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

% ***Reserved on : 26.05.2023***
Pronounced on: 02.06.2023

\+ **BAIL APPLN. 2604/2022**

RAJEEV RAJ RATHEE ..... Petitioner

Through: Mr. Daya Krishan Sharma, Mr. Ankit Bhanot and Mr. Bal Krishan Sharma, Advs.

versus

STATE & ANR. ..... Respondents

Through: Ms. Meenakshi Dahiya, APP for the State.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J

1. The instant application under Section 439 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking regular bail in case FIR bearing No. 171/2020 dated 03.11.2020, registered at Police Station E.O.W. Delhi, for offences punishable under Sections 420/467/468/471/120B of the Indian Penal Code, 1860.

2. The brief facts of the case are that in year 2013, Rajeev Raj Rathee (petitioner herein) proprietor of M/s Shagun Enterprises, Delhi

approached the 2 banks i.e., RBL Bank and Bank of Maharashtra for availing home loan by mortgaging the property i.e., H. No. 2066, HUDA, Gymkhana Club, Sector-4, Urban Estate, Gurgaon, Haryana.

3. It is alleged that after verification of title documents along with the document submitted by the petitioner, both the banks sanctioned the loan to him on the same property. In pursuance, RBL Bank sanctioned ₹2.50 Crores as loan vide Sanction letter dated 02.04.2013 and similarly Bank of Maharashtra sanctioned ₹1.30 Crores to the applicant vide letter dated 13.12.2013. It is further alleged that the petitioner had also applied for loan before another 2 banks i.e., Allahabad Bank and ICICI Bank by preparing and submitting forged property papers. On the basis of this complaint the present case was registered, investigation was taken up and accordingly the petitioner was arrested.

4. I have heard the Ld. Counsel for the petitioner, Ld. APP for the State assisted by the Ld. Counsel for the complainant, perused the Status Report filed by the State and also perused the records of this case.

5. It is submitted by the learned counsel for the petitioner that the petitioner is in judicial custody since 07.07.2021. It is further submitted by him that the investigation has already been completed and chargesheet has been filed. It is further submitted that the case is based on documentary evidence and no forged title deed has been recovered from the petitioner. It is further submitted that the entire case is based on bank accounts and bank statements along with

documents which are already in custody of the Investigating Officer. It is further submitted by the learned counsel for the petitioner that the complainant banks has already initiated proceedings before DRT and subsequently on 13.03.2019, Double Storey House of the petitioner bearing No. 2066 Sector-4 Gurugram has been auctioned by Bank for a sum of ₹1.92 Crores. It is further submitted by the learned counsel for the petitioner that the petitioner was granted interim bail by the learned Trial Court vide order dated 02.12.2021 for a period of three months so that the petitioner can make arrangements to repay the alleged loan amount. It is further submitted by him that the completion of trial would take sufficient time and no useful purpose would be served by keeping the petitioner behind the bars. It is further submitted that the petitioner has clean past antecedents and is a poor person who has deep roots in the society.

6. On the other hand, it is submitted by learned APP while vehemently opposing the present bail application that the allegations against the petitioner are serious in nature. It is further submitted by her that the petitioner has admitted that he had applied for loan in all four Banks against the same property and had also identified his signatures on documents provided to the Banks, further this fact has also been corroborated by the FSL report. It is further submitted that the petitioner was granted interim bail for 3 months on the term of settlement on an undertaking given by the petitioner but he failed to fulfill his commitment and was again sent to judicial custody. It is

further submitted that the cheated amount is ₹7 crores approximately of all four banks which is not yet recovered.

7. The object of bail is to secure the presence of the accused at the time of trial; this object is, thus, neither punitive nor preventative, and a person who has not been convicted should only be kept in custody if there are reasons to believe that they might flee from justice or tamper with the evidence or threaten the witnesses. If there is no apprehension of interference in administration of justice in a criminal trial by an accused, then the Court should be circumspect while considering depriving the accused of their personal liberty. Mere vague belief that the accused may thwart the investigation cannot be a ground to prolong the incarceration of the accused.

8. In the instant case, chargesheet has been filed, and all the evidence available which are documentary in nature are lying in custody of the investigating agency. The issue of whether the petitioner was entrusted with the any amount or not or is involved in preparing the forged documents is something that will be determined during the course of trial and cannot be considered at this stage. It is not disputed that the petitioner was granted interim bail by the learned Trial Court vide order dated 02.12.2021 for a period of 03 (three) months to make efforts for re-payment of the loan amount to the complainant Banks, though he failed.

9. It is pertinent to note here that there is nothing before this court which shows that there are allegations of tempering with the evidence and the petitioner is a flight risk. One cannot lose sight of the fact that

the complainant bank has recovered around ₹1.92 crores by auctioning the house belonging to the petitioner as submitted by the learned counsel for the petitioner.

10. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide ***Prahlad Singh Bhati v. NCT, Delhi and another*** **(2001) 4 SCC 280**). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits.

11. In ***Jayendra Saraswathi Swamigal v. State of Tamil Nadu*** **(2005) 2 SCC 13**, it was held as under:-

> *"16. The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Capt. Jagjit Singh AIR 1962 SC 253 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 and basically they are the nature and*

seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case."

12. Therefore, keeping in view the entire circumstances and the fact that the petitioner is in judicial custody since 07.07.2021 and a sum of ₹1.92 crores has been recovered after auctioning the property of the petitioner, the present bail application is allowed and the petitioner is admitted to bail on following conditions:

(i) The Petitioner shall furnish personal bond in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of the Trial Court concerned.

(ii) The petitioner shall provide his mobile phone number to the concerned Jail Superintendent and SHO of the concerned police station at the time of release, which shall be kept in working condition at all times;

(iii) The petitioner shall not leave the country without the prior permission of the Trial Court and shall reside at the address as per prison records;

(iv) The petitioner shall not communicate with, or come into contact with any of the prosecution witnesses, or tamper with the evidence of the case.

13. With the above said directions, the present petition along with pending application, if any, is disposed of accordingly.

14. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

JUNE 2,2023/ib