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

Judgment reserved on: 06.12.2021
Date of decision: 22.03.2022

\+ BAIL APPLN. 3180/2021 & CRL.M.(BAIL) 1498/2021

DEVENDER KUMAR ..... Petitioner

Through: Ms.Ujala Vishnoi and Sh.Randeep Singh, Advocates.

Versus

STATE OF DELHI ..... Respondent

Through: Mr.Mukesh Kumar, APP for State.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The applicant, vide the present application under Section 439 of the Cr.P.C., 1973 seeks the grant of regular bail in relation to FIR No.103/2021, PS EOW under Sections 420/120B/34 of the Indian Penal Code, 1860 submitting to the effect that he is incarcerated since 07.03.2021 and that he has no role whatsoever to play in the instant case and that there is no evidence that has been collected by the Investigating Agency even in the charge sheet that has been submitted.

2. As per the prosecution version put forth through the status report dated 24.09.2021 submitted under the signatures of the Asst.

Commissioner of Police, Sec-IV/EOW/New Delhi, the FIR No.103/2021, PS EOW under Sections 420/120B/34 of the Indian Penal Code, 1860 was registered on the complaint of one Sh. Jitender, who alleged that in the month of January, 2021, he learnt that one company namely, YOYO Cabs Corporation, with its office at 1006, GDITL, Netaji Subhash Place, Delhi was attaching the commercial Cabs with itself and paying high returns and on 09.01.2021, the complainant visited the office of above company and got attached his commercial CAB No. HR-38-AB-6370, Swift Dezire, with this company and paid Rs. 17,500/- to the Orient Bell Marketing (OPC) Pvt. Ltd. about which he, the complainant, Jitender was informed that the said company is the mother company of YOYO Cabs.

3. It is further stated through the said status report dated 24.09.2021 that thereafter, the complainant was provided a GPS and Carrier from YO-YO Cabs and the complainant was instructed not to run his car elsewhere and he would be provided tour booking by YO-YO Cabs office for inside and outside Delhi. It is stated further through this status report that on 11.01.2021, the Yo-Yo Cabs Corporation entered into an agreement with him for three years and assured Rs. 60,000/- per month i.e. Rs. 15,000/- for driver, Rs. 5000/- for maintenance and Rs. 40,000/- as vehicle rent which would be paid to him after the completion of one month, but the company did not pay any amount.

4. It is further stated through the said status report dated 24.09.2021 that the complainant had also issued a cheque of Orient Bell Marketing (OPC) Pvt. Ltd. company of INDUSIND Bank amounting Rs. 32,440/- with the same having been signed by one Mr. Om Prakash Rajput. It is further stated through the status report that when the complainant presented the cheque to the bank, the same was returned back with the remarks that the 'signature differs' and later, on 05.03.2021, the complainant learnt that Yo-Yo cab Corporation Company owners had closed their offices and fled away. It is further stated through the status report dated 24.09.2021 that the enquiry conducted at the local police station had revealed that several other innocent cab owners/drivers had also been cheated in similar manner and that more than 55 victims/complainants had given their complaints in the police station and that the present case was registered and two of the accused persons namely, Devender Kumar and Om Prakash were arrested on 07.03.2021 and sent to judicial custody.

5. As per the said status report, the case was then transferred to the EOW for further investigation and during the course of investigation, production warrant was issued by the learned Trial Court and both the accused persons were taken on one day police custody remand and at the instance of the accused persons, 480 applications of the victim cab owners/drivers and other papers, etc. were recovered from the office of the alleged YOYO Cabs and that more than 600 victim cab drivers/owners have lodged their separate complaints in the Police Station EOW and more complaints were still being received.

6. As per the status report dated 24.09.2021, it is further stated that these complaints were analyzed and it was revealed that most of the complainants were drivers and paid Rs. 17,500/- to the accused persons and that some of these complainants, were vendors who were in the business of tour and travels and got the taxis of taxi owners attached jointly and had paid between Rs 50,000/- to Rs. 10,00,000/- through cash and cheque both, to the accused persons directly. The said status report further stated to the effect that the accused company 'YOYO Cabs' was started under the flagship of Orient Bell Marketing (OPC) Pvt. Ltd. and that the bank account of the company was used by the accused persons for transactions with the Victims/Complainants and that the bank accounts where the cheated amount of the victim cab owners/drivers was deposited was being operated by the accused Devender Kumar, co-accused Om Prakash Rajput and their associate, Subhash Swarn Banjara, r/o Nagpur and that the registered office of YOYO Cabs i.e.l006, GDITL Tower was leased in the name of accused Devender Kumar, i.e. the applicant herein and the other office of YOYO Cabs at 8H, Big Jose Tower was also found leased in the name of Devender Kumar with the third office at Kakrolla Housing Complex near Dwarka Mor was found leased in the name of the co-accused Om Prakash Rajput and as per the status report, in January, the company Orient Bell Marketing (OPC) Pvt. Ltd. was transferred by the applicant herein in the name of the co-accused Om Prakash Rajput.

7. It has been further stated in the status report dated 24.09.2021 that the accused persons by way of false promises, misrepresentation and inducement had duped the innocent and poor cab drivers and owners in the pandemic and most of the victims were hand to mouth and most of the cheated amount was deposited in the bank accounts of the accused company Orient Bell Marketing (OPC) Pvt. Ltd. at INDUSIND Bank and Kotak Mahindra Bank, Janakpuri.

8. As per the status report, the cheated amount was found to be Rs.1.5 Crores approximately till the date 24.09.2021 and it was stated further that the cheated amount could be much more as the complainants were increasing and in relation to the same, a supplementary charge sheet would be filed.

9. It has *inter alia* been submitted through the status report that the victim cab drivers/owners had named the applicant herein directly in their complaints and statements and during the police custody, both the accused persons had disclosed that the idea of YOYO Cabs was of Subhash BanJara and that the applicant herein, Devender Kumar was known to Subhash BanJara and he introduced him to the co-accused Om Prakash Rajput; that the YOYO Cabs was started under the flagship of the accused company namely Orient Bell Marketing (OPC) Pvt. Ltd and that the applicant herein had started this company of which he was the sole Director until January 2021 and that the applicant herein was the part and parcel of the entire conspiracy from the very beginning of planning to cheat the innocent cab drivers/owners and that he resigned from the directorship of this company on paper only and due to the conspiracy had shifted the company in the name of the co-accused Om Prakash Rajput and that the applicant even after resigning from the company on paper, had remained active in the company by way of meeting and negotiating with the complainants; that the two offices of the accused company, at Netaji Subhash Place were found leased in the name of the present applicant, which were opened and operated by him; that the examination of the account opening forms in relation to the accused company Orient Bell Marketing (OPC) Pvt. Ltd. in INDUSIND Bank and in Kotak Mahindra Bank revealed that that the applicant herein, Devender Kumar had been an authorized signatory in INDUSIND Bank and Kotak Mahindra Bank till February, 2021.

10. As per the status report dated 24.09.2021, the complaints of victims were still pouring in with it having been submitted by the prosecution that the cheated amounts could be in crore of rupees and the same was yet to be ascertained and recovered, that the bank accounts and money trail was being investigated and that the cheated amount was yet to be recovered and that the co-accused persons were yet to be arrested and that the local links and details of the alleged company were to be investigated.

11. During the course of submissions that were made on behalf of the applicant on 16.11.2021, it was submitted in reply to a specific Court query on behalf of the State that even after the date of resignation of the applicant on 09.01.2021 from Orient Bell Marketing Pvt. Ltd., the applicant had been active in even settling the matter with the complainants and had been arrested on 07.03.2021 from the office of the said company and documents have also been recovered from him and that there was evidence that had been collected by the Investigating Agency to show the active involvement of the applicant even after the date 09.01.2021, with it having been submitted on behalf of the applicant the charge sheet having already been filed, that would be part of the charge sheet.

12. The State, vide order dated 16.11.2021 was directed to place on record the documents that it relied upon to contend that the applicant even after the date of resignation on 09.01.2021 had been so involved with it being specified that also whether these documents formed part of the chargesheet submitted in the matter.

13. The State through its status report dated 26.11.2021 has submitted that the present applicant had remained active from the very beginning of the case till his arrest and that the same was evident from the reply and documents submitted by the Kotak Mahindra Bank that bore the signatures of the present applicant on various dates in February 2021 and that all those documents along with the specimen signatures of the applicant had been sent to the FSL and had been deposited there for forensic examination. It was also submitted through the status report that all these documents had been received after filing of the charge sheet and would be submitted in the Court through the supplementary charge sheet.

14. The State thus, opposes the prayer made by the applicant seeking the grant of bail.

15. Through the written synopsis that was submitted on behalf of the applicant herein, it was submitted that a 1400 page charge sheet had been filed by the prosecution and the documents and complaints of approximately 113 complainants had been attached with the charge sheet and that a list of 609 victims whose application forms had been allegedly recovered at the time of inspection of the office premises of the company were traced out but that only four (4) such forms had been filed along with the charge sheet and that there were no complaints made by 609 victims nor were there 609 forms that had been filed along with the charge sheet.

16. *Inter alia* on behalf of the petitioner, it has been submitted that he is incarcerated since 07.03.2021, that the investigation qua the present applicant is complete, in as much as, as per the charge sheet itself, the Investigating Officer has stated that the investigation was pending only qua the remaining accused;

- that there is no previous involvement of the applicant in any criminal case;
- that the grant of bail is the rule and that incarceration in jail is the exception;
- that the applicant is a permanent resident of Delhi and his address and antecedents have been duly verified;
- that the investigation involves documentary evidence which has already been collected by the Investigation Officer;
- that the applicant has been falsely implicated;
- that there is no incriminating evidence against him in the 1400 page charge sheet filed by the Investigation Officer of the case against the applicant;
- that there are no allegations against the applicant of influencing the witnesses and tampering with the evidences with no such allegations being made by the complainant nor by the Investigation Officer;
- that the factum that only one day police custody remand was taken by the Investigation Officer with no further application

having been moved indicates that the applicant is not required for any further investigation;

- that the applicant has old aged parents to look up, who are living at the mercy of relatives and that his parents are medically ill and require constant supervision and attention and;
- that the petitioner is the only son of his parents;
- that the allegations levelled against the applicant are based on the factum of him being the Director of M/s Orient Bell Marketing Pvt. Ltd. but that he ceased to be the Director of the said company from 09.01.2021 and that all the deposit of money, execution of the agreements had been done between the YOYO Cab Corporation and the complainants which was after the date of resignation;
- that the applicant has not signed nor executed even a single receipt, cheques, agreement which were part of the documents attached in the charge sheet and no complaint showed that any alleged agreement was signed in the presence of the applicant which thus indicates that the petitioner/applicant has been falsely implicated in the present case;
- that out of the three Bank Accounts of M/s Orient Bell Marketing Pvt. Ltd., two Banks Accounts i.e maintained with Kotak Mahindra Bank and ICICI Bank have been opened by the current Director/ the co-accused Om Prakash after the resignation of the ex Director/ Devender i.e. the applicant herein but in the brief summary of the charge sheet, the Investigating Officer of the present case has wrongly and malafidely written

that the petitioner is the contact person of the Kotak Mahindra Bank which is contradictory to the documents placed on record along with chargesheet.

17. *Inter alia,* it has been submitted on behalf of the applicant that he has not received a single penny of the cheated amount and that it has erroneously been attributed by the Investigating Officer of the case that Rs.6,00,000/- (Rupees Six Lakhs) had been withdrawn by the applicant herein from the INDUSIND Bank out of the cheated amount for his personal use but that the entry of Rs.6,00,000/- (Rupees Six Lakhs) is an entry of a self Cheque bearing no. 412701 dated 29.01.2021 and that the withdrawal had been made by the co-accused after the date of the resignation of the applicant herein and thus, it could not be concluded that the same had been withdrawn by the applicant/petitioner. It has further been submitted on behalf of the applicant that a new cheque leaf was got issued by the co-accused after the resignation of the applicant/petitioner from the company and the self cheque bearing number 412701 pertained to the new cheque leaf issued on 12.01.2021. The applicant thus submits that no money has been received by the applicant/petitioner in his personal bank account.

18. The applicant further submits that in the FIR it has been specifically alleged that the YOYO Cabs Corporation had cheated the complainant and that the name of the applicant/petitioner was nowhere mentioned in the original complaint bearing no.LC 538 dated 05.03.2021 and that there were 55 such complaints in the same format all dated 05.03.2021 which nowhere referred the role of the petitioner herein and all the 55 complaints were dated 05.03.2021 with their numbers starting from 504 to 561 but that the Investigating Officer of the case had specifically made LC no. 538 as the original complaint just to implicate the present petitioner as the complaint no.LC 538 and the date of deposit of money was of the date as the resignation of the applicant/petitioner from M/s Orient Bell Marketing Pvt Ltd. i.e 09.01.2021.

19. *Inter alia* the applicant/petitioner submits that the FIR has mentioned totally different facts in contradiction to the original complaint of the complainant, which is an after thought of the investigating agency to implicate the present applicant/petitioner and that the applicant has been wrongly shown to be the owner of M/s Orient Bell Marketing Pvt. Ltd in the contents of the FIR and that no investigation has been conducted in relation to the main accused YOYO Cabs Corporation which is not even made an accused in Column No.11 of the charge sheet and that the victims had deposited their money in the bank account of the YOYO Cab Corporation and the receipts and entries were part of charge sheet but the bank account of the YOYO Cab Corporation was not seized by the Investigating Officer of the case to aid the main accused namely Subhash Banjara.

20. *Inter alia,* it has been submitted on behalf of the applicant/petitioner that out of the total 113 complainants who have given formal complaints against the YOYO Cab Corporation, there are statements of only 14 complainants recorded under Section 161 of the Cr.P.C and there are no specific allegations alleged against the petitioner herein in the same and that the allegations against the applicant of being the owner of YOYO Cabs Corporation is false and the applicant has no connection with the YOYO Cabs Corporation of any kind and that the prosecution had failed to prove that the applicant was the owner/Director of YOYO Cabs Corporation.

21. The applicant has further submitted that the charge sheet further clarifies that one person namely Sh. Subhash Banjara has diverted the funds collected through this fraud in his own bank account maintained in the name of the company owned by him i.e. M/s Smart India, Next Me India, and that the statements of the bank account maintained by Smart India, Next Me India and KUKI Taxi had not been examined/seized only to protect the original culprit. *Inter alia,* it has been submitted on behalf of the applicant that Subhash Banjara was also owner of KUKI Taxi registered at Maharshatra and there was an FIR registered in his name with the same nature of offence.

22. *Inter alia,* the applicant submits that the charge sheet has been filed on 08.05.2021 and the documents attached therewith show that there were no complaints after 08.04.2021 till 08.05.2021; that no additional complaints have been received by the Investigating Officer of the case and as the investigation is complete, the applicant cannot be detained behind bars any further as all relevant bank details and ROC details have been collected.

23. *Inter alia,* the applicant submits that it has been alleged by the Investigating Officer that the office premises used by YOYO Cab Corporation was leased in the name of Orient Bell Marketing Pvt. Ltd. but no proof of any lease deed had been placed on record by the Investigating Officer and even if the lease deed was signed by the applicant herein, it was signed in the capacity of the Director at that time and once the company got transferred after his resignation, the office address leased in the name of M/s Orient Bell Marketing Pvt. Ltd. or any other liability is deemed to have been transferred in the name of the current director i.e. Mr.Om Prakash Rajput and that there is no nexus that has been brought forth by the Investigating Officer between the applicant and the YOYO Cabs Corporation, the prime accused in the present alleged fraud.

24. Reliance was placed on behalf of the applicant/petitioner herein on the following verdicts:-

"(i) "Sumit Aggarwal vs State" in Bail Application No.1157/2020 passed by Delhi High Court on 22.06.2020.

(ii) "Sanjay Chandra v. CBI" (2012) 1 SCC 40.

(iii) "Zahur Haider Zaidi v. CBI" order dated 05.04.2019 passed by Hon'ble Supreme Court of India in Crl. Appeal No. 605/2019.

(iv) "Dataram Singh v. State of UP" (2018)3 SCC 22.

(v) "H.B. Chaturvedi v. CBI" 2010 SCC online Delhi 2155

(vi) "Ashok Kumar Vs. State" 2016 (2) JCC 1017 Ajay Madan v. State 2015 SCC online Delhi 12764.

(vii) "Anup Prakash Garg VS. Enforcement Department" BAIL APP. No. 1061/2018 passed by Delhi High Court on 06.08.2018",

with it having been submitted on behalf of the applicant that as laid down by the Hon'ble Supreme Court in Sanjay Chandra (supra) that even if the allegations relate to a grave economic offence, it is not a rule that bail should be denied in every case since there is no bar created in the relevant enactment and that at the time of consideration of bail, both the aspects of the seriousness of the charge and severity of the punishment need to be considered even in matters pertaining to EOW with it having been submitted on behalf of the applicant that the offences alleged to have been committed by the applicant being punishable under Sections 406 and 420 of the Indian Penal Code, 1860 and that the offence under Section 406 of the Indian Penal Code, 1860 is punishable to the extent of three (3) years of imprisonment and the offence under Section 420 of the Indian Penal Code, 1860 is punishable with the maximum imprisonment of seven (7) years.

25. Vide the status report dated 26.11.2021 filed by the State pursuant to directions dated 16.11.2021, it was submitted by the State that the applicant remained active from the very beginning of the case till his arrest and that the same was evident from the reply and documents submitted by the Kotak Mahindra Bank that bore the signatures of the present applicant on various dates in February 2021 and all those documents along with the specimen signatures of the applicant had been sent to the FSL and had been deposited there for forensic examination and all these documents had been received after the filing of the charge sheet and would be submitted in the Court through the supplementary charge sheet.

26. The documents bearing the purported signatures of the applicant dated 16.02.2021 to the Kotak Mahindra Bank Ltd., Janakpuri, New Delhi seeks the account holder's name from Orient Bell Marketing Pvt. Ltd. with the deletion of the account holder being Devendra Kumar i.e. the applicant herein to be changed to "as per BR" with the applicant having signed as the account holder for Orient Bell Marketing Pvt. Ltd. on 16.02.2021 with the copy of the extracts of the minutes of the meeting of the Board of Directors of Orient Bell Marketing Pvt. Ltd. held at House No.431, Kakrolla Housing Complex, New Delhi on 01.02.2021 as per which, qua Account No.9614014144 in the name of Orient Bell Marketing Pvt. Ltd. with the Kotak Mahindra Bank Ltd., Janakpuri, New Delhi, Mr. Om Prakash Rajput, Director was authorized to sign the necessary form and documents with the new MOP to be updated with the name of Devender Kumar, i.e. the applicant herein the existing Director to be deleted from that account with the MOP being singly done by Om Prakash Rajput with the applicant having signed allegedly on the said document with the applicant having also allegedly signed on 09.02.2021 on the documents in relation to the Kotak Mahindra Bank qua the entity Orient Bell Marketing Pvt. Ltd. as per which, FATCA/CRS declaration for non-individual accounts, the applicant herein was shown to be the beneficial person of the account maintained at the Kotak Mahindra Bank Ltd. at Janakpuri, New Delhi.

27. It has been submitted on behalf of the applicant that as per the arrest memo, the applicant was arrested on 07.03.2021 at PS Subhash Place and the Investigating Officer has sought to mislead the Court.

28. Placed on record also is an application i.e. CRL.M.(BAIL) 1498/2021 filed on behalf of the applicant seeking grant of interim bail for a period of three days submitting to the effect that the co-accused in the instant case was granted interim bail as per the HPC guidelines and that the applicant is the sole bread earner of his family and that he has old aged parents who are at the mercy of their relatives for their survival; that the applicant’s mother has to go for an eye operation and that the applicant's father is facing an acute asthmatic issues which are fatal in the ongoing covid scenario.

ANALYSIS

29. On a consideration of the rival submissions made on behalf of either side and the catena of verdicts relied upon on behalf of the applicant, taking into account the factum that the investigation in the matter qua the applicant is complete and all documentary evidence in the matter qua the applicant has since been collected with his signatures having also been sent for forensic examination with the documents in relation to his alleged exercise of authority even beyond the date of resignation i.e. 09.01.2021, the date on which the complaint against him is indicated to have been initiated by the complainant, coupled with the factum that the applicant has been incarcerated now for more than a year having been arrested on 07.03.2021, and taking into account the factum that the offence punishable under Section 406 of the Indian Penal Code, 1860 is punishable only with imprisonment of either kind to the extent of three (3) years of imprisonment and the offence under punishable Section 420 of the Indian Penal Code, 1860 is punishable to a maximum imprisonment of seven (7) years of either kind, with the offence punishable under Section 120B of the Indian Penal Code, 1860 being punishable in the same manner as qua the abetment of the offences which in the instant case would be to the extent of three (3) years qua the offence punishable under Section 406 of the Indian Penal Code, 1860 and to a maximum imprisonment of seven (7) years qua the offence punishable under Section 420 of the Indian Penal Code, 1860 with it being apparent on a perusal of the charge sheet that the trial in the instant case would take a long time, taking into account the factum that as per the charge sheet there are 617 persons allegedly duped to the tune of Rs.1,51,26,785/- allegedly by the applicant with one Om Prakash Rajput and another co-accused i.e. Subhash Banjara, Pankaj and Kabir of whom Subhash Banjara, Pankaj and Kabir have not even been arrested as per the copy of the charge sheet submitted on record, coupled with the factum that as contended through the submissions made on behalf of the applicant that there are only four forms of more than 600 victims allegedly that have been filed with the charge sheet to support the contention of the State in relation to more than 600 persons having been duped, with there being no previous adverse antecedents against the applicant, coupled with the factum that it has been contended on behalf of the applicant that the cheated amount of Rs.6,00,000/- (Rupees Six Lakhs) withdrawn from the account of Orient Bell Marketing Pvt. Ltd. of which the applicant was the Ex-Director from which he states he has ceased to be a Director thereof w.e.f. 09.01.2021, was withdrawn vide a self cheque bearing No.412701 dated 29.01.2021 which was made by the co-accused after the date of resignation of the applicant herein, with the new cheque leaf having been got issued by the co-accused after the resignation of the applicant herein from the company and the self cheque bearing no.412701 pertaining to the new cheque leaf issued on 12.01.2021 in view of the guidelines of the Hon'ble Supreme Court in ***"Satender Kumar Anil Versus Central Bureau of Investigation & Anr."*** vide verdict dated 07.10.2021 in ***SLP No.5191/2021***, wherein, even qua economic offences not covered by special Acts, though such an application seeking grant of bail is put forth within the category 'D' i.e. the economic offences not covered by special Acts, it has been observed by the Hon'ble Supreme Court to the effect:-

> *"The suggestions of learned ASG which we have adopted have categorized a separate set of offences as "economic Offences" not covered by the special Acts in this behalf, suffice to say on the submission of Mr. Luthra that this Court in Sanjay Chandra vs. CBI, (2012) 1 SCC 40 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:*
>
> *a) seriousness of the charge and*
> *b) severity of punishment.*
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> ***Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.",***

makes it apparent that the seriousness of the charge and severity of punishment are aspects which need to be taken into account at the time of consideration of grant of bail or otherwise and that it is not as if economic offences are completely taken out of the guidelines forming part of the judgment and both the seriousness of the charge and simultaneously the severity of punishment imposed by the statute has to be taken into account as a factor. Furthermore, the observations in paragraphs 14 & 16 of the verdict of the Hon'ble Supreme Court in ***"Sanjay Chandra v. CBI" MANU/SC/1375/2011***, lay down to the effect:-

"14. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

16. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. In the case of State of Rajasthan v. Balchand

MANU/SC/0152/1977 : (1977) 4 SCC 308, this Court opined:

> *2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the Petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.*
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> *3. It is true that the gravity of the offence involved is likely to induce the Petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the Petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the Petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the Petitioner will report himself before the police station at Baren once every fortnight.",*

with observations in paragraph 25 thereof to the effect:-

"25. Coming back to the facts of the present case, both the Courts have refused the request for grant of bail on two grounds: The primary ground is that offence alleged against the accused persons is very serious involving deep rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that the possibility of the accused persons tempering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property, forgery for the purpose of cheating using as genuine a forged document. The punishment of the offence is punishment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required. This Court in Gurcharan Singh and Ors. v. State AIR 1978 SC 179 observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of

> ***the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.",***

and thus also lay down that while determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

CONCLUSION

30. In the circumstances, it is considered appropriate to allow the applicant to be released on bail in relation to FIR No.103/2021, PS EOW under Sections 420/120B/34 of the Indian Penal Code, 1860 on filing a bail bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with two sureties of the like amount to the satisfaction of the learned Trial Court with directions to the applicant to the effect that:-

- he shall not leave the country under any circumstances;
- he shall appear before the learned Trial Court as and when directed by the Trial Court;
- he shall keep his mobile phone on at all times;
- he shall drop a PIN on the google map to ensure that his location is available is available to the Investigation Officer of the case;
- he shall commit no offence whatsoever;
- in the event of there being any FIR/Complaint/DD entry lodged against the applicant, it would be open to the State to seek cancellation of bail of the applicant, which application, if any, filed would be considered on its own merits.

31. The BAIL APPLN. 3180/2021 & CRL.M.(BAIL) 1498/2021 are disposed of accordingly.

ANU MALHOTRA, J.

MARCH 22, 2022

NC