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

% *Order pronounced on 15.09.2022*

\+ BAIL APPLN. 1243/2022

IRFAN ALI ..... Petitioner

Through: Mr. Rajive Maini, Ms. Shriya Maini, Advocates.

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr. N.S.Bajwa, APP for State with Insp. Chaitanya Abhijit, PS Cyber Police Station (Central Distt.

\+ BAIL APPLN. 2059/2022 & CRL.M.A. 12929/2022

MOHD IRFAN @ RAJJI ..... Petitioner

Through: Mr. Rajive Maini, Ms. Shriya Maini, Advocates.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. N.S. Bajwa, APP for State.

**CORAM:**
**HON'BLE MR. JUSTICE TALWANT SINGH**

**Talwant Singh, J.:**

1. These two bail applications have been moved by accused/applicants Mohd. Irfan *alias* Rajji and Irfan Ali, who are co-accused in FIR No. 30/2021 registered at PS Hauz Qazi under Section 420/406/120B IPC and Section 4/20/21/25 of Indian Telegraph Act and Section 65 of Information Technology Act.

1.1 Notice was issued. The State has filed Status Report. Nominal Rolls of the accused/applicants have been also called from the jail.

2. The factual matrix of the present case is given in the Status Report. A complaint was received in PS Hauz Qazi on 05.02.2021 from Government

officials that one illegal international telecom exchange, setup in Chawri Bazar, Delhi has been found, which is using the advance technology for routing international calls of foreign countries like US, UAE, Canada, Nepal, Australia and many more to India *via* internet and in this way, bypassing the international and national call gateways of India. This exchange can handle 2500 international calls simultaneously and is causing loss of about Rs.1.20 crore per day to the Government and telecom companies. This exchange could handle 3 lac international calls per day.

2.1 These calls are then routed towards Indian telecom/mobile numbers through heavy servers and software tools. The setup was fully automatic. Since this call route was internet based, so it is difficult for Indian Law Enforcement Agencies to monitor and back trace the foreign callers, so it is posing a grave threat to national security.

2.2 Raid was conducted where two SIP servers of IBM and HP along with other paraphernalia were recovered. The present FIR was registered and investigation was transferred to District Cyber Cell, Central. One accused, Imran Khan was arrested on 06.02.2021, who disclosed that his maternal uncle, namely Zulifiqar Ali asked him to arrange a room where connection of JIO will be installed. His elder brother, Yousuf handed over the room to Zulifiqar Ali, who started working from there. He shared his ID with Zulifiqar Ali as he needed fast internet connection of Airtel.

2.3 The said Zulifiqar Ali paid Imran Khan Rs.5,000/- for using his ID and assured him to pay more in future. Imran Khan further disclosed that Zulifiqar Ali installed two machines and started dealing in international calls. Statement of the person, who installed the internet connection, namely, Kamal Kishore was recorded.

2.4 One Ganga Singh was also examined, who had also installed internet connection at the instance of Zulifiqar Ali.

2.5 One Harish Kumar also stated that he had installed high-speed internet connection on the order placed by Zulifiqar Ali.

2.6 One Usman Miyan S/o Tarik was examined, who was introduced to Zulifiqar Ali by one Irfan and he had installed SIP Trunk after collecting the necessary documents from M/S Adeeba Enterprises, a firm of Zulifiqar Ali. The use of the said SIP Trunk for making international calls was forbidden. Persons, who had received international calls, were examined and their statements were recorded.

2.7 On further inquiry, the Government officials gave details of the losses caused by installation of the illegal international telecom exchange by the culprits and the total loss was estimated to be around Rs.103.45 crores. Efforts were made to find out the source of the seized case property. The IBM and SIP server was initially sold to Vodafone India Ltd. Subsequently, they were further sold to another person and lastly to Montu Mandal, who sold the same to one Raju Khan *alias* Mohd. Irfan *alias* Rajji for Rs.58,000/- each. Mohd. Irfan was arrested on 29.09.2021. He is the petitioner in bail application No.2059/2022.

2.8 Applicant Mohd. Irfan disclosed that he was in collusion with one Abdul Murtza, an NRI of Kwait and they had set up the illegal SIP server to earn profit and he also got involved other known persons, namely, Irfan Ali (petitioner in bail application No. 143/2022), Zulifiqar Ali, Areeb and Mohd. Rehan. He had purchased the SIP server for running illegal telephone exchange and the money was arranged through Hawala Traders on the direction of one Mohd. Murtaza, who was also residing in Kwait. He had received Rs.90 lacs through Hawala, out of which he had paid Rs.45 lacs to his associate, Irfan Ali.

2.9 Accused Zulifiqar Ali was arrested on 29.09.2021 and during interrogation, he disclosed that about one year ago, his brother Irfan Ali had induced him to setup an illegal telephone exchange in his name, which will produce daily income in lacs. He took two high-speed wifi connections in his name, one connection in the name of his nephew Imran Khan and two connections in the name of his son, namely, Areeb at the instance of Zulifiqar Ali.

2.10 Petitioner Irfan Ali was arrested and interrogated. He disclosed that he was induced by Mohd. Irfan *alias* Rajji to setup an illegal telephone exchange, which will give daily income running into lacs. Further, he also got involved his brother Zulifiqar Ali in the said activity. He used the ID of his brother Zulifiqar Ali to get installed the telephone exchange. He received Rs.45 lacs from Mohd. Irfan for this illegal activity. An HP server was recovered from his home at his instance.

2.11 Irfan had introduced Usman Miyan to Zulifiqar Ali, who purchased the high-speed internet connection from him. Accused Areeb Ali was arrested on 30.09.2021 and interrogated. He stated that his financial condition was not good. Meanwhile, his uncle Irfan induced his father to setup the said illegal connection in his name for SIP Trunk Services. The payment was made from the bank account of one Rehan and the said money was arranged through Hawala transactions. These accused were arrested.

2.12 After completion of investigation, charge sheet under Section 420/120B/406 IPC, Section 20/21/25 Telegraph Act and Section 65 of the IT Act was filed in Court. Accused/applicant Irfan Ali was also involved previously in case FIR No. 13/2014 under Section 420/406/120B/174A IPC, PS Chandni Mahal, Delhi.

3. On behalf of the petitioner, Irfan Ali, in bail application No.1243/2022, it has been submitted that he is a respectable and peace loving citizen of India; he has been mechanically roped in the subject FIR just because his brother was also involved in the crime. He has no role to play in commission of the alleged crime and the only allegation against him is that he had introduced/recommended the main accused Zulifiqar Ali to a JIO sales executive named Usman Miyan. He has not obtained any telephone internet connection in his name and he has not worked on any device, server or telephone connection. There is not even one single document which can be relied upon by prosecution for lodging an FIR against him.

3.1 It is further submitted that he was arrested in the present case on the basis of verbal statement of the co-accused after seven months of lodging of the FIR. Only one day's police custody remand was sought. The regular bail application of the petitioner Irfan Ali was rejected by the learned ASJ without describing any specific role/loss to the petitioner herein.

3.2 The investigation is over. Supplementary charge sheet has been filed.

3.3 Not even a single penny of any illegal earnings has been attributed to the petitioner herein. He is in custody since 01.10.2021. He is not keeping good health. The petitioner is not a criminal or a habitual offender. Most of the offences are triable by Magistrate. He is the only bread earner of the family.

3.4 The grounds for bail have been stated that he is in judicial custody since 01.10.2021; the learned ASJ has not applied his mind while dismissing his bail application; bail application has been dismissed without giving any reasons; no *mens rea* has been attributed to the petitioner herein; the case of the police is highly improvable by its nature; the SIP servers were obtained by his brother, Mr. Zulifiqar Ali and not by the petitioner; the servers were sold as a junk material; all the co-accused have been already arrested; no recovery is to be affected now; the petitioner is a permanent resident of Delhi and the trial of accused will take a long time. Under these circumstances, it has been prayed that the present applicant be released on regular bail.

4. As far as accused Mohd. Irfan *alias* Rajji, who is the petitioner in bail application No. 2059/2022, is concerned, his date of arrest is 28.09.2021. His bail application was dismissed on 25.06.2022. It was argued before the learned ASJ that there is no receipt on record pertaining to alleged purchase of servers from Montu Mandal and the applicant is not well educated to operate such a sophisticated server and there is no evidence on record regarding assessment of loss of revenue to the extent of Rs.1.20 crore per day and the said bail application was dismissed keeping in view the fact that earlier bail application of the applicant was dismissed on 07.02.2022. On the similar grounds and giving the same narrative as in the bail application of the co-accused, petitioner Mohd. Irfan has also prayed for bail.

5. Notices were issued. Status Report has been filed. Arguments heard.

6. It has been argued on behalf of the petitioners that they have been falsely implicated. There is nothing on record to connect them with the alleged offences. The calculation of causing loss of Rs.1.2 crores per day to the public exchequer is an imaginary figure. The so-called IBM and HP high-machines were basically junk machines which were not in working

conditions and the petitioners have no role to play in the entire crime setup and they have been mechanically roped in the present case.

7. On behalf of the prosecution, it has been argued that the petitioners, along with other persons had entered into a conspiracy and all of them had played active role in establishing an illegal international telephone exchange and they caused huge losses to the Government as well as to telecom companies running into crores of rupees. An estimate in this regard filed on record as part of the Status Report which quantifies the said loss at Rs.103.45 crores. This calculation has been challenged by the present petitioners as being an imaginary figure. Both the parties will get an opportunity to approve/disapprove the said estimate while evidence is led in the Court.

8. In this case, Hawala transactions of Rs.90.00 lacs are also involved. Out of the said amount, a sum of Rs. 45 lacs was allegedly given by accused/applicant Mohd. Irfan *alias* Rajji to Irfan Ali. Moreover, at the instance of Mohd. Irfan *alias* Rajji, a server machine work station of IBM make, one mobile phone Lenovo Tab V 7 along with two SIMs, one laptop of Dell, used for running the scam were recovered and one black coloured Samsung mobile phone which was purchased by the petitioner/accused from the cheated amount was also recovered.

8.1 It is further mentioned in the Status Report that it was Irfan *alias* Rajji who had purchased 4 IBM servers and one HP server from Montu Mandal for Rs.2,90,000/-. Statement of Montu Mandal recorded under 161 Cr.P.C. has been also annexed, stating therein that Mohd. Irfan *alias* Rajji gave his name as Raj and had purchased 4 IBM and one HP server at the rate of Rs.58,000/- per piece from him. He had identified the present applicant/accused.

9. In my view, the junk machines cannot be used to run an international telephone exchange, which bypasses the official international trunk lines. The danger to the security of the nation is another important factor because if anti-social elements make international calls by using this setup, there is no way for the Law Enforcement Agencies to trace the said callers and take appropriate action against them.

10. The Charge Sheet stands filed but the case is at the initial stage. Important witnesses are yet to be examined and the possibility of influencing the said witnesses and/or tampering of evidence at this stage is not ruled out.

11. Keeping in view the magnitude of the crime alleged against the present petitioners and the co-accused persons, their specific roles as pointed out in the Status Report and the possibility of tampering with the evidence at this stage being not ruled out, I am not inclined to grant them bail at this stage. Both the bail applications being nos.1243/2022 and 2059/2022 are hereby dismissed.

12. However, it is made clear that nothing stated herein above shall affect the merits of the case being tried before the learned Trial Court, which will be decided by the learned Trial Court on its own merits on the basis of the evidence produced by both the State as well as by the accused persons before the said Court.

13. Copy of this order be sent to the concerned Court.

**TALWANT SINGH, J**

**SEPTEMBER 15, 2022/**pa

<u>*Click here to check corrigendum, if any*</u>