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

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+ **BAIL APPLN. 2274/2022**

RASHMEE SEENGAL (In JC)

..... Petitioner

Through: Mr Jayant Bhushan, Sr.
Advocate with Mr Raman
Gandhi, Mr Tushar Bhushan
and Mr Amartya Bhushan,
Advocates

Advocates

versus

STATE THROUGH EOW & ANR.

..... Respondents

Through: Mr Manoj Pant, APP for State
Mr Amol Sharma, Ms Jagriti
Ahuja and Mr Tushar Sahu,
Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present application has been filed by the petitioner seeking bail under Section 439 of the Code of Criminal Procedure, 1898. The petitioner had earlier filed a bail application bearing No. 1655/2022 before this court, impugning the order dated 18.05.2022 passed by



the ld. Sessions Judge declining the bail of the petitioner. During the course of proceedings in bail application no. 1655/2022, vide an order dated 02.06.2022, this Court had directed the petitioner to pay a sum of Rs. 3 crores to the complainant i.e. HSBC Bank. The aforesaid direction had been issued on account of willingness shown by the petitioner herself. Even the timeline for making the payment had been decided with the consent of the petitioner.

2. However, the petitioner subsequently approached the Court seeking waiver of the directions imposed in the order dated 02.06.2022. Eventually, the petitioner sought permission to withdraw the bail application altogether.

3. It is submitted by the learned counsel for the petitioner that the order dated 02.06.2022 had been passed based on the willingness shown by the petitioner to pay money to the complainant and not on merits of the case. It is stated that the petitioner has the right to have her bail application decided on merits and thus, the present fresh bail application has been filed.

4. It is the case of the complainant that the applicant is one of the directors of M/s Compact Disk India Limited which availed a loan of Rs. 19 Crores approximately from the complainant. The said loan was not utilised for the designated purposed for which the it had been sanctioned, rather, the loan amount was diverted to some companies which are actually owned by the applicant. It is also submitted that the applicant executed a deed of personal guarantee and submitted the certificate of her individual financial wealth issued by CA Sh. Suresh Goyal. The issuance of certificate was denied by the CA and



he disclosed in his statement to police that his signatures have been forged on the certificate. The FSL report was inconclusive and thus it cannot be said that the signatures are or are not of the CA concerned.

5. In the impugned order passed by the Id. ASJ, the bail application of the applicant has been dismissed considering no submissions were made regarding the allegations of diversion of funds by the counsel for the applicant, nor had the applicant endeavoured to negotiate a settlement with the complainant despite undertaking before the court on 04.05.2022 that they will settle the matter with the complainant.

6. With regard to the above submissions and facts before me, I find it appropriate to refer to the observations of the Hon'ble Supreme Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528]***:

"...12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted." 10.1 In the case of Neeru Yadav vs. State of UP & Anr., (2016) 15 SCC 422, it is held by this Court in para 11 as under:

"11. It is a well settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are: (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of



tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie satisfaction of the Court in support of the charge. (Chaman Lal v. State of U.P., (2004) 7 SCC 525)” 10.2 In Anil Kumar vs. State (NCT of Delhi), (2018) 12 SCC 129, it is observed and held by this Court that while granting bail, the relevant considerations are, (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering...”

7. In the case of **Prahlad Singh Bhati vs. NCT of Delhi & Ors., (2001) 4 SCC 280**, the Apex Court opined that the jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. It is observed and held as under:

“...The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words ‘reasonable grounds for believing’ instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and



that the prosecution will be able to produce prima facie evidence in support of the charge...”

8. The present case is one where the complainant bank has allegedly been cheated by the applicant for a sum of Rs. 19 Crores. Economic offences, apart from causing loss to the institution directly involved, also disturb the economy. Hon'ble Supreme Court observed in the case of ***Nimmagadda Prasad vs. Central Bureau of Investigation (Criminal Appeal Number 728 of 2013)*** as under:

26) Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat vs. Mohanlal Jitmalji Porwal and Anr. (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-

“5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....”



27) While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

28) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country..."

9. Considering the facts and circumstances of the case and applying the law laid down by the Hon'ble Supreme Court, I am of the opinion that the present case involves fraudulent diversion of public funds by the applicant obtained from the bank. The same cannot be treated lightly or be called as a civil wrong. Cheating institutions of their money is a criminal offence which must be treated as such and dealt with accordingly. The loss caused to the exchequer due to misuse of public money creates an adverse impact on the economy and more often than not, the brunt is borne by the common man. It is thus imperative that disputes involving economic



offences are dealt with stringently to recover public money at the earliest and also set such precedence, which will dissuade others from committing similar offences. At this stage from the statement of the CA, it is clear that he did not issue the certificate dated 11.09.2008 regarding the Net Worth of the applicant as filed by her.

10. Further, the conduct of the applicant also dissuades this court from allowing the present petition. The applicant consented to making partial payment to the complainant post which the court passed specific directions in its order dated 02.06.2022. A liberal timeline was also granted to the applicant to abide by the said directions.

11. The order of dismissal of bail application by learned ASJ too mentions similar conduct as it is noted therein that *“Though, it is not incumbent upon the applicant/accused Rashmee Seengal to make any settlement with the complainant bank, it is pertinent to observe that despite undertaking before the court on 04.05.2022 the applicant/accused and her husband have not made any efforts to even negotiate with the complainant bank”*. Allowing the present petition, in my opinion, shall lay down a wrong precedent, entitling petitioners to not comply with directions issued by the court in a consent order and still be entitled to bail.

12. In view of the above, the application is dismissed.

SWARANA KANTA SHARMA, J.

AUGUST 16, 2022/zp