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

Reserved on: 04.07.2023

Pronounced on: 29.08.2023

+ **BAIL APPLN. 832/2023 & CRL.M.A. 9680/2023**

SANJEEVA SHUKLA

..... Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Advocate with Mr. Divyesh Pratap Singh, Mr. Abhinav Rama Krishna, Mr. Abhishek Chandravanshi, Ms. Ishita Bedi, Mr. Vikram Pratap Singh and Ms. Pratiksha Tripathi, Advocates.

versus

STATE THROUGH EOW

..... Respondent

Through: Mr. Amit Sahni, APP for the State with SI Ajay, PS Sector-1, EOW. Mr. Simon Benjamin and Mr Yuvraj Bansal, Advocates for respondent.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 CrPC seeking regular bail in FIR No. 97/2021 under Sections 420/409/120B IPC registered at Police Station EOW Delhi.



FACTS

2. The FIR was registered at the instance of the complainant, namely, Abhenav Khettry on behalf of about 100 investors (who are mentioned in Table A which has been annexed to the FIR) alleging that the individuals who had invested in the Compulsorily Redeemable Preference Shares Schemes of the Company M/s. Credforce Asia Limited have been duped of their hard-earned monies. It was further the allegation of the complainant that the directors and the top management of the company are siphoning off the money outside India and have stopped paying the amounts due to the investors since February, 2020.

3. The complainant stated that all the investors can be grouped into three different categories, which can be stated as under:-

a. **Category A:** Alleged investors whose dividends were not paid after they became due on 31st March, 30th June & 30th September.

b. **Category B:** Alleged investors whose principal amount was not returned regardless of the maturity date.

c. **Category C:** Alleged investors who had paid the principal amount for issuance of share certificates but the said certificates were not issued by the company.

4. It is the allegation of the complainant that the directors and promoters of the company namely, (1) Rajiv Gupta, (2) Mr. Sanjeev Dhingra (3) Mr. Sanjeeva Shukla (petitioner herein) by promising lucrative returns on investment, induced the investors to invest their money by purchasing Credforce Compulsorily Redeemable Preference



Shares with quarterly payment of dividend and payment of the maturity amount at the end of the term. It is alleged that the company thereafter failed to repay a total sum of Rs. 16,57,66,800 (Rupees Sixteen Crores Fifty-Seven Lakhs Six Thousand Eight Hundred only). The breakup of the alleged amount is as under:-

- a. **Category A:** A sum of Rs. Rs. 1,93,74,604/- (*Rupees One Crore Ninety Three Lakhs Seventy Four Thousand Six Hundred and Four Only*) and interest accrued on these amounts, calculated till Sep 30, 2020, is allegedly due to the investors in Category A.
 - b. **Category B:** A sum of Rs. 10,23,92,196/- (*Rupees Ten Crores Twenty- Three Lakhs Ninety Two Thousand One Hundred and Ninety-Six*) along with interest accrued on these amounts, calculated till Oct 11, 2020, is due to the investors in Category B.
 - c. **Category C:** A sum of Rs. 4,40,00,000 (*Rupees Four Crores Forty Lakhs*) has been paid by 38 investors of Category C, however, the company has allegedly failed to provide the requisite documentation confirming the allotment of these shares.
5. The complaint further alleged that the investors were informed by a senior employee of the company that there is a likelihood that the funds deposited in the bank account of the company could be siphoned off to a different bank account of the company held overseas.
 6. A complaint premised on the aforesaid allegations culminated in the registration of the aforesaid FIR dated 13.07.2021 under Sections 420/409/120B. The petitioner was arrested by the Police in the present FIR on 27.09.2022 and produced before the Court of Ld. Jurisdictional Magistrate on 28.09.2022 and his police custody remand



was allowed for a period of 2 days, which was subsequently extended by a period of 3 days.

7. Two of the investors have also filed separate FIRs in Kolkata and the petitioner was produced before the concerned Court in Kolkata and he has been granted bail in case FIR No. 121/2021 registered at PS Shakespeare Sarai Kolkata, West Bengal, on 23.02.2023.

SUBMISSIONS ON BEHALF OF THE PETITIONER

8. Mr. Siddharth Aggarwal, learned senior counsel appearing on behalf of the petitioner submits that M/s. CredForce Asia is an unlisted public company dealing in providing consultancy services and the company had issued 'Compulsorily Redeemable Preference Shares' to tap international opportunities to expand its business overseas and subsequently the preference shares were subscribed by individuals all over the country.

9. It is submitted that the present case is not of *mala fide* conduct or *mens rea* on behalf of the petitioner or the company in as much as it is the admitted case of the complainant that the company had been regularly paying dividends from the year 2015 until December, 2019. The amount paid out by the company during the aforesaid years has been detailed in the bail application which reads as under:-

Financial Year	Interest Payout	Total Maturity	Dividend on redemption	Roll Over	Redemption on maturity
FY 2014-15	-	-	-	-	-
FY 2015-16	1225818	-	-	-	-



FY 2016-17	734180	-	-		
FY 2017-18	418254	39100000	3510460	-	39100000
FY 2018-19	1075056	106750000	1981110	46800000	59950002
FY 2019-20	1882608	227210000	3866604	157000000	70210000
FY2020-21	15016	0	0	0	0
Total	5350931	373060000	9358174	203800000	169260002

10. Learned senior counsel further submits that the failure on the part of the company to honor its commitment towards its investors is due to reasons beyond the control of the company. He submits that in early, 2020, as the world was hit by the COVID-19 pandemic, the world economy was shut down on a global scale which resulted in losses to the company as it could not generate the requisite revenue as manufacturing companies and service industry had stopped engaging consultancy services. It is, therefore, urged that there has been no willful default on the part of the petitioner in repaying its investors and the present case is that of corporate failure and not of fraud.

11. The attention of the Court is also drawn to a copy of Form No. SH-13 Nomination Form issued pursuant to Section 72 of the Indian Companies Act, 2013, and Rule 19(1) of the Companies Share Capital and Debentures Rules, 2014 (annexed as Annexure A-9 to the paper book) to contend that it was informed to the investors that dividend shall be payable at the assured rate to the investors from the profits or retained earnings of the company. Thus, when the company was



reeling under losses and could not generate profits, the petitioner cannot be held liable for default in payment of returns on investment. The relevant clause of Form No. SH-13 reads as under:-

"Dividends at the assured rate of 12.25% p.a. to all RCNCP Series P-FY2015 Preference share-holders will be paid out of TCG Hamilton's profits or retained earnings, and this amount is set by the company's "dividend policy". Dividends shall be first paid to holders of Preference Shares before any dividends are paid to common shareholders."

12. Further, referring to the allegations as contained in the FIR, learned senior counsel submits that no active role in allegedly defrauding the investors has been attributed to the present petitioner. Elaborating on this, the learned senior counsel has drawn the attention of the Court to the minutes of meeting dated 29.08.2023 of the board of directors of the company (*annexed as Annexure P-4 to the paper-book*), whereby the board has decided that for the years 2018-2020, the role of the petitioner in the company shall be marketing, product and brand management. He submits that Mr. Sanjeev Dhingra (*since deceased*), who has been arrayed as accused no. 2 was assigned the task of financial planning and structuring of the company and accordingly, the petitioner had no concern with the financial affairs of the company.

13. Referring to the shareholding pattern of the company, it is urged by the learned senior counsel that the petitioner is not the main accused in the present FIR and he has been made a mere scapegoat in the matter. The petitioner merely holds 5.893% equity shares in the



aforesaid company and the remaining shares are held by the other directors. Further referring to the contents of the charge-sheet, it is submitted that only a sum of Rs. 4.10 lacs has been transferred into the account of the petitioner from 2015 to 2019, whereas a sum of Rs. 2.25 Crores has been siphoned off in the accounts of Rajeev Gupta (Accused No.1).

14. It is further argued that the complainant in the present case is neither a beneficiary nor an authorized representative of the investors. The complainant is the founder and director of Vyana Wealth Management Pvt. Ltd. and had earlier acted as an agent of the company and had received crores of rupees towards commission from the company. For this purpose, the attention of the Court is drawn to Annexure P-7 of the paper book. Further, it is submitted that various complaints have been lodged by investors alleging that the complainant had falsely represented and induced the investors to invest in the company promising high returns on investment.

15. It is also the contention of the learned senior counsel that charge-sheet in the present case has been filed and investigation qua the petitioner is complete, no useful purpose would be served in keeping the petitioner behind bars. Further, a total of 103 witnesses are cited to be examined in the present case and the trial is going to take considerable time.

16. Lastly, it is submitted by the learned senior counsel that the petitioner has clean antecedents and is not a flight risk in as much as the petitioner had joined the investigation as and when he was directed by the investigating officer before his arrest on 27.09.2022.



**SUBMISSIONS OF THE APP ASSISTED BY THE COUNSEL
FOR THE VICTIMS**

17. Mr. Amit Sahni, learned APP for the State assisted by the counsel for the victims has opposed the grant of regular bail to the petitioner citing that the present case is Multi Victim Scam/Fraud, where the accused has duped a large number of individuals. Further, it is submitted that most of the investors in the present case are senior citizens who had invested their hard-earned money in the company on the assurances of the petitioner and this fraud has derailed the lives of more than 218 families.

18. The learned APP has repelled the submission that the petitioner is not a flight risk and submits that there is a possibility that the petitioner may flee from justice in case he is enlarged on bail. It is further submitted that the co-accused in the present case namely, Rajeev Gupta and his wife, Geetika Gupta are absconding and have not joined the investigation. Further, warrants of arrest in 38 cases under Section 138 NI Act have been issued against the petitioner, where he had neither joined the investigation nor appeared before the concerned Court.

19. It is also a submission of the learned APP that the petitioner was non-cooperative during the investigation and therefore, he was arrested for custodial interrogation. It is urged that the antecedents of the petitioner are not clean in as much as, apart from the present FIR, various other criminal cases are pending against the petitioner. The said cases are as under:-



S. No.	Criminal Case	Place where it is pending
1.	FIR No. 97/2021 dated 13.07.2021 under Sections 409/420/120B IPC registered at PS EOW, Delhi	New Delhi
2.	FIR No. 121/2021 dated 13.08.2021 under Section 120B/420/467/468/471 IPC registered at PS Shakespeare Sarani, Kolkata	Kolkata
3.	FIR No. 135/2022 dated 29.09.2022 registered at PS Park Street (Special Cell), Kolkata	Kolkata
4.	Warrant of Arrest under Section 138 NI in Case No. CS/30762/2021, Case No. CS/30764/2021	Kolkata

20. He submits that the petitioner was involved in the day-to-day affairs of the company as the petitioner was appointed as a full-time director on 04.12.2017 for a term of five years. He further submits that the petitioner was appointed as the CFO of the company on 05.03.2019, thus the financial irregularities committed by the company were committed with the active connivance of the petitioner.

21. Learned APP for the State further contends that the intention of the accused persons was dishonest from the very inception as the petitioner as well as the other co-accused have created 2 sets of forged and inflated balance sheets of the company year after year since 2014; one for MCA and the other for Income Tax Authorities and because of this act of the petitioner, the statutory auditors of the company have filed a complaint with the SHO, Desh Bandhu Gupta Road. He



submits that the profits of the company were inflated by the petitioner as well as the co-accused persons to induce innocent people to invest their hard-earned money in the company.

22. He contends that the present case of default on the part of the company in honoring its commitments cannot be attributed to a case of corporate failure or market risks as the pandemic only began in March, 2020; whereas, the company had defaulted on its obligations in December, 2019 as well as February, 2020 when there was no pandemic. It is also submitted by the learned APP that even if it is assumed that the company could not honor its commitments due to COVID-19, there is no reason given by the petitioner as to why the individuals in Group C were not allotted their preference shares despite the company accepting consideration towards the same.

23. It is further submitted by the learned APP for the State that the petitioner was actively involved in duping the innocent investors and had also received a sum of Rs. 4 lakhs (approx) in his personal bank account apart from his salary. The acceptance of the said amount, which remains unexplained by the petitioner points towards his complicity in the matter.

24. In these circumstances, the learned APP submits that the present petition for grant of regular bail be dismissed.

ANALYSIS AND FINDINGS

25. I have heard the learned senior counsel for the petitioner, as well as, the learned APP for the State assisted by the counsel for the victims and have perused the record.



26. The contention of the learned senior counsel for the petitioner that the petitioner merely holds 5.893% equity shares in the company was not refuted by the learned APP or by the learned counsel appearing on behalf of the victims.

27. A perusal of the status report dated 12.04.2023 shows that more than Rs. 2.25 Cr have been diverted into the personal account of Rajeev Gupta maintained with Kotak Mahindra Bank from the account of M/s Credforce Asia Ltd. It is also mentioned in the status report that the investigation revealed that a sufficient amount, since the allotment of Preference Shares to the investors, has been diverted and used by the alleged director, namely, Rajeev Gupta.

28. It is also mentioned in the status report as also in the charge-sheet that co-accused Rajeev Gupta, who is a promoter director of the company, has not joined the investigation so far and he is residing abroad (USA). An open NBW has been issued against him.

29. In the charge-sheet the role assigned to the petitioner is that he was one of the directors of the company since 2012 and was actively involved in day to day affairs of the alleged company. Further, he attended the meeting of the Board of Directors and was an authorized signatory of the alleged company. In so far as the diversion of funds to the personal account of the present petitioner is concerned, it is mentioned in the status report that only an amount of Rs. 4 Lakhs approx. has been credited into his personal account besides salaries.

30. From the charge-sheet and the status report, it appears that a substantial amount (Rs. 2.25 Cr) which was collected from the investors has been diverted into the personal accounts of the promoter



director namely, Rajeev Gupta. Evidently, the diversion of funds to the personal account of the petitioner is miniscule (i.e. Rs. 4 Lakh) as compared to the diversion into the personal account of Rajeev Gupta.

31. This Court is conscious of the fact that punishment for the offence under section 420 IPC is imprisonment for a term which may extend to seven years and for the offence under section 409 IPC, the punishment is for a term which may extend to ten years or life imprisonment, but at the same time it is yet to be adjudicated and established during the trial as to what was the exact role of the petitioner in the alleged offence and the extent of his involvement in the financial matters of the company. It is also yet to be ascertained whether ingredients of the alleged offences under sections 409/420 IPC are made out against the present petitioner.

32. At this juncture, it is also apposite to refer to the following observations of the Hon'ble Supreme Court made in *Sanjay Chandra v. CBI, (2012) 1 SCC 40*:

21. 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. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted 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 India, 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 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 unconvicted person for the propose of giving him a taste of imprisonment as a lesson.

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40. 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.

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46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled



to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

(emphasis supplied)

33. In *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791, it was observed by the Supreme Court that even if the allegation is of commission of a grave economic offence, it is not a rule that bail should be denied in every case and ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial. Para 23 of the said decision reads thus:

23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is



one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

34. In *Satender Kumar Antil vs. State of Maharashtra*, (2022) 10 SCC 51, the Supreme Court in the context of the economic offences, after observing that law, as laid down in *Sanjay Chandra (supra)* and *P. Chidambaram (supra)*, will govern the field, deprecated the approach of deciding the bail applications strictly, contrary to legal principles. The Supreme Court also emphasized the role of the criminal courts as guardian angels of liberty:

93. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

94. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts



would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.

(emphasis supplied)

35. As argued by the prosecution, the petitioner was arrested for custodial interrogation as he did not cooperate during the investigation. However, it is a matter of record that the investigation is now complete and the charge-sheet stands filed qua the petitioner. The present case is otherwise based on documents and all incriminating documents have already been recovered by the investigating agency and made part of the charge-sheet. Evidently, the custody of the petitioner is no longer required.

36. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be awarded to him. Detention is not supposed to be punitive or preventive. The seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in the commencement and conclusion of the trial is a factor to be taken into account and the accused cannot be kept in custody for an indefinite period if the trial is not likely to be concluded within a reasonable time.¹ At this stage, it cannot be overlooked that the petitioner has been in custody since 27.09.2022 and the

¹Vinod Bhandari v. State of Madhya Pradesh, (2015) 11 SCC 502



prosecution has cited as many as 103 witnesses which would inevitably lead to a protracted trial. In the given circumstances, no useful purpose will be served in keeping the petitioner behind bars.

37. In so far as the apprehension expressed by the learned APP as regards the petitioner being a flight risk, the same can be dispelled by putting stringent conditions.

38. Considering the above-discussed circumstances and keeping in perspective the law laid down by the Hon'ble Supreme Court, I am of the view that the petitioner is entitled to the grant of bail pending trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 1,00,000/- with two sureties of the like amount, out of which one should be of the family member, subject to the satisfaction of the Trial Court/Duty Magistrate/Jail Superintendent, further subject to the following conditions:

- a) Petitioner/applicant shall surrender his Passport, if any, before the Trial Court at the time of furnishing bail bond/surety bond.
- b) Petitioner/applicant shall appear before the Court as and when the matter is taken up for hearing.
- c) Petitioner/applicant shall provide all the mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating officer concerned.
- d) Petitioner/applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the present case so as to dissuade them from disclosing such facts to the Court or to any other authority.



39. It is made clear that the observations made hereinabove are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

40. The petition stands disposed of.

41. Order *dasti* under the signatures of the Court Master

42. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

AUGUST 29, 2023

N.S. ASWAL/MK