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

% ***Reserved on: 13.12.2022***
Pronounced on: 14.12.2022

\+ **BAIL APPLN. 2418/2022**

RAHUL GAUR .... Petitioner

Through: Mr. Sidharth Joshi, Ms. Ambareen, Mr. Prakash Singh Negi and Mr. Anmol, Advocates

versus

STATE .... Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State with SI Deep Sharma, D.I.U./New Delhi

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of instant petition under Section 439 of Code of Criminal Procedure, 1973, the petitioner seeks regular bail in FIR bearing no. 151/2018 registered at Police Station Barakhamba Road, New Delhi under Sections 420/406/120B of Indian Penal Code, 1860 ("IPC").

2. Briefly stated, the case of prosecution is that one Sh. Harender Khokhar, Director of M/s Avenue Homes Pvt. Ltd, had alleged that the accused persons had approached him and offered to sell their shares of M/s. Brys Hotel Pvt. Ltd. and shares to the extent of 60% were purchased by the complainant for the sale consideration of Rs. 5.98 Crores approx. which was paid to the accused persons through cheque. Though the accused persons handed over the original share certificates to the complainant, neither the name of complainant's company as share holder of M/s. Brys Hotels Pvt. Ltd. Was reflected on the website of Registrar of Companies nor were the representatives of complainant company inducted in the board of the company. Later on, the complainant came to know that the shares in question were already pledged as security with the Bank of Baroda against the loan account of M/s Brys Hotel Pvt. Ltd., and the said account had been classified as Non-Performing Asset. It is further the case of prosecution that the accused persons requested the complainant to buy back the shareholding of the complainant's company M/s Avenue Homes for a sum of Rs. 18.5 Crores and offered to sell their Hotel Brys Fort, Jaisalmer for a total sum of Rs. 39 Crores to the complainant's another company namely M/s Damont Developers Pvt. Ltd. An agreement to sell dated 14.09.2016 was executed in respect of Hotel Brys Fort, Jaisalmer. Accused company acknowledged the receipt of Rs. 7 Crores and remaining amount of Rs. 32 Crores were to be paid directly to Bank of Baroda by the complainant company for clearing the NPA account liabilities of M/s Brys Hotel Pvt. Ltd. In this regard, a loan of Rs. 20 Crores was to be sanctioned by Bank of Baroda to complainant

company and then a balance of Rs. 12 Crores was to be paid by the complainant company to the bank. Subsequently, an MOU dated 17.09.2016 was also executed between M/s Brys Hotel Pvt. Ltd. and M/s Damont Developers Pvt. Ltd. and a letter was sent to DM Jaisalmer for change in lease in the name of M/s Damont Developers Pvt. Ltd. A loan of Rs. 20 Crores was sanctioned on 31.03.2017 by Bank of Baroda to M/s Demont Developers Pvt. Ltd. Further as per the terms of MOU, a sum of Rs. 9.45 Crores was deposited by the complainant company with Bank of Baroda from September 2016 to January 2018. It is however alleged that on 17.07.2018, the complainant came to know from Bank of Baroda that someone else is also trying to buy Hotel Brys Fort, Jaisalmer. The accused persons, on 19.07.2018, cancelled the agreement and MOU signed with M/s Demont Developers Pvt. Ltd. and also sent letters to DM Jaisalmer requesting to not transfer the lease in favour of M/s Damont Developers Pvt. Ltd. Thereafter, the present FIR was registered on 28.12.2018.

3. Learned counsel for applicant/accused submits that the applicant has been in judicial custody since 09.02.2019, whereas co-accused Navneet Gaur has already been granted regular bail by this Court *vide* order dated 16.08.2021. It is stated that applicant has been falsely implicated in the present case, and the present FIR is a counter-blast to the FIR lodged by the applicant in Jaisalmer against the complainant one day prior to the lodging of instant FIR.

4. It is argued by the learned counsel for applicant/accused that accused persons had taken a friendly loan of around Rs. 6 Crores from

the complainant and signatures of the applicant were obtained on some blank papers as security, which the complainant has later on misused for transfer of shares. It is stated that the present case is purely a civil dispute, as also admitted by the complainant in proceedings before NCLT. It is submitted that there are 18 witnesses to be examined in this case and it will take much time for the trial to conclude, in view of which, the applicant may be released on bail.

5. On the other hand, learned APP for the State, duly assisted by learned counsel for complainant, argues that the allegations against the applicant are serious in nature. It is stated that the applicant was not authorised to sell the shares of the accused company M/s Brys Hotel Pvt. Ltd. as per the terms and conditions of the loan sanctioned by Bank of Baroda to it, but the same was done dishonestly with an intention to defraud the complainant. It is stated that documents relating to the bank accounts reveal that applicant had received Rs.1,08,67,500/- in his account as consideration towards the sale of his shares in the accused company. It is also stated that the FSL report confirms the signatures of the applicant and other accused persons on the documents involved in present case. It is also informed that a Closure report has been filed by the Investigating Officer in the FIR that was lodged by the applicant against the complainant in Jaisalmer, Rajasthan. Learned APP further opposes the present application on ground that applicant is involved in many such cases of similar nature and had earlier been declared as a proclaimed offender.

6. The arguments advanced by both the sides have been heard and material on record has been perused.

7. Before evaluating the facts of the present case, a quick reference can be made to the decision of Hon'ble Apex Court in ***Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) &Anr. (2021) 6 SCC 230***, wherein the Court had observed as under with respect to grant of bail to an accused:

> *"24. The principles governing the grant of bail were reiterated by a two judge Bench in Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496:*
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> > *"9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*
> > *(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
> > *(ii) nature and gravity of the accusation;*
> > *(iii) severity of the punishment in the event of conviction;*
> > *(iv) danger of the accused absconding or fleeing, if released on bail;*
> > *(v) character, behaviour, means, position and standing of the accused;*
> > *(vi) likelihood of the offence being repeated;*
> > *(vii) reasonable apprehension of the witnesses being influenced; and*
> > *(viii) danger, of course, of justice being thwarted by grant of bail.*
> > *Explicating the power of this Court to set aside an order granting bail, this Court held:*
> > *10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal...*

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40. The considerations which must weigh with the Court in granting bail have been formulated in the decisions of this Court in Ram Govind Upadhyay v. Sudarshan Singh, and Prasanta Kumar Sarkar v. Ashis Chatterjee(noted earlier). These decisions as well as the decision in Sanjay Chandra (supra) were adverted to in a recent decision of a two judge Bench of this Court dated 19 March 2021 in The State of Kerala v. Mahesh where the Court observed:

> *"22...All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant accused absconding or otherwise defeating or delaying the course ofjustice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses...."*

8. As evident from the material on record, the allegations against the applicant are serious in nature as the transactions in dispute involve crores of rupees, and the present applicant is alleged to be the main conspirator as well as the main beneficiary of amount in dispute which was obtained after selling the share certificates of their company which they were not authorized to sell as the same had already been pledged with the bank against the loan account of company. The FSL report also confirms the signatures of the applicant on the documents in question.

9. As per the record, 10 criminal cases of similar nature are pending against the applicant including cases registered in other states as well

with the CBI, Delhi. The applicant also has a previous history of being declared as a proclaimed offender in a case relating to FIR No.1139/2015 under Sections 406/420 IPC. Two of the pending FIRs against the applicant are under Section 174A IPC i.e., Non-appearance in response to a proclamation under Section 82. Other than the aforesaid FIRs, the applicant and the accused company are involved in more than 30 cases under Section 138 of Negotiable Instruments Act, 1881, as accused. Thus, considering the seriousness of the allegations and the past conduct of the applicant, this Court is not inclined to grant bail to the applicant.

10. However, considering the fact that applicant has been in judicial custody for more than three years, learned Trial Court is directed to expedite the trial.

11. Accordingly, the present petition stands disposed of in above terms. However, nothing stated hereinabove shall tantamount to any expression of opinion on merits of the case.

12. A copy of this order be forwarded to the learned Trial Court for information and compliance.

SWARANA KANTA SHARMA, J

DECEMBER 14, 2022/