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

% ***Reserved on: 07.07.2022***
Pronounced on: 12.07.2022

\+ **BAIL APPLN. 1911/2022 & CRL.M.A. 12581/2022**

ANKUR AGGARWAL ..... Petitioner
Through: Ms. Ruchi Kohli with Mr. Yash Mishra, Mr. Anuj Rathee, and Ms. Priya, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent
Through: Mr. Ripu Daman Bhardwaj, SPP.

And

\+ **BAIL APPLN. 1909/2022 & CRL.M.A. 12579/2022**

ANKUR AGGARWAL ..... Petitioner
Through: Ms. Ruchi Kohli with Mr. Yash Mishra, Mr. Anuj Rathee, and Ms. Priya, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent
Through: Mr. Ripu Daman Bhardwaj, SPP

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

<u>JUDGMENT</u>

<u>SWARANA KANTA SHARMA, J.</u>

1. The present bail application has been filed under Section 439 of the Code of Criminal Procedure 1973 ('CrPC') on behalf of the

petitioner seeking interim bail in FIR No. RC-BDI/2008/E/0008, dated 14.11.2008, registered under Section 120-B read with Sections 420/467/468/471 IPC and substantive offences thereof by the CBI at P.S. CBI/BS&FC/DL.

2. The learned counsel on behalf of the petitioner submits that though the offences relate to the year 2008, the petitioner came to be arrested in the present case only on 10.06.2021. It is also urged that since charge sheet has been filed, the petitioner is not required for any investigation in judicial custody.

3. The learned counsel further submits that the petitioner, along with his mother, Veena Aggarwal, is one of the partners in M/s Krishna Chains & Jewellery Co. The petitioner and his mother have been accused of having mortgaged Shops No. 12-14, Plot No. 1171, Kucha Mahajani, Chandni Chowk, Delhi by using forged and bogus documents. The aforementioned shops allegedly were also being used as mortgage for obtaining credit facilities to the tune of Rs. 1.61 crores from the State Bank of Patiala, Darya Ganj Branch in 2006. It is submitted that since Veena Aggarwal, who owned the aforesaid properties, has already been released on regular bail by the Special Court vide order dated 07.12.2021, the petitioner may be enlarged on interim bail at the least, considering that he had a lesser role to play in comparison to her. The aforementioned properties, besides properties of the family members of the petitioner, have already been auctioned, and a sum of Rs. 5.08 crores has been recovered by the banks. It is further stated that the petitioner came to India on 04.07.2018 on voluntary departure from Canada, thereafter he was

arrested by the respondent from his brother's office on 01.04.2021 in another case with regard to the loan taken from Punjab National Bank. Subsequently, the petitioner was arrested by the respondent in the present case.

4. The learned counsel for the petitioner states that the medical condition of the petitioner has gone from bad to worse. It is also stated that the desired medical treatment could not be provided to the petitioner and that the learned Vacation Judge vide an order dated 22.06.2022 had also directed the concerned Jail Authorities to take the petitioner for MRI. However, the same has not taken place till date. It is, therefore, now urged that the accused/petitioner be released on bail for his medical treatment on any terms and conditions as imposed by this Court.

5. It is also argued that there is no flight risk involved as far as the present petitioner is concerned as co-accused, who was granted bail, has also not misused the liberty of bail. It is also argued that it was not due to any fault of the accused that he did not join the investigation and it was purely negligence and mistake on the part of the prosecution that he was not informed about pendency of criminal investigation against him.

6. Learned SPP for the respondent opposes this bail application. He submits that the petitioner, in conspiracy with Veena Aggarwal and his father, Omkar Mal Aggarwal, had first obtained credit facility from Allahabad Bank, when the shops, along with premises No. 13-A, New Gupta Colony, New Delhi, were mortgaged and the title deeds of the shops were submitted. Subsequently, the petitioner and

the co-accused persons fabricated the title documents of the shops twice and by mortgaging the same, obtained loan facilities from the State Bank of Patiala, Darya Ganj Branch and Punjab National Bank, Sadar Bazar.

7. It is further submitted by the learned SPP that after committing the offence, all the accused persons fled from India to Canada, whereafter LOC was opened against them and they were deported after much difficulty. It is also submitted that Omkar Mal Aggarwal is still absconding and is currently in Canada.

8. Having heard both the parties and having perused the materials placed on record, I am of the opinion that making a reference to the decision of the Apex Court in ***P. Chidambaram v. Central Bureau of Investigation*** **(2020) 13 SCC 337** here would be pertinent wherein it was observed as under:

> *"...21. 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).]

22. 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. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that "flight risk" of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straight-jacket formula so as to deny bail to the one who is before the Court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merits of his own case. Hence, in our view, such consideration including as to "flight risk" is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved."

9. It is clear from the record that the petitioner along with his family had absconded and concealed himself, had not joined the investigation for about 15 years by fleeing the country and even after coming back from Canada, he remained elusive for almost 3 years. The father of the petitioner, who is also a co-accused in the present case, is still absconding. The allegations against the petitioner are serious in nature. He has defrauded the government banks of approximately Rs. 8-9 crores, causing wrongful loss to public exchequer.

10. Keeping in mind the facts and circumstances of the case as well as the rationale in the aforementioned decision of the Apex Court, I am of the opinion that the present case of the petitioner does not warrant grant of interim bail. The bail application of the petitioner for interim bail is rejected.

11. However, it is also stated that the main concern of the learned counsel for the petitioner/accused is that he is not being medically treated to his satisfaction. The latest medical status report filed by the Jail Authorities themselves also states that:

> *"...It is further submitted that due to recent episode of acute onset of flank pain with burning micturition with urine retention with hematuria with UTI and a follow up case of Bilateral Nephrolithiasis, and his hypoxic chest condition with dyspnea with acute exacerbation, anemia, he is getting treatment but despite treatment inmate patient complaints are still persisting and the condition of the inmate patient is not improving..."*

12. The learned counsel for the petitioner wants the accused to be treated in a private hospital in Delhi which, according to her, will be in a better position to treat him for his serious ailments.

13. The learned counsel for the respondent states that they have no objection to the petitioner being treated at a private hospital as long as he is kept in custody and pays for it.

14. Keeping in view the medical condition of the petitioner, his latest status report, as well as the fact that he needs immediate medical intervention, I deem it appropriate to order that the petitioner be medically treated at All India Institute of Medical Sciences, (AIIMS), Delhi. Medical Superintendent of the hospital to file report

regarding his present medical status and course of treatment before the Trial Court. Though the accused is in judicial custody, if his medical condition warrants, he must be provided medical treatment immediately from AIIMS as his medical condition has not shown any improvement despite present medical facility extended to him. Petitioner be taken to AIIMS within two days. Compliance report be filed before Joint Registrar.

15. With the above observations, the bail applications and the pending applications stand disposed of.

16. The Registry is directed to deliver a copy of this order to the concerned Jail Superintendent as well as to the concerned trial court today itself.

SWARANA KANTA SHARMA, J.

JULY 12, 2022/zp