vs. State, 2009 (2) JCC 1498;
- f. H.B. Chaturvedi vs. C.B.I, 2009 (2) JCC 1498;
- g. Sanjay Chandra vs. C.B.I., (2012) 1 see 40;
- h. Dr. Shivinder Mohan Singh vs. Directorate of Enforcement, BAIL APPL. 1353/2020 DHC;
- i. Dataram Singh vs. State of Uttar Pradesh and Ors., (2018) 3 SCC 22;
- j. Sheila Sebastian vs. R. Jawaharaj and Ors., MANU/SE/0542/201S;
- k. Sharad T. Kabra vs. Union of India, (UOI) 2018(4) SCC 493;
- l. Manish Solanki vs. The State of Rajasthan, 2019(4) SCJ 340;
- m. Firoz Khan vs. State (NCT of Delhi), MANU/DE/1134/2020;
- n. Rajendra Prakash Agrawal vs. Union of India (UOI) and Ors., 2015(5)JCC 233;
- o. Narender Jain vs. State, Bail Appln. 1992/2009;
- p. Tunde Gbaja vs. Central Bureau of Investigation, 2007(95)DRJ429;
- q. Sharad Kumar vs. CBI, 2011 (4) JCC3048.

6. I have gone through the above case law. There is no quarrel with the proposition of law laid down therein. However, these authorities are clearly distinguishable on the basis of facts and circumstances stated therein. Moreover, it is settled principle of law that no straitjacket formula can be laid down in deciding a bail application. The Hon'ble Supreme Court in **State of Bihar & Anr. v. Amit Kumar @ Bachcha Rai, (2017) 13 SCC 751** has held as under:-

*“11. Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that **there is no straight jacket formula for consideration of grant of bail to an accused.** It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although ‘**bail is the rule and jail is an exception**’ is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail.”(Emphasis supplied)*

7. It is also well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts

of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without regard to the factual situation and circumstances of the two cases.

8. In ***Padma Sundara Rao & Ors. v. State of Tamil Nadu & Ors.***(2002) 3 SCC 533 the Hon'ble Supreme Court has held that the ratio of a judgment has to be read in the context of the facts of the case and even a single fact can make a difference. In para 9 of the said judgment, the Hon'ble Supreme Court has held as under:

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in British Railways Board v. Herrington. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

9. In *Bharat Petroleum Corporation Ltd v. N.R. Vairamani*, (2004) 8 SCC 579, the Hon'ble Supreme Court has held that a decision cannot be relied on without considering the factual situation. The Hon'ble Supreme Court has observed as under;

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737: (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord Mac Dermott observed: (All ER p. 14 C-D)

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to

the language actually used by that most distinguished judge...”

10. In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] (All ER p. 297g-h) Lord Reid said,

“Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances”.

Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed:

“One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament.”

And, in Herrington v. British Railways Board [(1972) 2 WLR 537: (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

“There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.”

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

“Each case depends on its own facts and a

close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

******Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”*

10. Thus, the present bail application has to be decided on the basis of its own facts. Learned Additional Public Prosecutor for the state has opposed the application on the ground that offence committed by the petitioner is serious in nature. He is the beneficiary of cheated amount of approximately Rs. 2.20 Crores. It is further submitted that though investigation qua petitioner is complete and charge-sheet has been filed against him, however, supplementary charge-sheet is yet to be filed qua parents of the petitioner and bank employees. Since parents of the petitioner have been granted protection, they are not co-operating in the investigation. It is further submitted that petitioner and his parents have no permanent address in Delhi and therefore, there are chances

of his absconding. He has, therefore, prayed for dismissal of the present application.

11. Mr. Sumit Choudhary, Learned counsel for the complainant also filed reply to the bail application and submitted that there is no change of circumstance since dismissal of earlier bail application of the petitioner by this court vide its order dated 31st October, 2019. It is submitted that the delay in trial has been on account of non-appearance of counsel for the petitioner and the petitioner has taken a deliberate stand to procrastinate the trial court. It is further denied that trial has been delayed on the ground that supplementary charge-sheet is yet to be filed. Perusal of the order dated 2nd November, 2019 of trial court reveals that the investigating agency has categorically stated that supplementary charge-sheet is only to be filed qua co-accused persons (parents of the petitioner), who were granted interim protection by this Court. However, ever since interim bail has been granted, the co-accuseds have adopted delaying tactics by taking regular adjournment in their respective bail petition.

12. It is further submitted that petitioner is a habitual offender, who is also accused in similar case bearing FIR no. 277/2018, PS Sadar Bazaar. Further, co-accuseds have failed to deposited Rs. 40,00,000/- as per direction of this Hon'ble Court in above noted FIR, which further reflects that neither the petitioner nor his parents have any intention to comply with the directions of this Court or return the cheated amount.

13. It is further submitted that petitioner is an economic offender, who has cheated the complainant in a well deliberated conspiracy and if granted bail by this Hon'ble Court, he carries a significant flight risk as he does not have a permanent abode and, therefore, in view of the abovementioned submissions, learned counsel for the complainant has requested for dismissal of the present bail application.

14. Learned counsel for the petitioner has filed rejoinder to the reply of the learned counsel for the complainant and denied all the allegations. It is submitted that reply in question has been filed only with a purpose to delay the disposal of the present application. Non-framing of charge for the last almost 2 years after filing of the charge-sheet itself indicates that there is likelihood of delay in disposal of the case and that petitioner's fundamental right for expeditious justice under Article 21 of the Constitution of India is, thus, violated. It is submitted that petitioner along with his counsel was appearing diligently in almost all the hearings and matter in trial court was adjourned almost for one year on account of non filing of supplementary charge-sheet. Interim bail applications of co-accuseds have no bearing on the trial qua the present petitioner as the charge-sheet has already been filed before the trial court and specimen, thumb impression and handwriting of the petitioner has already been obtained and sent to FSL.

15. I have considered the rival submissions. Perusal of record reveals that petitioner was arrested on 24th November, 2018 and after completion of investigation, charge-sheet has been filed by the

investigating agency on 23rd January, 2019. However, supplementary charge-sheet is yet to be filed qua the co-accuseds Naresh Jain and Simi Jain. According to the status report of SHO PS Model Town dated 24th August, 2020, the co-accuseds i.e. Naresh Jain and Simi Jain who have been granted interim protection by this court vide order dated 13th February, 2019 are not co-operating in the investigation. They have not given their specimen signature and their custodial interrogation is required for the said purpose. In the absence of the same, the prosecution cannot file supplementary charge-sheet qua co-accuseds. Thus, it is clear that delay in filing the supplementary charge-sheet and framing of charges against the petitioner are for the reason that the co-accuseds have been granted interim protection by this court and they are not co-operating with the investigating agency. Thus, there is no deliberate delay on the part of investigating agency in filing the supplementary charge-sheet. The earlier bail application of petitioner was dismissed by this court vide a detailed order dated 31st October, 2019 in which it was observed that the proprietor of M/s. Shreya International namely Simmi Jain had transferred Rs. 95 lacs to Kashish International whose owner is petitioner Kashish Jain and Rs.55 lacs to NH international, whose partners are Naresh Jain and Kashish Jain, through RTGS on 11th May, 2015. Further, the alleged original sale deed of property Z-10, 2nd floor, Model Town, Delhi shows that on the front page of sale deed, the photographs of complainant Sanjay Garg and accused Simmi Jain were affixed but the seal of sub-registrar was incomplete on the photo of Sanjay Garg. Accused

Simmi Jain had transferred Rs.77 lacs (apart from Rs. 55 Lacs to NH International and Rs. 95 Lacs to Kashish International) in the account of Kashish International and saving account of Kashish Jain. The applicant is, thus, the beneficiary of cheated amount of Rs.2.20 Crore approx. and is directly involved in this case which is clear from his presence at the time of valuation of alleged property No.Z-10, 2nd floor, Model Town, Delhi which was done at the instruction of Chola mandalam Ltd.

16. In view of the above facts appearing on record, it is clear that petitioner is beneficiary of the cheated amount of Rs. 2.2 Crores. The amount has flowed to him being one of the beneficiaries of the company. Petitioner is co-applicant in the Loan which has been taken from Chola mandalam Ltd. and he has played an active role throughout the loan process by using forged documents. The investigation qua co-accuseds is under progress. It has also come on record that petitioner is also involved in another case bearing FIR No. 277/18 u/s. 419/420/467/468/471/120-B IPC, PS Sadar Bazar. There is no delay on the part of investigating agency in filing supplementary charge-sheet. Rather, it is because of the non-co-operation of the co-accuseds i.e. parents of the petitioner that the supplementary charge-sheet is not being filed.

17. In view of the above discussion and also keeping in mind the fact that petitioner is also involved in another case bearing FIR No. 277/18 under Section 419/420/467/468/471/120-B IPC, PS Sadar Bazar, New Delhi, no grounds for regular bail are made out at this

stage. The bail application is, therefore, dismissed and stands disposed of accordingly.

18. However, nothing stated herein above is expression of opinion on the merits of the case.

19. A copy of this order be sent to the concerned Jail Superintendent via electronic mode.

20. The order be uploaded on the website of this court forthwith.

BRIJESH SETHI, J

NOVEMBER 03, 2020

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