* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 06.07.2023
Judgment pronounced on: 11.07.2023

\+ BAIL APPLN. 2830/2022 and CRL.M.A.19936/2022, 20334/2022, 21086/2022, 26303/2022, 26304/2022, 10647/2023 & CRL.M.A. 12942/2023

ASHISH GUPTA ..... Applicant

versus

STATE GOVT NCT OF DELHI ..... Respondent

Advocates who appeared in this case:

For the Applicant: Mr. Mohit Mathur, Senior Advocate with Mr. Sumer Singh Boparai, Mr. Sidhant Saraswat, Mr. Suyash Govardhan and Mr. Deepak, Advocates.

For the Respondent: Ms. Priyanka Dalal, APP for State with Insp. Parveen Kumar, EOW.
Mr. Karan Suneja, Advocate for Intervenor/ victim with Mr. Gautam Mallick and Ms. Aruna Mullick, Advocates.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. By way of the present bail petition under section 439 of the Code of Criminal Procedure 1973, the applicant, who is accused in case FIR No.173/2015 dated 17.12.2015 registered under sections 409/420/120B

of Indian Penal Code 1860 ('IPC') at Police Station EOW, seeks regular bail.

2. Notice on this petition was issued on 20.09.2022. Status report dated 27.09.2022 has been filed. Though updated nominal roll is not on record, the applicant has admittedly been in custody since 24.05.2022. Investigation in the matter is complete. Multiple chargesheets have been filed. Supplementary chargesheet dated 22.08.2022 has been filed against some of the accused, including the applicant, under sections 406/409/402/174A IPC.

3. Charges were framed against the applicant vide order dated 25.02.2023 only under sections 406/174A IPC; and the learned trial court was pleased to discharge the applicant insofar as the offences under sections 409/420 IPC are concerned.

4. Mr. Mohit Mathur, learned Senior Counsel appearing on behalf of the applicant submits that as evidenced by the Forensic Audit Report dated 15/21.11.2017 of the company as obtained by the Investigating Officer, and as also summarised in the status report filed in the matter, Rs.75 crores are alleged to have been siphoned-off from the company. Although, according to the forensic audit report, certain amounts are also alleged to have been siphoned-off the same further shows that the amounts alleged to have been siphoned off also decreased over the years to Rs 74 crore, implying thereby that certain amounts were repaid to the investors.

5. Mr. Mathur learned Senior Counsel submits, that as seen in the chargesheet, there were 08 shareholders of the company, each holding

12.5% of the shareholding; and, of the 08 shareholders, 07 have been arrayed as accused in the matter; and 03 of them viz. Krishan Kumar (applicant's father), Ankit Gupta and Ram Chander have already been admitted to regular bail by various orders of the Co-ordinate Bench of this court. Copies of the bail orders have been annexed with the petition.

6. Mr. Mathur submits, that though in each of the said cases, the court was pleased to grant regular bail subject to the person concerned depositing Rs.10 crores in court towards the amounts alleged to have been siphoned-off, in the present case, the applicant simply does not have the resources and wherewithal to deposit such money in court. Senior counsel further submits that asking the applicant to deposit an amount in excess of his resources, will amount to unreasonable denial of bail; but the applicant is ready and willing to fulfill any other condition of bail, to secure his presence at the trial.

7. Senior counsel urges the court to consider, that other things apart, investigation in the matter is over; that chargesheet has been filed; that at the stage of framing charge, the learned trial court has been pleased to frame charges against the applicant only under sections 406/174A which attracts a maximum punishment of imprisonment of 03 years; and admittedly, the applicant has already been in judicial custody for about 1 year 2 months, as of now.

8. Based on the aforesaid factual narration as also predicated upon the law on parity coupled with the fact that the charges are now framed under Section 406 IPC, learned Senior Counsel submits that the Applicant is entitled to regular bail. Learned Senior Counsel also submits that the offences as alleged are purely economic in nature and

primarily based on documentary evidence, the same having been seized by the EOW, nothing further needs to be elicited from the Applicant and therefore, the Applicant can be enlarged on regular bail.

9. *Per Contra,* Ms. Priyanka Dalal, Learned APP for the State on the other hand contends that the supplementary charge sheet in itself notes that the general public was lured by its Director in the year 2006 with the assurance of timely possession till 2009 and assured return of 12 percent of the investment to investors.

10. On this allurement the company collected approximately ₹543 crores from more than 3000 investors. The company got the building plans sanctioned on 25th September, 2008, environment clearance in March, 2009 and pollution clearance in 2010. However, bookings of the Adventure mall were taken without the requisite permissions of Greater Noida Industrial Development Authority (GNIDA), the permission of which was turned down by GNIDA in the year 2013 and the company failed to return the amount to the various investors.

11. Ms. Dalal, Learned APP for the State, submits that the Applicant, Mr. Ashish Gupta was the Director, owner, signing authority, share holder (12.5%) and promoter of AMR INFRASTRUCTURES LTD (AMRISL) for a substantial period of more than 10 years (15 June 2006 till 05 Oct 2016) whereupon offences such as criminal breach of trust, fraud, cheating, etc. were committed upon the public at large including the victim/complainant/intervener.

12. Ms. Priyanka Dalal, Learned APP for the State submits that in the above noted FIR the allegations are, that the Directors of the company

had lured investors and out of the total 3203 investors, 650 complaints have been received. On that basis Ms. Dalal prays for dismissal of the bail.

13. Mr. Gautam Mullick, learned advocate appearing for Complainant and Mr. Karan Suneja, learned advocate for Intervenors, while supporting the arguments so addressed by the Learned APP for the State, had also addressed co-extensive arguments protesting against the grant of such bail or any such interim relief of that sorts. Arguments from both the sides are summarized in the following paras.

14. It is submitted that a registered lease deed was executed between Greater Noida Industrial Development Authority (GNIDA) and RC info systems Ltd.(RCISL) on 21.07.2006. It is submitted that an MOU was executed between RC info systems ltd. (RCISL) and AMR INFRASTRUCTURES LTD (AMRISL) on 21.07.2006 wherein Mr. Ashish Gupta signed the said MOU on behalf of AMR as owner and signing authority. It is submitted that the applicant from the very inception knew that the land/units in question can only be sold to owners of IT Industries and IT Enabled Services but despite that fact they still advertised, booked the units, received monies from the public at large, promoted the entire project with all sorts of pomp and show, etc. so that public was dishonestly induced by the accused persons to invest and purchased their hard earned money which establishes the very fact that intent to deceive/cheat was present at each and every level.

15. It is also submitted that the Applicant has been/ is Director and owner of various shell companies wherein the other prime accused have been also full time directors during the period of commission of

offences, and that there is a very high possibility of getting money trail established for which a proper audit of these shell companies and detailed audit investigation is very much needed, for which the custodial investigation of the accused is necessary so as to ally the fears of tampering the evidence and hampering the detailed investigation, so required. For that, learned counsels also point out to the conduct of the accused which can be ascertained from the fact that the Applicant was absconding and did not cooperate with the investigation and thus, was declared a Proclaimed Offender (P.O.) by the Ld. Trial Court vide order dated 16.03.2018. It was only thereafter that the Applicant surrendered.

16. Finally, the learned counsel alongwith the Learned APP for the State, also contend that accused/applicant cannot claim parity with the other co-accused persons, more so, when the accused had himself shown his inability to fulfill the condition so imposed by this Court while granting reliefs to other co-accused persons. That apart, according to the learned counsel, the Applicant herein is the "*kingpin*" of the entire conspiracy as also the transaction which concluded in thousands of investors being cheated of their hard earned money without any corresponding benefit to the victims. Thus, learned counsel submits that the Applicant does not deserve any leniency and the application ought to be dismissed.

17. In rebuttal, Mr. Mohit Mathur, learned Senior Counsel contends that the applicant had pursued with best of his efforts, each and every possibility to comply with the condition previously imposed by this Court while granting bail to the other co accused persons, but could only arrange title deeds of the property amounting to market value of Rs. 7

Crores only, and that too with the help of his father-in-law. According to the title deeds filed on record, the details of the said property are 2nd Floor, Plot No. 4613, DLF City Phase-IV, Chakkarpur, Gurugram, Haryana. According to the valuation report the market value of the said property is worth almost Rs.7 Crores, and would be a sufficient security qua the bail so sought. He further submits that the father-in-law of the Applicant has agreed to give an affidavit of an unequivocal undertaking that he would not object if the subject property, is appropriated/auctioned in the event of any breach of any condition of bail by the applicant.

18. This Court had considered the arguments and rival contentions, so raised, by all the parties.

19. Though the other co accused persons have already been enlarged by this Court through various orders, so far as the considerations for the grant of bail to the present applicant/accused are concerned, the following points have emerged out of the aforesaid fact as narrated and the arguments so advanced.

20. That the accused/applicant is currently charged under the offence under Section 406 IPC which, though is, Non-Bailable but at the same time is a compoundable offence, attracting a punishment of 3 years. As against the maximum punishment of 3 years, the applicant has already undergone an incarceration for 1 year and 2 months as per the submissions of learned Senior Counsel and keeping in view the number of witnesses and the voluminous documents it appears that the trial will take its own time. That apart, when the other co-accused persons were

already granted bail by this Court, the accused/applicant can also be meted out with the same treatment on the grounds of parity.

21. So far as the issue of accused/applicant being declared as Proclaimed Offender previously by the Trial Court vide its order dated 16.03.2018 is concerned, it is on record that the Applicant was enlarged on interim protection from arrest for a period of almost 4 years vide the Order dated 16.04.2019, which was passed even after Applicant was declared as P.O.. Subsequently, the aforesaid interim order protected the Applicant till the time it was dismissed on 07.03.2022. The present application has been preferred after his surrender and incarceration for the last more than 1 year. Thus, the declaration of the Applicant as P.O. will not be an impediment for this Court to consider granting regular bail.

22. It is also not disputed by either the Complainant or the State that all the other remaining co-accused persons have been released on regular bail. So to that extent, it would make no sense to keep the Applicant behind bars during the remaining period of the trial. Though the applicant has been alleged to be the "*Kingpin*" or the Mastermind behind the entire conspiracy and transaction, once having elicited all required information from the Applicant as also the other co-accused and having seized all the relevant documents on such alleged disclosure, nothing further would remain to be enquired from the applicant. Even if the role ascribed to the Applicant is serious and grave, that by itself cannot be a ground to incarcerate person if otherwise no further information or relevant details are required from the applicant.

23. So far as the furnishing of adequate and commensurate security is concerned, this Court is in agreement with the submissions of Mr. Mathur, learned Senior Counsel that merely because an under trial is not able to provide sufficient security, that by itself should not and ought not to disentitle an under trial from availing the benefit of regular bail. In any case, this Court is also of the considered opinion that the immovable property belonging to the Applicant's Father-in-Law namely Mr. Anil Jain, provides for a sufficient security, though, to the extent of only Rs. 7 Crores. That apart, as of now, the investigation has revealed an alleged siphoning off of approximately Rs. 74 Crores, allegedly by the applicant as also the other co accused persons, and keeping that in view, this Court had previously directed each of the directors to furnish a security of Rs. 10 Crores each. In case of the present Applicant, this Court is satisfied that the aforesaid immovable property is sufficient to be treated as security for the purposes of bail.

24. In view of the above, upon a balance of all considerations, and in the interests of justice, this court is persuaded to accept the present application, thereby admitting the applicant to regular bail subject to the following conditions:

24.1 The applicant shall furnish a personal bond in the sum of Rs. 5,00,000/- (Rs. Five Lacs Only) with 01 surety in the like amount from a family member, to the satisfaction of the learned trial court;

24.2 The applicant shall furnish to the Investigating Officer/S.H.O a cell-phone number on which the applicant may be contacted at any time and shall ensure that the said mobile number is kept active and switched-on at all time along with the location of the device be kept ON at all times.

24.3 If the applicant has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;

24.4 The applicant shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case.

24.5 The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial or any impending investigation, if any, so required by the prosecution; and

24.6 Furthermore, the Applicant's father-in-law namely Mr. Anil Jain S/o. Sh. Padam Prasad Jain, shall file an undertaking by way of an affidavit, stating the following conditions:-

(a.) That the subject property bearing number 2nd Floor, Plot No.4613, DLF City Phase-IV, Chakkarapur, Gurugram is completely owned by the applicant's father-in-law in its entirety, and the same is free of any charge, lien or encumbrance of any nature whatsoever.

(b.) That he shall not create any third party right or interests in the subject property during his lifetime.

(c.) That he or his legal heirs/successors-in-interests/agents will have no objection if the subject property as aforesaid is forfeited/appropriated/auctioned in the event of any breach of any conditions of bail by the Applicant.

25. In addition to the above conditions, as agreed to, the applicant shall deposit with the Registrar General of this Court, within 01 week, the original title deeds relating to 2nd Floor, Plot No.4613, DLF City Phase-IV, Chakkarapur, Gurugram.

26. With the aforesaid observations, the present bail application alongwith pending applications, if any, stand disposed off, with no orders as to costs.

27. Nothing in this order shall be construed as an expression on the merits of the pending matter.

TUSHAR RAO GEDELA, J.

JULY 11, 2023/*rl*