



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

% **Pronounced on: 18th May, 2022**

+ **BAIL APPLN. 1445/2022, CRL.M.As. 9141/2022 & 9142/2022**

UDIPT MANI JAIN

..... Applicant

Through: Mr. Mohit Mathur, Senior Advocate
with Dr. Harsh Surana, Mr. Sandeep
Malik and Ms. Dipti Jain, Advocates

Versus

THE STATE NCT OF DELHI

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for State
with SI Amit Pratap Singh
Mr. Madhav Khurana with Mr. Sanjay
Bhargava and Ms. Riya Arora,
Advocates for the complainant

+ **BAIL APPLN. 1448/2022, CRL.M.As. 9156/2022 & 9157/2022**

MANINDRA JAIN

..... Applicant

Through: Mr. Mohit Mathur, Senior Advocate
with Dr. Harsh Surana, Mr. Sandeep
Malik and Ms. Dipti Jain, Advocates

Versus

THE STATE NCT OF DELHI

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for State
with SI Amit Pratap Singh
Mr. Madhav Khurana with Mr. Sanjay
Bhargava and Ms. Riya Arora,
Advocates for the complainant



CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. These two bail applications under Section 438/439 of Cr.P.C. seeking bail have been moved by the accused in FIR No.261/2018 dated 20th December, 2018 registered under Sections 406/420 IPC by the Economic Offences Wing, Delhi.

2. Mr. Mohit Mathur, learned senior counsel for the applicants submitted that neither of the two applicants had been arrested in respect of the FIR and that they have duly participated in the investigations. It is further submitted that though the charge-sheet had been filed against the applicant/Manindra Jain, he had not been arrested, whereas the applicant/Udipt Mani Jain had been shown in Column No.12. Both accused were however summoned by the learned Chief Metropolitan Magistrate (for short 'CMM') vide order dated 20th December, 2021 directing their appearance on 16th February, 2022. Both the applicants appeared on that date and applied for regular bail. The learned CMM, while adjourning the hearing on the regular bail applications, granted interim bail to both the applicants, till these applications were disposed of.

3. The learned senior counsel submitted that the hearing on the regular bail applications was concluded on 9th March, 2022 and the matter was to be taken up at 3.00 PM on 11th March, 2022 for orders. On 11th March, 2022, due to a misunderstanding, the accused remained absent, as a result of which the learned CMM did not pronounce the bail orders and rather directed the



issuance of Non-Bailable Warrants (for short 'NBWs') against both the accused with notices to their sureties.

4. Thereafter, applications for cancellation of NBWs were moved on 14th March, 2022. On 15th March, 2022, the learned CMM dismissed the applications for cancellation of NBWs, and also dismissed the bail applications, and directed the accused to surrender and fresh NBWs were also directed to be issued. The learned senior counsel for the applicants submitted that subsequently, the learned Principal District & Sessions Judge vide order dated 6th April, 2022, cancelled the NBWs. A subsequent order of the learned Trial Court dated 8th April, 2022 issuing fresh NBWs was also set aside vide order dated 18th April, 2022.

5. After the bail applications were dismissed, the applicants moved the Sessions Court for bail under Section 438 Cr.P.C. The learned senior counsel for the applicants submitted that the applicants ought to have moved for bail under Section 439 Cr.P.C. and not under Section 438 Cr.P.C. but the learned Sessions Court could also have read the right provision instead of dismissing the bail applications as not maintainable.

6. It is the submission of the learned senior counsel on behalf of the applicants that the case set up against the applicants is of a civil nature, the main issue being, whether a sum of Rs.5,40,00,000/- had been paid to the applicant/Manindra Jain for purchase of a land or for production of the film 'Anna'. Since the receipt of the said amount has not been disputed, it would be a question of trial, whether any sum had been misappropriated as alleged, or whether there was any cheating on account of which the complainant paid



Rs.5,40,00,000/- to the accused Manindra Jain. As regards the applicant/Udipt Mani Jain, it is submitted that though a sum of Rs.6,00,000/- had been transferred into his account, Rs.5,00,000/- had immediately been transferred into the account of M/s Rise Pictures Pvt. Ltd. Similarly, the sum of Rs.5,34,00,000/- received by the applicant/Manindra Jain had also been transferred into the account of M/s Rise Pictures Pvt. Ltd. Thus, the mere factum of receipt cannot be held to be a culpable act, till there was proof of such *mens rea* upon evidence being led against the applicants.

7. The learned senior counsel for the applicants submitted that throughout the conduct of the applicants showed that they were not at flight risk. Even before the learned Trial Court, on summoning, they had appeared on 11th March, 2022, as also represented through counsel. It was not as if, they are absconding. Probably the fear of being taken into custody induced them to seek cancellation of the NBWs before appearing before the learned Trial Court, but that fact also cannot be treated as indicative of a disinclination to follow the law or avoid the trial. Hence, it was submitted that the present applications be allowed and the applicants be admitted to bail.

8. Ms. Meenakshi Dahiya, learned APP for the respondent/State has been assisted by Mr. Madhav Khurana, learned counsel appearing on behalf of the complainant. Though their initial objection was that the present applications are also for anticipatory bail under Section 438 Cr.P.C. which was not maintainable, as the applicants had once appeared before the learned Trial Court on summons, since the present applications have also been moved under Section 439 Cr.P.C., this Court treats the applications as filed only under Sections 439 Cr.P.C. Therefore, all the arguments and the cited



judgments supporting the contention that an application under Section 438 Cr.P.C. was not maintainable, if the accused moves a court for bail under Section 437 Cr.P.C., are not relevant for the purposes of disposal of the present applications.

9. It has been submitted that the complainant was a philanthropic organization by the name of M/s Nice Society Trust working for enhancing educational activities and by cheating and misappropriating the sum of Rs.5,40,00,000/-, which had admittedly, been paid to the applicant/Manindra Jain, young children were the ones who were directly affected, as these monies would have been spent otherwise on their welfare and educational activities of the Trust. Therefore, the gravity of offence was of a high degree. It was further argued that the intentions of the applicants were *mala fide* from the very beginning which was why when money had been paid for purchase of land and the applicants were engaged as facilitators to look for an appropriate land for the educational activities of the Trust, no land was given to the complainant and the money has also been swallowed. Thus, it was submitted that the applicants did not deserve benefit of bail and the applications be dismissed. The learned APP further submitted that the two applicants had left Delhi when the date for orders had been fixed and when falsehoods were stated when NBWs were to be executed against them. Hence, they did not deserve bail.

10. I have heard the learned counsel for the parties as well as the learned APP for the respondent/State and have perused the record.



11. It is a very significant fact that neither of the applicants/accused were arrested in this matter though the FIR was registered on 20th December, 2018. Though the charge sheet had been filed against the applicant/Manindra Jain as an accused, the applicant/Udipt Mani Jain was only named in Column No.12. The fact that they appeared on summoning by the learned Trial Court and were present on subsequent dates as well would show that they are not at a flight risk.

12. No doubt, they were found absent on 11th March, 2022, when the orders on their regular bail applications were to be pronounced, but they promptly moved for cancelation of the NBWs before the following date i.e. 15th March, 2022. It is interesting to note that on 16th February, 2022, the learned Trial Court granted interim bail *“till disposal of their bail applications”*. Yet, on 11th March, 2022, it was observed that the bail applications *“could not be disposed due to their absence”* on that day. In other words, the interim bail granted had not been cancelled through the disposal of the regular bail applications. The learned Trial Court ought to have then cancelled the interim bail or directed the appearance of the accused on the next date of hearing, making their appearance imperative before pronouncing the order on the bail applications. The orders do not reveal that on 9th March, 2022, the presence of the accused was made imperative prior to the pronouncement on the bail applications. In any case, there is no requirement of the presence of the accused at the time of passing of bail orders when regular bail applications are being considered. The absence on 11th March, 2022, cannot be considered as a flight risk.



13. On merits, it is clear that there are two versions for the money having been transferred by the complainant to the applicants. Whether it was for the purchase of land or for the production of a film, would be a matter of trial and evidence. The receipt of the money, significantly, has not been disputed. What is in issue is the purpose. The proof of one purpose may establish misappropriation or cheating, while the other purpose may not.

14. The charge-sheet has been filed and since even during the investigations the applicants have remained without arrest and have not tampered with any evidence, there can be no fear that if the applicants remained on bail now, they would tamper with evidence or hamper trial.

15. In the light of the foregoing discussions, the applications are allowed. The applicants are admitted to bail on their furnishing a personal bond and a surety bond in the sum of Rs.30,000/- each with one surety in the like amount, to the satisfaction of the concerned/learned Trial Court. The applicants shall also be bound by the following further conditions:

- (i) The applicants shall not leave NCT of Delhi without intimation to the SHO concerned;
- (ii) The applicants shall not leave the country without express permission of the learned Trial Court;
- (iii) The applicants shall appear on each date of hearing, unless so exempted by the learned Trial Court;
- (iv) The applicants shall not directly or indirectly contact the complainant or any other witnesses under any circumstance and



any such attempt shall be construed as an attempt at influencing the witnesses;

- (v) The applicants shall furnish their mobile phone/landline numbers and residential addresses as well as that of their sureties to the I.O./SHO concerned and both shall keep their mobile/landline phones operational at all times during this period and in the event of any change of the same, will immediately inform the same to the I.O./SHO; and,
- (vi) The applicants shall drop a pin location on Google Maps so that the location of the applicants is available to the Investigating Officer.

16. The Bail Applications stand disposed of along with the pending applications.

17. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MAY 18, 2022
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