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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on : 28/07/2022
Order pronounced on : 04/08/2022

\+ **BAIL APPLN. 661/2022 & CRL. M.A. 12405/2022**

ISHMA ARORA (THROUGH PAIROKAR) ..... Petitioner

Through: Ms. Ruchi Kohli, Mr. Yash Mishra, Ms. Srishti Mishra and Ms. Priya, Advs.

versus

STATE OF NCT ..... Respondent

Through: Ms. Richa Dhawan, APP for the State.
Mr. Rajesh Sharma, ACP, EOW

CORAM:
HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J :

1.0. Vide this application u/s 439 Cr.P.C filed through Parokar/ mother-in-law Smt. Neena Arora, the petitioner is seeking bail in case FIR no. 56/2016, dated 11.06.2016, under Sections 420/467/468/471/120-B/34 Indian Penal Code, 1860, PS EOW.

2.0 The present case came to be registered on the complaint of Bank of Maharashtra alleging that the petitioner Ishma Arora, proprietor of M/s. Banke Bihari Trading Company availed Cash Credit facility of Rs.200 lakhs from Bank of Maharashtra, Branch Office Bhikaji Cama Place, New Delhi, by mortgaging her property bearing no. H-5/10, Krishna Nagar, Delhi on the basis of forged documents. Petitioner's husband A-2/Nitin Arora stood guarantor in the said Cash Credit Facility. Subsequently, it was revealed that the said property had already been mortgaged by the petitioner and her husband with other banks while availing credit facilities in the names of their different proprietorship firms namely, M/s Sunshine International, Rock Hudson Clothing India, Hi-tech Garments Company. Subsequently, the said account turned NPA with the outstanding balance of Rs.2.54 crores.

2.1 It is alleged that the aforesaid Cash Credit limit of Rs.200 lacs availed from Bank of Maharashtra was not utilized for the declared purpose and the said funds were rather siphoned off by the petitioner and her husband/accused no. 2 by diverting the same to bank accounts of their different proprietorship firms as under :

A/c Number	**Name of Proprietorship Firm**	**Amount in Rs.**
102405500443, ICICI Bank Ltd, Krishna Nagar	Arvind Textiles-Proprietor Ishma Arora	Rs.18,50,000
		Rs.15,70,900
		Rs.15,95,400
		Rs.16,94,700
		Rs.17,84,780
		Rs.12,80,500
		Rs.17,20,400
A/c 033005004893, ICICI Bank Ltd. Anand Vihar	M/s. S.K. Enterprises-Sandeep Khera	Rs.17,98,200
		Rs.16,45,780
A/c 003705500230, ICICI Bank Ltd. Preet Vihar Br	Swastik Shubham International-Proprietor Ishma Arora	Rs.14,10,460
		Rs.15,98,776
A/c 033005500229, ICICI Bank Ltd. Anand Vihar	M/s Surya Laxmi Traders-Proprietor Ishma Arora	Rs.17,03,672

2.2 Para 6 of the status report provides the details of various transactions/ diversion/rotations of funds to different accounts of other proprietorship firms of the petitioner and her husband/A-2.

2.3 Status report mentions that during investigation it was revealed that even the chain of title documents of the property in question including the Gift Deed in favour of the present petitioner/Ishma Arora executed by Smt. Leela Rani dated 18.02.2011, were forged and fabricated. Further investigation revealed that Smt. Leela Rani having expired on 31.10.2004, had not executed the said Gift Deed dated 18.02.2011. Even the e-stamp paper used for the forged Gift Deed was found to not have been issued by SHCIL and was forged. The letter dated 12.07.2011 regarding mutation of the aforesaid mortgaged property and receipt of property tax of Rs.10,744/- for 2011-2012, purportedly issued by MCD, were also found to have not been issued by the MCD.

2.4 Status report also mentions that the FSL Finger Print examination report dated 15.07.2021 confirmed that finger prints and thumb impression of purchaser, seller, donor, donee and even the witnesses on the aforesaid forged titled documents used by the petitioner/ accused Ishma Arora and her husband A-2 Nitin Arora in availing the credit facility from the bank, were that of accused Suresh Kumar, employee of a close friend of petitioner's husband/A-2 Nitin Arora, namely Sandeep Khera, A5.

2.5 Investigation further revealed that several original looking copies were got prepared by the petitioner and her husband Nitin Arora/A-2 with the help of/in connivance with accused Sandeep Khera and Suresh Kumar; and loans on the basis of said forged copies of title documents of the property in question were availed from six banks by the petitioner and her husband in the names of their proprietorship concerns. Details of which are given as under :

1) Punjab and Sind Bank, Asaft Ali Road, Delhi
(i) M/s Bankey Bihari Trading Company Rs.350
(ii) M/s Rock Hudson Trading Co.-Rs. 250 Lakhs

2) Central Bank , Ghonda Village, Maujpur, New Delhi-
(i) M/s Rock Hudson Clothing (India) Company- Rs. 250 Lakhs
(ii) M/s Rock Hudson Trading Company- Rs. 250 Lakhs

3) Allahabad Bank, Parliament Street, New Delhi
(i) M/s Sun Shine International- Rs. 200 Lakhs

4) Punjab National Bank, Kalkaji, Delhi
(i) M/s Hi-Tech Garments- Rs. 300 Lakhs

5) State Bank oflndia, Vivek Vihar-1, New Delhi
(i) M/s Sun Shine International-Rs. 345Lakhs

6) The South Indian Bank, Rajauri Garden, Delhi
(i) Hi-Teck Fashion Company- Rs. 100 Lakhs

3.0 The petitioner vide this application has submitted that she has been falsely implicated. She has been in judicial custody since 24.02.2016 and was formally arrested in the present case on 24.02.2020 and was sent to judicial custody in the present case on 26.02.2020.

3.1 Ld. counsel for the petitioner submitted that the accused Suresh Kumar (A-3) is the person, who forged the documents i.e. gift deed and sale deed; and as per the Expert Opinion/Report, finger prints and thumb impression of accused Suresh Kumar were found on the said documents i.e. forged gift deed and sale deeds, as that of purchaser, seller, donor, donees and even witnesses. Ld. counsel further submitted that A-3/accused Suresh Kumar had allegedly forged all the documents at the behest of accused no. 4 Sandeep Khera; and both of them have been granted bail. Thus, the petitioner is also entitled to be released on bail, on the ground of parity.

3.2 Ld. counsel for the petitioner further submitted that the best case of the prosecution against the present petitioner/accused no. 1 is that she allegedly submitted above forged documents to the bank, which is a matter of trial.

3.3 It is further submitted by Ld. counsel for the petitioner that entire evidence is documentary in nature and nothing is to be recovered from the present petitioner. Further, all the witnesses are bank witnesses/official witnesses and are formal in nature; and there is no possibility of tampering with evidence and threatening or influencing said witnesses. Ld. counsel also submitted that there are 59 prosecution witnesses; and more witnesses have come to be added vide supplementary charge-sheet, examination of whom will take a long time. Petitioner/accused cannot be kept in jail for an indefinite period till completion of evidence. It is further submitted that passport of the petitioner has already been seized and therefore, the petitioner is not a flight-risk.

3.4 Ld. counsel for the petitioner also submitted that vide order dated 30.05.2022, the petitioner as well as other accused persons have been charged u/Ss. 120-B IPC, U/S 419/34 IPC, U/S 420/34 IPC, U/S 109 read with Section 467/468/34 IPC, U/S 471/34 IPC and u/S 109 read with Sec. 260/34 IPC by Ld. Addl. Chief Metropolitan Magistrate, South-East District, Saket Courts, New Delhi.

3.5 Ld. counsel for the petitioner also submitted that there is change in circumstances as now charge in the matter has already been framed pursuant to the directions of this court vide order dated 17.05.2022, during the pendency of this petition. Other accused persons have also been similarly charged. It is further submitted that except the present petitioner/A-1 Ishma Arora and her husband/A-2 Nitin Arora, all the other accused persons namely A-3 Suresh Kumar, A-4 Sandeep Khera, A-6 A.C. Bej and A-7 Md. Qaiser have been admitted to bail by the ld. Trial Court.

3.6 Ld. counsel for the petitioner further submitted that the petitioner deserves bail even on humanitarian grounds, she has lost her father and father-in-law during last one year; and she has two young children.

3.7 Ld. counsel for the petitioner also submitted that petitioner is ready to abide by any terms and conditions, which may be imposed by this Court.

4.0 **Per contra**, Ld. Addl. Public Prosecutor for the State submitted that petitioner/A-1 and her husband/A-2 are not only the master minds behind defrauding six banks of huge amount of public funds, but also, are the main beneficiaries; the petitioner along with her husband/A-2 Nitin Arora being the main conspirator of all the transactions, cannot claim parity with the other accused persons namely A-3 Suresh Kumar, A-4 Sandeep Khera, A-5 A.C. Bej and A-7 Md. Qaiser. It is further submitted that the petitioner is a habitual offender and has been involved in as many as 19 cases of similar nature whereby various banks have been duped.

4.1 Ld. Prosecutor further submitted that it is the petitioner, who was instrumental in obtaining loan from the complainant bank- Bank of Maharashtra to the tune of Rs. 200 lakhs in Account no. 60105215911 of M/s Bankey Bihari Trading Company, which was siphoned off by diverting it to different accounts under the name of different firms, of which, she, her husband and her close friends including A-4, are the proprietors. Ld. Prosecutor further submitted that the petitioner has been involved in defrauding various banks namely - Punjab and Sindh Bank, Asaf Ali Road, Central Bank, Ghonda Village, Allahabad Bank, Parliament Street, Punjab National Bank, Kalkaji, Delhi, State Bank of India, Vivek Vihar-I and The South Indian Bank; considering the same, the petitioner's bail applications were dismissed by the coordinate Bench of this court vide order dated 03.11.2020. Against which, the petitioner had filed the SLP (CRL.) No. 6245 of 2020, which was also dismissed by the Hon'ble Supreme Court vide order dated 08.01.2021. Ld. Prosecutor submitted that the said SLP was dismissed despite petitioner's submission that she has been granted bail in 17 out of 19 cases, taking into account the involvement of the petitioner and her husband in large number of cases for defrauding public financial institutions/banks.

4.2 Ld. Prosecutor submitted that the petitioner does not deserve to be released on bail, also as the economic offences stand on a different footing having wider ramifications and impact the economy of the country.

4.3 With respect to the co-accused Suresh Kumar, who has been granted bail, Ld. Prosecutor submitted that the accused Suresh Kumar was the employee of accused no. 4 Sandeep Khera, a close friend of A-2 Nitin Arora, husband of the petitioner. Said employee (A-3) of the friend (A-4), used to forge the documents, which were actually used by the petitioner besides other accused persons in obtaining loans from different banks; and the said funds were siphoned off by them for personal purposes and as such, the petitioner cannot claim parity with co-accused Suresh.

4.4 Ld. Prosecutor further submitted that the trial is yet to commence and material witnesses are yet to be examined. Ld. Prosecutor also submitted that the children of the petitioner are grown up and are aged about 15 years and 17 years. This fact is not disputed.

5.0 **In rebuttal**, ld. counsel for the petitioner submitted that magnitude of the offence cannot be a ground to deny bail and placed reliance upon the judgement of the coordinate Bench of this court in *Sunder Singh Bhati vs. State, 2022 SCC Online DL 134*. She further submitted that whether the petitioner was the beneficiary of the cheated amount, is a matter of trial and the same cannot be a ground for declining the bail to the petitioner. Ld. counsel for the petitioner further submitted that in 17 cases out of 19 cases, the petitioner is on bail. Ld. counsel for the petitioner also submitted that the petitioner can not be denied bail merely because, she is involved in an economic offence and placed reliance upon the judgment of the Hon'ble Supreme Court dated 11.07.2022 in *Satender Kumar Antil vs. CBI, Misc. Appln. No. 1849 of 2021 in SPL (CRL.) 5191 of 2021*.

5.1 In this respect, Ld. Prosecutor argued that it is not only the magnitude or economic nature of offences, on which the rejection of bail to the petitioner is sought. The petitioner/accused is a habitual offender and has been involved in 19 cases of similar nature of defrauding various banks/financial institutions of public money, which was even taken note of by the Hon'ble Supreme Court while dismissing the petitioner's SLP and other attending facts and circumstances, which need to be considered. She further argued that though the charge-sheet has been filed in the matter, complete trail of money is yet to be traced and supplementary charge-sheet may have to be filed. She also submitted that the petitioner if admitted to bail, may misuse those funds, tamper with evidence/influence witnesses and the same can impact further investigation in the matter.

6.0 I have duly considered the submissions made by both the sides.

7.0 There are serious allegations against the petitioner of defrauding various banks. She, in connivance with A-2, her husband Nitin Arora and other accused persons obtained loan of Rs.200 lacs from the complainant bank i.e. Bank of Maharashtra, BO: Bhikaji Cama Place, New Delhi against mortgage of property no. H-5/10, Krishna Nagar, New Delhi, the title documents of which were revealed to be forged and fabricated. The petitioner and her husband A-2/Nitin Arora even produced one lady Kulwant Kaur (who is absconding), who impersonated as Leela Rani, before the Sub-Registrar office and executed the forged Gift Deed dated 18.02.2011 in favour of the petitioner. The owner Leela Rani had already died in the year 2004, as is borne out from the statement of her son Sh. Jugal Kishore Sethi, under section 161 Cr.PC.

7.1 Further, the FSL Finger Print examination report dated 15.07.2021 confirmed that finger prints and thumb impression of purchaser, seller, donor, donee and even the witnesses on the aforesaid forged titled documents used by the petitioner/ accused Ishma Arora and her husband A-2 Nitin Arora in availing the credit facility from the bank, were that of accused Suresh Kumar. Even the letter of mutation and property tax receipt have been verified to be not issued by the MCD and were fake and forged.

7.1 Ld. Prosecutor, to show diversion of funds, has drawn attention of this court to transfer of loan amount to various proprietorship concerns of the petitioner and her husband/A-2 Nitin Arora and that of A-5 Sandeep Khera and rotation of funds back to the petitioner/her husband's proprietorship firms. From the same, the petitioner and her husband A-2/Nitin Arora appear to be the main beneficiaries of the siphoned off funds availed through Cash Credit Facility from the complainant bank against forged and fabricated title documents. It was not only the Bank of Maharashtra but also, the other banks/financial institutions namely - Punjab and Sindh Bank, Asaf Ali Road, Central Bank, Ghonda Village, Allahabad Bank, Parliament Street, Punjab National Bank, Kalkaji, Delhi, State Bank of India, Vivek Vihar-I and The South Indian Bank, which were duped by the petitioner and her husband/A-2 Nitin Arora using the same *modus operandi*. The petitioner is involved in 19 cases of similar nature. There is force in Ld. Prosecutor's argument that the petitioner has criminal propensity and may indulge in similar offence/tamper with evidence with respect to money trail, if admitted to bail.

8.0 Now coming to argument of Ld. counsel for the petitioner that magnitude of the offence cannot be a criteria to deny bail making reference to the judgment in the case of *Sunder Singh Bhati (supra*). Suffice it to state that the coordinate Bench of this court in that case had observed that the magnitude of the offence cannot be the *only* criteria to deny bail. Further, as far as the judgment of Hon'ble Supreme Court in *Satender Kumar Antil (supra*) relied upon by the petitioner is concerned, the observation of the apex court that economic offences cannot be classified as a category to deny bail, cannot be disputed. It would be pertinent to refer here to the observation made by the Hon'ble Supreme Court, in that regard :

> "*66. What is left for us now to discuss are the economic offences. The question for consideration is*

> *whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of* ***P. Chidambaram v. Directorate of Enforcement,*** *(2020) 13 SCC 791), after taking note of the earlier decisions governing the field.* ***The gravity of the offence, the object of the Special Act****, and the* ***attending circumstances are a few of the factors to be taken note of****, along with the period of sentence. After all,* ***an economic offence cannot be classified as such****, as it may involve various activities and may differ from one case to another.* ***Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis****. ......"*

8.1 From the above, it is evident that the Hon'ble Apex Court observed that the bail cannot be denied merely because the applicant is involved in an economic offence and that other factors i.e. gravity of offence, object of the special act and other attendant facts and circumstances are also to be taken note of besides other relevant considerations.

8.2 Considering the above facts and circumstances in entirety and taking into account the seriousness of allegations against the petitioner, nature of offences, the petitioner is charged with; and that the petitioner is a habitual offender and is involved in 19 cases of similar nature, complete money trail is yet to be traced, trial in the matter is yet to commence, I am of the opinion that the petitioner does not deserve to be admitted to bail at this stage.

9.0 The petitioner has also sought bail on the ground of parity with the co-accused Suresh Kumar and Sandeep Khera. Co-accused Suresh Khera was granted bail by the co-ordinate Bench of this court vide order dated 19.04.2022 in Bail Appln. No. 489/2022; and accused Sandeep Khera, was granted bail by Ld. ASJ(02), South East, Saket Courts, New Delhi, vide order dated 21.06.2021.

9.1 Suffice it to state that the accused Suresh Kumar was admitted to bail by the co-ordinate Bench of this court for very different reasons viz. the co-accused Suresh Kumar came to be named in supplementary charge-sheet, which was filed without arresting the accused. Considering that the accused was not arrested during the course of investigation and even the charge-sheet was filed without arrest, while his role had already been described in the charge-sheet and the forensic report had also been alluded to and also taking into account the fact that the accused Suresh Kumar acted at the instance of his employer/accused Sandeep Khera, who was already admitted to bail vide order dated 21.06.2021 by the Ld. ASJ.

9.2 As far as co-accused Sandeed Khera is concerned, he was granted bail by Ld. ASJ(02), South East, Saket Courts, New Delhi, for the similar reasons that is, he had been joining investigation, he was not arrested during investigation and the charge-sheet was filed without his arrest and also on humanitarian grounds. Co-accused Sandeep Khera was found to be bed ridden, his left leg below the knee has been amputated and he was not able to move.

9.3 Role of the petitioner is very different. She is the main accused, who had obtained loans from different banks on the basis of forged and fabricated title deeds in connivance with other accused persons, the said loans/public money was siphoned off by her along with her husband/ A-2 Nitin Arora for purposes other than the designated purposes. In view of these facts, the petitioner cannot claim parity with the co-accused Suresh Kumar and Sandeep Khera.

10.0 For the aforesaid reasons, **bail application of the petitioner Ishma Arora is hereby dismissed**.

11.0 Petition is disposed of accordingly.

12.0 It may be mentioned that any observation made hereinabove shall not tantamount to expression of opinion on merits of the case.

(POONAM A. BAMBA)
JUDGE

AUGUST 04, 2022/*manju*

Click here to check corrigendum, if any