

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 27.01.2023

+ **BAIL APPLN. 2009/2022**

SANJAY SAXENA

..... Applicant

versus

STATE OF GNCTD

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. R.K. Handoo, Mr. Aditya Chaudhary & Mr. Ashwin Kataria, Advs.

For the Respondent : Ms. Priyanka Dalal, APP for State.
SI Ajay, EOW

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439, Code of Criminal Procedure, 1973 (**CrPC**) seeking regular bail in FIR No. 0071/2020 dated 20.07.2020, under sections 420/406/409/411/414/467/468/471/212/120B of the Indian Penal Code, 1860 (**IPC**), registered at Police Station Economic Offences Wing (**EOW**).

2. The FIR was registered on a complaint given by one Dr. Prashant Sarin on his behalf and on behalf of his company namely M/s Focus Imaging and Research Center Pvt. Ltd.

3. It was alleged that in July, 2018, the complainant along with the other Director of his company met the applicant who was introduced as a big financier / gold and diamond merchant having a company by the name of 'LD Group'.

4. It was alleged that the applicant represented that he can arrange finances and loan to the complainant's company up to the sum of ₹75 Crores at cheap lending rate of interest. The complainant got induced since the usual bank interest in India was much higher than what was being proposed by the applicant and other co-accused persons.

5. The complainant claimed that he did not get suspicious since the applicant was introduced by the uncle of his own partner and their company, at that time, was also looking for funds.

6. The complainant, thereafter, met the applicant on various occasions in different five-star hotels. The applicant also visited the business premises of the complainant on the pretext of due diligence and for evaluating the machineries at the complainant's premises, sales, balance sheets, etc. for the purpose(s) of valuation and for modalities in relation to the collateral / securities, etc.

7. All these meetings are claimed to have taken place between 1st and 10th of July, 2018 and it was finally decided that the company 'LD Group' will finance the complainant's company 'M/s Focus Imaging and Research Center Pvt. Ltd.' a sum of ₹75 Crores in two parts.

8. As a collateral, some properties belonging to the complainant were agreed to be pledged with the applicant. One of such properties was mortgaged with the HDFC Bank.

9. It was alleged that for the said purpose, a Memorandum of Understanding (MOU) dated 18.07.2018, was entered into between the 'LD Group' and 'M/s Focus Imaging and Research Center Pvt. Ltd.'.

10. It was further alleged that pursuant to the execution of the MOU, the applicant started calling the complainant and asked for financial helps on one pretext or the other which were paid to him on different dates in cash. The applicant also took an undated cheque for a sum of ₹75 Crores as security cheque for the loan amount. Sixty post-dated cheques amounting to ₹33,75,000/- each, towards the interest at the rate of 6% per annum on a loan of ₹75 Crores were also issued by the complainant in favour of the applicant.

11. The applicant has claimed to have handed over a cheque for a sum of ₹35 Crores dated 17.08.2018 towards the first tranche of loan. The said cheque, however, is claimed to have not been presented at that time on a request made by the applicant.

12. The applicant, thereafter, represented to be in some income tax dispute and requested money from the complainant on the pretext that his accounts have been frozen. In this regard, it is claimed that the complainant transferred a sum of ₹80 Lakhs on 13.11.2018, 60 lakhs on 11.03.2019, 10 Lakhs on 12.04.2019 and 11 Lakhs on 12.04.2019,

besides this another sum of ₹39.50 Lakhs was handed over in cash on different dates.

13. Some amount was given to the Applicant for the purchase of stamp papers. It is alleged that in all, a sum of ₹4,25,50,000/- was transferred to the applicant on different dates, out of which, ₹3,86,00,000/- was transferred by way of RTGS and ₹39.50 Lakhs was paid in cash, which was taken by the applicant on one pretext or the other.

14. It is claimed that this went on till as late as November, 2019. The applicant then gave certain cheques for the amount taken by him from the complainant. The said cheques were presented to the bank but have been dishonoured for insufficiency of funds.

15. The complainant then realised that they have been duped and gave a complaint dated 08.01.2020 to police station Crime / EOW, which ultimately led to registration of the present FIR.

16. The applicant was arrested on 16.08.2020 and after the completion of investigation, the chargesheet was filed before the learned CMM (West), Tis Hazari Courts on 09.11.2020. The applicant is in custody since then.

17. Learned counsel for the applicant submits that the applicant has already undergone more than two years of incarceration.

18. He submits that the investigation in the present case, was completed long back and the chargesheet has already been filed. Even at this stage, the trial is not likely to get over in near future.

19. He has relied upon an agreement dated 17.07.2018 to contend that the transaction between the complainant and 'LD Group' was in relation to the investment being made by the complainant in the business of jewellery showroom of the applicant in return of 6% rate of interest on the total investment.

20. He submits that pursuant to the said agreement, the applicant had also provided the gold and other jewellery of value of ₹5.2 Crores as a security.

21. He submits that even though the said agreement was provided to the police, but the police accepted the averments of the complainant without investigating the allegation's of the forgery. The alleged MOU provided by the complainant is only a photocopy.

22. He further submits that the allegations on the face of it, are fallacious that the money was paid over a period of time for the purchase of stamp paper and to help the applicant.

23. He submits that in terms of the law laid down by this Court, in the absence of the company being made a party no prosecution, can be proceeded against the applicant. Admittedly, the money had gone into the account of the company.

24. He further submits that the bank accounts of the company, as well as the personal accounts of the applicant have already been freezed and no purpose would be served by keeping the applicant in further incarceration. The complainant is already pursuing the case under the Negotiable Instruments Act, 1881 (**NI Act**) for dishonour of cheques allegedly provided by the applicant and even if the allegations are taken at their face value, the present transaction / dispute is purely a commercial transaction / dispute of civil nature. The son of the applicant has also been arrested in order to pressurise the applicant to not recover money from the complainant.

25. The applicant has also annexed the copies of the receipts showing the delivery of the gold and jewellery items to the complainant.

26. Learned APP for the State has opposed the grant of bail to the applicant.

27. She submits that the applicant has been involved in six other similar cases wherein people have been cheated by adopting the similar *modus operandi*.

28. She submits that the applicant is found to have forged various documents and have cheated a huge amount of money.

29. She submits that the applicant had been absconding initially and was not found at the various addresses. His house was found locked during the search. His entire family was non-cooperative during the investigation. He kept changing his location from Delhi to Ghaziabad

to Sonipat to Jaipur and used different mobile phones and sim cards during the period of investigation and was finally intercepted in Jaipur, Rajasthan. The alleged vouchers submitted by the applicant evidencing the purchase of gold for the purpose of delivering it to the complainant are found to be bogus.

CONCLUSION

30. It is a settled law that in order to establish the offence of cheating, what is required to be shown is that the accused had dishonest intention at the time of making representation or promise. Mere failure to keep the promise on a subsequent date cannot be presumed that such culpable intention existed right at the beginning. Whether the accused had a dishonest / fraudulent intention right when the alleged agreement was entered into, in my opinion, is essentially a matter of trial.

31. In the present case, the applicant has relied upon another set of Memorandum of Understanding (**MOU-1**) in order to show that the complainant had, in fact, invested certain amount of money in the applicant's company. Though it is alleged that the blank stamp papers were given to the applicant by the complainant and the said MOU-1 was printed on those stamp papers with a fraudulent intention.

32. The applicant has admitted to have received a certain amount of money from the complainant and has stated that the jewellery in lieu of the said amount was handed over to the complainant. The said aspect has been disputed by the prosecution.

33. It is not in doubt that the allegations made are serious in nature. The mode and manner in which the applicant is alleged to have committed the crime makes it a grave offence. The allegation that he had earlier been involved in the offence of similar nature would normally disentitle the applicant of any order of bail. However, it cannot be lost sight of the fact that the object of bail is to secure the appearance of the accused during the trial, the object is neither punitive nor preventive and the deprivation of liberty must be considered punishment unless the same is required to ensure that the accused will stand his trial.

34. It is not in dispute that the investigating agency has already completed investigation and further incarceration, therefore, is no longer required for any investigation. The evidence is documentary in nature and is already in possession of the State. The veracity of the allegations and the strength of evidence is a matter of trial.

35. It is also not in dispute that there are various litigations which have been initiated by the complainant against the applicant in the form of complaints under NI Act. The incarceration of the applicant in such scenario for further period, in my opinion, would also cause deprivation of his right of legal defence. The allegations and the counter allegations, as noted above, would be decided during the course of the trial and the accused cannot be made to remain in custody for an infinite period only for the reason that serious allegations have been made against him or that he had been earlier involved in the cases of similar nature.

36. The courts have held that the denial of bail is a restriction on the liberty of the accused and his right to prepare defence, and only because serious allegations have been made cannot be a reason to justify deprivation of the liberty before the conviction.

37. The Hon'ble Apex Court, in the case of ***Prabhakar Tewari v. State of Uttar Pradesh and Another: 2020 SCC OnLine SC 75***, held that the mere pendency of several cases against the accused cannot be factor in itself for refusal of prayer for bail.

38. The allegation relates to an incident which is more than two years old. It cannot be an apprehension at this stage that the accused would tamper with the evidence or extend any inducement / threat to the complainant or any of the witnesses, especially when the chargesheet was filed way back on 09.11.2020.

39. It is though alleged that the applicant had not cooperated at the initial stages and was apprehended after a lot of efforts and there are chances that he would not join the trial, the same however can be taken care of by putting appropriate conditions.

40. Considering the aforesaid facts and the fact that the applicant is in judicial custody since 16.08.2020 and the trial is likely to take a considerable amount of time, this Court feels that no purpose would be served by keeping the applicant in further incarceration. Therefore, the applicant is directed to be released on bail in FIR No. 0071/2020, on furnishing a bail bond for a sum of ₹3 Lakhs with two sureties of the

like amount to the satisfaction of the learned Trial Court / Duty Metropolitan Magistrate subject to the following terms and conditions:

- i) The applicant shall not leave the city without informing the concerned IO / SHO;
- ii) The applicant shall surrender his Passport before the learned Trial Court and shall not leave the country without permission of the learned Trial Court;
- iii) The applicant shall upon his release give his mobile number to the concerned IO / SHO and shall keep his mobile phone switched on at all times;
- iv) The applicant shall drop a pin on the google maps application to indicate his location to the concerned IO/SHO;
- v) The applicant shall appear before the learned Trial Court on every date of hearing;
- vi) The applicant shall not change his address without informing the concerned IO / SHO;
- vii) The applicant shall not, in any manner, contact the complainant or any of the witnesses.

41. In the event of there being any FIR/DD entry/ complaint lodged against the applicant or the applicant is found to have violated any of the conditions mentioned above, it would be open for the State to seek redressal by filing appropriate application for cancellation of bail.

42. The present application is allowed in the aforesaid terms.

43. It is also made clear that the observations made in the present case are only for the purpose(s) of considering the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

44. *Dasti under signature(s) of the Court Master.*

JANUARY 27, 2023

KDK

AMIT MAHAJAN, J

