

\$~

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

Reserved on: 10.01.2023
Pronounced on: 17.01.2023

%

+ **BAIL APPLN. 1137/2021 & CRL.M.A. 15323/2021**
SHEETAL SAHANI Petitioner

Through: Mr. Vijay Kinger, Mr. D.D. Pandey, Mr. Ashwani Gehlot and Mr. Abhishek Pandey, Advocates

versus

STATE -GOVT. OF NCT OF DELHI Respondent

Through: Ms. Rupali Bandhopadhyia, ASC for State with Mr. Akshay Kumar and Mr. Abhijeet Kumar, Advocates and with Insp. Raj Kumar Pal, P.S. EOW. Mr. Jitender Chaudhary and Ms. Shilpa, Advocates for complainant.

+ **BAIL APPLN. 1138/2021**
SUKHVINDER SINGH SAHANI Petitioner

Through: Mr. Vijay Kinger, Mr. D.D. Pandey, Mr. Ashwani Gehlot and Mr. Abhishek Pandey, Advocates

versus

STATE -GOVT. OF NCT OF DELHI Respondent

Through: Ms. Rupali Bandhopadhyaya,
ASC for State with Mr.
Akshay Kumar and Mr.
Abhijeet Kumar, Advocates
and with Insp. Raj Kumar Pal,
P.S. EOW.

Mr. Jitender Chaudhary and
Ms. Shilpa, Advocates for
complainant.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 438 of Code of Criminal Procedure, 1973 has been filed seeking grant of bail to the applicants who are apprehending their arrest in connection with FIR No. 32/2021, registered under Sections 420/406/120B/34 of Indian Penal Code, 1860, at Police Station Dwarka-South, Delhi.

2. The FIR was registered at the instance of one Mrs. Rashmi Batra who in her complaint had alleged that the applicants had cheated her and several other persons by fraudulently taking money on the pretext of various investments and promising high rates of return on such investments ranging between 18% to 20% per annum. It was also stated that the applicants had represented that they were engaged in some wholesale as well as real estate business in Punjab and were well-known persons in the locality. Initially to gain the trust of the victims, the applicants had returned the money of some of the investors with the promised rate of return but the victims were again made to reinvest in

some other investment schemes with more lucrative returns. However, this time, the accused persons succeeded in collecting huge amounts from the victims, but they neither gave any return on the investments nor returned the principal amount. Subsequently after registration of present FIR, the investigation of the case was transferred to Economic Offences Wing Delhi in February, 2021. During the course of investigation, more complaints having similar set of allegations also emerged. All these complaints were clubbed together and as of now, as per prosecution, there are a total of 30 complainants having been duped of more than Rupees Eight crores. During the investigation, the statements of the complainants were recorded wherein it was revealed that the said process of cheating had started somewhere around in the year 2016-17. It was stated that the applicants used to meet the victims as well as their relatives and friends at different locations to explain their investment schemes and also used to arrange lunch parties, distribution of gifts etc. to win the confidence of these people. It was also revealed that during these gatherings and parties, money was collected from the victims by way of cash, without issuing any receipts against the same. It was stated that even during the period of Covid-19 lockdown, the applicants were successful in persuading the complainants to part away with their money for the said investment schemes.

3. Learned counsels for applicants/accused persons, during the course of hearing of present application, stated that they were ready to deposit the original title documents of three immovable properties mentioned in the status report as well as in their petition. Later, it was

also argued by learned counsels for the applicants that as per several judgments of the Hon'ble Supreme Court, the learned Sessions Judge could not have imposed any condition regarding depositing the amount as has been mentioned in the order dated 18.01.2021. It is therefore, stated that the present applications be allowed.

4. It is also submitted by learned counsels for applicants that applicants have been appearing and cooperating with the investigating agencies throughout and recovery of all the relevant documents and items has already been affected from their house. It is also averred that many complainants were even given back their money and a few of the complainants had also filed civil suits for recovery, and these facts have not been disclosed by the State.

5. Opposing the present bail application, learned ASC for the State submits that a verification report was filed by the prosecution, as per which, the properties in question do not have any clear title except for the one which is situated at Maya Puri, however, the same also is a subject matter of litigation filed by the applicant against one of the tenants of the said property for eviction of the shop in which he is in possession. Learned ASC for the State, as well as learned counsel appearing for the complainants who are present in person, have stated that since the properties sought to be pledged do not have a clear title, the intention of the accused persons is clear.

6. It is stated by learned ASC for the State that the applicants have not cooperated with investigation as during the course of investigation, notices were issued to relevant persons to join the investigation and to provide the relevant information. Though the accused persons joined

the investigation, they did not cooperate in investigation and failed to provide the relevant information. Further, both the alleged persons did not provide their mobile phones allegedly used by them for WhatsApp Chats/communication with the complainants.

7. Learned counsel for the petitioners, controverting the aforesaid contention of learned ASC, stated that they are not in possession of those mobile phones, and that though during one of the hearings before this Court, it was stated that the mobile phones will be handed over to the IO, however, in the later hearings, it was stated by learned counsels for the applicants, upon instruction from their clients, that the mobile phones were missing since the time of search.

8. Heard the arguments of both the sides at length and perused the material on record.

9. A perusal of record reveals that one of the applicants i.e. Sheetal Sahani was granted interim protection from arrest, by the Court of learned ASJ-04, South West, Dwarka Courts *vide* order dated 28.01.2021, with the following conditions:

"...In view of respective submissions, interim order in favour of accused/applicant is passed. It is directed that accused be not arrested till NDOH. Accused is directed to deposit FDR in sum of Rs. 2 crores in name of concerned Ld. Area MM before NDOH. Accused is directed to join investigation and co-operate in the investigation. Accused is directed to provide her mobile phone number/numbers to IO today itself and is directed to make three video calls to IO everyday and send her location to IO thrice everyday. In case, accused does not deposit FDR of Rs. 2 crores as directed, interim order in favour of accused shall be deemed to have been vacated on NDOH..."

10. Thereafter, an application under Section 438 Cr.P.C. was also moved by co-accused/applicant Sukhvinder Singh Sahni and the learned Trial Court *vide* order dated 12.02.2021 extended the interim protection granted to both the applicants herein for a period of one month, after considering their submissions that the amount of Rs. 2 crores directed to be deposited as one of the conditions for grant of interim protection was substantial and some more time was required to deposit the same. Since the applicants could not deposit such an amount, an application for modification of such order was moved praying that they be allowed to deposit the title deeds of immovable properties worth more than Rs. 2 crores, however, the application was dismissed by the learned Sessions Judge on the ground that the intention of the petitioners was not to deposit the FDRs and also that they were asked to deposit the FDRs and not properties in lieu thereof. After hearing arguments on merits, the learned Trial Court, *vide* order dated 17.03.2021, was pleased to dismissed the bail applications of both the accused persons.

11. This Court *vide* order dated 06.04.2021, after considering the submissions of applicants that they were ready to deposit the original documents of three properties which could fetch more than Rs. 2 crores against the claim of Rs. 1.25 crore of complainants, granted interim protection to the applicants upon them joining and cooperating in the investigation. Applicants were further directed to file valuation reports of the properties and the State was to then verify as to whether these properties could actually fetch the amount in dispute.

12. In this regard, it is not in dispute that out of these three properties, one of the properties i.e. No. 101 in Block-D, Rewari Line, Mayapuri Phase-2, New Delhi-110064, valued at around Rs. 2 crores, though owned by the applicants, is a subject matter of civil litigation wherein the applicant herein has filed a suit for eviction against the tenant. Further, the second property i.e. House no. C-185-B, Vaka Jattan Wala, Chauntra, Patiala, Punjab, is not owned by the applicant Sheetal Sahni, rather by her younger sister. Similarly, the third property i.e Shop bearing no SG-12, Ground Floor, Supreme Plaza, Sector 6, Dwarka-110075 is jointly owned by applicant Sheetal Sahni and one of the complainants namely Sakshi Aggarwal. Thus, none of the properties has a clear title so as to dispose of the same and generate money and compensate the complainants. Even otherwise, the total valuation of all the properties is around Rs. 2-3 crores, whereas as per the case of prosecution, the total amount duped so far by the applicants is around Rs. 8 crores.

13. However, it has now emerged that claims of one of the complainants namely Ms Sakshi Agarwal, who had alleged of being duped of Rs. 66 lakhs, has been settled by the applicants by way of transferring the share of applicant in one of the three immovable properties i.e. the one situated in Dwarka to the said complainant, which was earlier jointly owned by the said applicant and complainant. The remaining two immovable properties, as stated in preceding para, either do not have a clear title or are not owned by the applicants.

14. For the same reasons, at this stage, this Court is not impressed by the arguments of learned counsel for applicants that the Trial Court

could not have imposed any such condition of depositing an FDR of Rs. 2 crores, more particularly, because the learned counsel for applicants had themselves stated before this Court as well as in the present application that instead of an FDR, the applicants are ready to deposit the original title deeds of three immovable properties which are worth more than Rs. 2 crores in order to seek pre-arrest bail. Further, the valuation reports of the said properties were submitted on behalf of the applicants themselves which were further verified by the State.

15. Needless to say, this Court is now considering the present application on its merits.

16. As per the Status Report dated 14.07.2021, the applicants though had joined the investigation, there was non-cooperation on their part as far as revelation of important details and handing over of their mobile phones containing the relevant chats with the complainants were concerned. This Court further notes that as recorded in order dated 19.12.2022, the applicants were asked to appear before the investigating authorities and submit their mobile phones to the IO. However, it was later stated by learned counsels for applicants that they were not in possession of the said mobile phones, which had been missing since the house of applicants was searched by the police. It is pertinent to note that the seizure memo on record makes no mention of any mobile phone. Further, the prosecution, by way of its Status Report dated 22.03.2022, submits that during the investigation, a total of 30 complaints amounting to around Rs. 8 crores (approximately), have been received so far against the present applicants.

17. In the case at hand, a reference can be made to the decision of Hon'ble Supreme Court in *Sumitha Pradeep v. Arun Kumar C.K. and Anr., 2022 SCC Online SC 1529*, wherein the points to be considered at the time of grant of anticipatory bail were summed up as: (i) prima facie case against accused, (ii) nature of offence, and (iii) severity of the punishment. The relevant observations, in this regard, read as under:

"...In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail.

Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail..."

18. Furthermore, in context of grant of anticipatory bail in economic offences, a reference can be made to the decision of Hon'ble Apex

Court in *P. Chidambaram v. Directorate of Enforcement* (2019) 9 SCC 24, wherein it has been observed as under:

“...Economic Offences:-

76. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In *Directorate of Enforcement v. Ashok Kumar Jain* (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.

78. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in *State of Gujarat v. Mohanlal Jitamalji Porwal and others* (1987) 2 SCC 364, it was held 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.....”

79. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in *Y.S. Jagan Mohan Reddy v. CBI* (2013) 7 SCC 439, the Supreme Court held as under:-

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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.

35. 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.”

19. The allegations against the accused persons are of committing fraud and misappropriation, which was initially stated to be about Rs. 1.25 crores, and which by now as per investigation, after addition of other complainants, is about Rs. 8 crores. It is stated that the allegations relate to fraud and a promise of higher rate of interest ranging from 18-20 per cent per annum, and since the applicants failed to return the dues to the complainants, the present FIR was registered. The applicants are accused to be the kingpin of a huge ponzi scam running into crores of rupees and the seriousness of the allegations is apparent from the fact that the accused persons had duped around 30 persons, who are alleged to have been duped and have parted with their money, even during the period of Covid-19 lockdown when people were undergoing their hardest days have been easily enticed to part away with their funds on

false pretext and promises. The statement of bank accounts of applicants also reflects that the amounts were channeled into their accounts.

20. In the light of the aforesaid discussion, it cannot be ruled out that custodial interrogation of the applicants is entirely uncalled for, since the same might be necessary to unravel the details of the so-called investment schemes and transactions and to also unearth the money trail as the recovery of alleged cash amount has not yet been made. Moreover, as per the case of prosecution, one co-accused namely Ali who used to collect money on behalf of the applicants has been absconding and is yet to be arrested.

21. Considering the seriousness of the allegations and the fact that applicants were allegedly involved in alluring and cheating large number of depositors through their investment schemes, as well as taking into account the conduct of the applicants so far, this Court is not inclined to grant anticipatory bail to the applicants/accused persons.

22. Accordingly, the present bail application stands dismissed.

23. It is, however, made clear that this Court has examined the facts of the case at a *prima facie* stage for the purpose of consideration of the present application only and has not returned any finding on the merits of the case.

SWARANA KANTA SHARMA, J

JANUARY 17, 2023/zp