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

Reserved on: 11th January, 2023
Pronounced on: 24th January, 2023

\+ BAIL APPLN. 3174/2022 & CRL.M.(BAIL) 1303/2022 (Interim Bail)
AJAY YADAV ..... Petitioner
Through: Mr. Anurag Ahluwalia, Mr. Hem Kumar, Advocates.

versus

STATE NCT OF DELHI ..... Respondent
Through: Mr. Aman Usman, APP for State with SI Sohan Thakur, PS: Jyoti Nagar.
Mr. Viraj Datar, Sr. Adv. With Mr. Shalabh Gupta, Ms. Himani Aggarwal, Mr. Gagan, Mr. Saurav Joon, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA J.

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') seeks grant of regular bail in case FIR No. 408/2022 dated 30.05.2022, under Sections 420/467/468/471/448/120B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), registered at PS Jyoti Nagar.

2. By three separate judgments of the same date, this Court has disposed of three other bail applications filed on behalf of the applicant, being BAIL APPLN. 3175/2022 seeking grant of regular bail in case FIR No. 585/2022, BAIL APPLN. 3176/2022 seeking grant of regular bail in case FIR No. 557/2022, and BAIL APPLN. 3177/2022 seeking grant of regular bail in case

FIR No. 584/2022. The said FIRs have been registered under Sections 420/467/468/471/448/120B of the IPC, at PS Jyoti Nagar. The said FIRs are based on similar set of allegations with respect to the present applicant, except for the fact that they relate to distinct plots of land. It is pertinent to note that that except for the present FIR No. 408/2022, all the FIRs have been registered at the instance of M/s Capital Land Builders Pvt. Ltd (hereinafter referred to as 'CLB'). The present FIR No. 408/2022 has been registered at the instance of M/s Runwell (India) Pvt. Ltd., a sister concern of CLB.

3. The present FIR has been registered at the instance M/s Runwell (India) Pvt. Ltd. (hereinafter referred to as 'complainant company'), through its authorized representative, Shri Manoj Bansal. Briefly stated, the facts leading up to the registration of the present FIR are as under:

(i) CLB is stated to have been incorporated in the year 1959 with a total share capital of 15 shares, by Smt. Satya Chowdhary with 10 shares and Sh. Kishor Lal Sachdeva with 5 shares. In the year 1960, Smt. Satya Chowdhary transferred 5 of her shares to Sh. Kishor Lal Sachdeva and 40 new shares were allotted to him as well. In the year 1962, 500 shares issued by CLB were allotted to one Late Sh. Chowdhary Brahma Prakash, who in 1963, transferred the said shares to the Shaheed Memorial Society (hereinafter referred to as the 'Society'), of which he was the President. In 1967, 45 shares were transferred to M/s Runwell (India) Pvt. Ltd. by Sh. Kishor Lal Sachdeva. It is the case of the complainant company that between 1968 to 1989, the Society sold all of its shares to various persons and thus, ceased to be a shareholder.

(ii) It is the case of the complainant company that on 10.03.2006, acting through its President, Sh. Ajay Chowdhary, the Society convened an extra-ordinary general meeting of CLB and fraudulently removed Sh. Om Prakash Sachdeva, Sh. Ankur Sachdeva and Smt. Promila Kishore as Directors and appointed Sh. Ajay Yadav (applicant herein), Sh. Arjun Chowdhary, Sh. Surender Pal and Sh. Abdul Haq Farhan as Directors.

(iii) Aggrieved by the aforesaid action, CLB, acting through its authorized representative, filed a civil suit before this court, bearing number C.S.(OS) 1906/2006, titled M/s Capital Land Builders and Ors. v. Shaheed Memorial Trust and Ors. During the course of proceedings in the said civil suit, on an application filed by the plaintiffs therein under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), this Court, *vide* order dated 06.10.2006, granted an *ex-parte ad interim* injunction and restrained the defendants therein, which also included the present applicant, from representing themselves as shareholders/representatives of the plaintiff therein, i.e., CLB. The said injunction was vacated by an order of this Court dated 06.08.2009. Thereafter, in an appeal filed against the order dated 06.08.2009, in FAO(OS) 337/2009, a Division Bench of this court, *vide* order dated 06.11.2009, set aside the order dated 06.08.2009, thereby restraining the applicant and others from holding themselves out as shareholders and Directors of the complainant company during pendency of the suit. A Special Leave Petition bearing number SLP(C) 1277/2010 filed by the applicant herein assailing the order of the Division Bench of this Court dated 06.11.2009 was dismissed by the Hon'ble Supreme Court *vide* order dated 19.03.2010.

(iv) In the complaint, it has been alleged that the applicant, purporting to be a Director of CLB, a sister concern of the complainant company, fraudulently executed a sale deed dated 24.05.2006 of a plot of land, bearing number B-57, Kailash Nagar Colony, Shahdra, New Delhi (hereinafter referred to as 'subject property') in favour of Sh. Satjit Singh Walia. The subject property is stated to be owned by the complainant company *vide* registered sale deed dated 07.07.2004 executed it its favour by M/s G.S. Kashyap and Sons (HUF) through its General Attorney. It has been further alleged that the concerned Sub-Registrar IV-A (also an accused in the present FIR) registered the said documents without even bothering to see whether the subject property belongs to CLB. Thereafter, upon an application filed under Section 156(3) CrPC, the learned Chief Metropolitan Magistrate, Shahdra District, Karkardooma ordered the registration of the present FIR.

4. Learned counsel appearing on behalf of the applicant submitted that the case of CLB (sister concern of the complainant company) that the 500 shares held by the Society were transferred to various persons including members of the 'Sachdeva Group' and their associates is false. It is submitted that the Society never transferred its shares to anyone and continues to remain a majority shareholder of CLB. Thereafter, the Society, acting through its President, Sh. Ajay Chowdhary convened an Extra-Ordinary General Meeting of CLB on 10.03.2006 and appointed Sh. Ajay Yadav (applicant herein), Sh. Arjun Chowdhary, Sh. Surender Pal and Sh. Abdul Haq Farhan as Directors. It is submitted that in that regard, Form-32 and other statutory requirements were complied with and filed with the Registrar of Companies. Various resolutions were passed, including those authorising the applicant to execute sale deeds on behalf of CLB *qua* different plots of land situated in Kailash Nagar Colony, Shahdra, New Delhi. Pursuant to the said resolutions, sale deeds were executed *qua* various plots of land by the applicant between 2006 and 2007.

5. It is submitted that thereafter, between 2006 and 2017, 11 different FIRs were registered at the instance of CLB against the applicant and others, out of which chargesheets were filed in four FIRs bearing numbers 229/2006, 612/2007, 742/2014 and 672/2015, registered at PS M.S. Park. Chargesheets against the applicant were filed in FIRs bearing numbers 229/2006 and 612/2007 on 14.02.2019, without arrest.

6. Learned counsel appearing on behalf of the applicant further submitted that the learned Chief Metropolitan Magistrate, Shahdra District, Karkardooma, *vide* 12 separate orders passed between 30.05.2022 and 25.08.2022, ordered registration of FIRs, including the present FIR, against the applicant and others, all of which were registered at PS Jyoti Nagar under Sections 420/467/468/471/448/120B of the IPC. It was submitted that all the said FIRs are related to a common cause of action, which allegedly arose when the complainant company gained knowledge about the sale of a few plots stated to be owned by it and its sister concern – CLB by the present applicant. In that behalf, it is submitted that a perusal of the 11 earlier FIRs and the chargesheets would show that the allegations made therein are similar to the 12 new FIRs registered pursuant to orders of the learned Metropolitan Magistrate in the year 2022 and thus, there was no occasion for registration of 12 fresh FIRs relating to the same issue, i.e., sale of plots of land by the applicant stated to be owned by the complainant company and its sister concern, i.e., CLB.

7. It was further submitted by the learned counsel appearing on behalf of the applicant that 11 civil suits are also pending before this Court, *inter-alia* pertaining to the applicant's role in CLB, in which issues have been framed by this Court *vide* a common order dated 25.01.2022. In particular, attention of this court has been invited to 'issue no. 12' framed in CS(OS) 1376/2007 and CS(OS) 1607/2007 which is as under:

> "12. Whether the Sale Deed executed by Defendant No. I is a nullity and *non est* by virtue of an order dated 20th April, 2009, passed in the suit bearing No. CS(OS) 1906/2006. OPP"

With regard to the aforesaid issue no. 12, it has been further clarified as follows:

> "5. Further, it is clarified that the issues no. 1 and 12 framed above the aforenoted suits, i.e., CS(OS) 1376/2007 & CS(OS) 1607/2007 - shall also be read as issues in other suits pertaining to the cancellation of the Sale Deeds where the counter-claims have also been dealt with. The issue of 'indoor management' is now to be read in all the cases."

It was submitted that the outcome of the said 11 suits would also determine the final outcome of the criminal cases pending against the applicant and others. Learned counsel appearing on behalf of the applicant submitted that the pendency of 11 civil suits and the earlier 11 FIRs including the consequential chargesheets and the fact that the applicant has not been arrested in any of them has erroneously been overlooked by the Investigating Officer of the present case.

8. Learned counsel appearing on behalf of the applicant has further invited the attention of this Court to the judgment dated 12.10.2020, passed in

I.A. No. 4570/2014 in CS(OS) 1451/2012, titled Shaheed Memorial Society (Regd.) & Ors. v. Promila Kishore & Ors. and in particular, to paragraphs 63 to 68. In view thereof, it is submitted that the propriety of the claim of CLB, i.e, sister concern of the complainant company relating to transfer of shares by the Society is itself an issue pending adjudication.

9. It is submitted on behalf of the applicant that he had joined the investigation as and when called for by the Investigating Officer and was cooperating with the same. Despite that, he has been arrested. In support of his contentions, learned counsel placed reliance on judgments of the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar, MANU/SC/05559/2014 and Satender Kumar Antil v. Central Bureau of Investigation, MANU/SC/0851/2022.

10. Learned APP appearing on behalf of the State has placed on record status report dated 17.12.2022, authored by Inspector Lalan Keshari, SHO, PS Jyoti Nagar, wherein it has been stated that Mr. Manoj Bansal, acting as the authorized representative of the complainant company inspected the documents at the office of Sub-Registrar-IVA and came to know about the sale of the subject property by the applicant *vide* a sale deed dated 24.05.2006, registered as Document no. 2677 in Addl. Book No. 1, Vol. 150, on pages 171-177.

11. It is further stated in the status report that during interrogation, the applicant was unable to answer as to how the subject property belongs to CLB and where are the sale deeds to demonstrate the same. It is further recorded that when asked about why his name is not reflected as a 'Director' of CLB in the report of the Registrar of Companies, he gave a vague answer. Thereafter, the applicant was arrested on 31.08.2022 and was remanded to one day's police custody. He has been in judicial custody since 01.09.2022.

12. Learned APP appearing on behalf of the State opposed grant of regular bail to the applicant on the following grounds:

(i) The nature of the crime the accused has committed is serious in nature.

(ii) Original documents pertaining to the transaction alleged to have been made by the applicant are yet to be recovered and investigation is required.

(iii) The applicant is likely to jump bail and commit an offence of a similar nature again.

(iv) The applicant may tamper with evidences and destroy the evidences if granted bail.

13. Learned Senior Counsel appearing on behalf of the complainant company submitted that in the year 2005, online filing of Annual Returns and various other statutory forms were introduced by the Registrar of Companies, Ministry of Corporate Affairs. Thereafter, Sh. Ajay Chowdhary, acting as the President of the Society filed Form-32 and removed 3 legitimate directors of the CLB and appointed 4 of his associates as Directors. Thereafter, the applicant executed several sale deeds of plots of land owned by the said company, without any authority. It is submitted that in that regard, a chargesheet has been filed against Ajay Chowdhary in case FIR no. 44/3013, under Sections 182/420/471 IPC registered at PS MS Park, wherein it has been stated that Ajay Chowdhary has used forged documents and misrepresented himself with an ulterior motive to cause gain to himself.

14. Learned Senior Counsel appearing on behalf of the complainant company submitted that in the present FIR, the subject property belongs to the complainant company and neither CLB., nor anyone acting in its behalf had any right to transfer any property owned by it, unless authorised to do so. It was further submitted that the applicant was never authorized by the complainant company to act on its behalf in any manner whatsoever and he has, in no manner, been connected with the complainant company, be it as a shareholder, director, member, agent or official of the company. It is urged that the present applicant, acting as a Director of CLB, could not have sold the subject property owned by the complainant company.

15. Learned Senior Counsel appearing on behalf of the complainant company has placed on record, Master Data showing the directorship of the complainant company and a certified copy of the Annual Returns for the year 2006-07 filed before the Registrar of Companies to demonstrate that the applicant was not a Director of the complainant company when he executed the sale deed pertaining to the subject property, i.e., on 24.05.2006.

16. Learned Senior Counsel further submitted that the judgment dated 12.10.2020, passed in I.A. No. 4570/2014 in CS(OS) 1451/2012, as relied upon by learned counsel for the petitioner does not apply to the present case as the complainant company is not a party therein.

17. Learned Senior Counsel appearing on behalf of the complainant company further invited attention of this Court to order dated 20.04.2009 passed in CS(OS) 1906/2006 on an application filed under Order XXXIX, Rule 2A of the CPC, whereby 26 sale deeds executed by the applicant and others, in violation of the injunction order dated 06.10.2006 were declared *non-est* and they were held guilty of contempt of court for violating the order dated 06.10.2006. It was observed as under:

> "33. Therefore, in the present case also nothing more needs to be done in respect of the Sale Deeds executed. by contemner Ajay Yadav as a Director of the Company with the approval of its Board of Directors

> comprising of defendants 2-6 except to declare that all the Sale Deeds, copies of which have been placed on record and details whereof have already been noticed in this order, are non est and they passed over no right in favour any person."

18. Learned Senior Counsel appearing on behalf of the complainant company further pointed out that *vide* order dated 25.05.2006, the applicant and others who were found to be in contempt of court as aforesaid, were directed to be detained in civil prison for a period of two weeks. The properties enlisted in Para 12 of the order dated 20.04.2009, which were stated to have been sold by the applicant were also directed to be attached. Therefore, it was submitted that in view of his conduct in completely disregarding and violating orders of the Court, the applicant does not deserve any leniency from the Court. In support of his contentions, learned Senior Counsel placed reliance on judgment of the Hon'ble Supreme Court in Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40.

19. Heard learned counsel for the parties.

20. The present FIR under Sections 420/467/468/471/448/120B of IPC, registered at PS Jyoti Nagar, is primarily on the ground that the subject property which was in the name of the complainant company was sold by the applicant purporting to be the Director of CLB even when the latter was not the owner of the subject property. Dealing with a similar situation, the Hon'ble Supreme Court in Mohammed Ibrahim and Others v. State of Bihar and Another, (2009) 8 SCC 751 examined the provisions of Sections 467 and 471 of the IPC and held as under:

> "**13.** The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether

the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

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15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

Similarly, while dealing with Section 420 of the IPC, it was as under:

"**20.** When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused *tried to deceive him* either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

A clarification

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint."

21. At this juncture, it is pertinent to note that the limited issue before this court is whether in the facts and circumstances of the case, the applicant is entitled to grant of regular bail.

22. Admittedly, there is *inter-se* dispute between the applicant and CLB with respect to the ownership of the plots, *vis-a-vis* CLB. The said dispute has been subsisting since 2006/2007. It is also an admitted position that the allegations in all the FIRs at the instance of CLB registered against the present applicant are essentially the same, except for the subject property mentioned in the said FIRs. Further, it is also an admitted position that out of the previous 11 FIRs, chargesheets against the applicant were filed in FIRs bearing numbers 229/2006 and 612/2007 on 14.02.2019, without arrest.

23. A perusal of the status report reflects that the applicant joined the investigation. The investigation *qua* the applicant is complete and chargesheet has been filed. It is also pertinent to note that while he was in judicial custody, the applicant was not interrogated with respect to the other FIRs which have been registered against him and are pending investigation.

24. The applicant has been facing trial in case FIR No. 229/2006 and case FIR No. 612/2007 since 14.02.2019. The fact that there is no allegation against the applicant, in the status report, regarding tampering with the evidence or otherwise, would also be a relevant factor for determining the present application.

25. The transaction alleged to have been executed by the applicant in the present FIR pertains to a sale deed executed on 24.05.2006, which again relates to a contemporaneous period of time when the earlier FIR No. 229/2006 dated 09.06.2006 was registered at the instance of CLB and in which chargesheet was filed against the applicant, without his arrest, on 14.02.2019. Although, the plot in question in the present FIR is different and as per the complainant company, the factum of the transaction *qua* the said plot executed by the applicant came to their knowledge only in the year 2022, the fact remains that the alleged sale deed executed by the present applicant was in 2006.

26. The Hon'ble Supreme Court, in Satender Kumar Antil v. Central Bureau of Investigation and Anr., (2022) 10 SCC 51, while dealing with bail in cases relating to economic offences has held as under:

> **"90.** What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in *P. Chidambaram* v. *Directorate of Enforcement* [*P. Chidambaram* v. *Directorate of Enforcement*, (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646] , after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field:
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> ***Precedents***
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> **91.** *P.Chidambaram* v. *Directorate of Enforcement* [*P. Chidambaram* v. *Directorate of Enforcement*, (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646] : (SCC pp. 804-805, para 23)
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> > "*23*. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench [*Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] 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."

92. *Sanjay Chandra* v. *CBI* [*Sanjay Chandra* v. *CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] : (SCC pp. 62-64, paras 39-40 & 46)

"*39.* Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

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 ally the apprehension expressed by CBI."

Role of the court

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."

27. In the present case, the applicant was arrested on 31.08.2022 and he has been in judicial custody since 01.09.2022. The investigation *qua* the applicant is complete and chargesheet has been filed and any further investigation, if required to be conducted, cannot be a sufficient ground for continued detention of the applicant in judicial custody. No useful purpose will be served by keeping the applicant in custody any further. As far as the alleged previous conduct of the applicant is concerned, the Hon'ble Supreme Court, in Sanjay Chandra v. Central Bureau of Investigation (*supra*), while observing that denial of bail as a sign of disapproval for former conduct would be improper, has held as under:

> "**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 is 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.
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> **22.** From the earliest times, it was appreciated that 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 this country, 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.
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> **23.** 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 purpose of giving him a taste of imprisonment as a lesson."

28. In view of the facts and circumstances of the present case, the application is allowed.

29. The applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith one surety of like amount to the satisfaction of the learned trial Court/Duty Magistrate, further subject to the following conditions:

i. The memo of parties shows that the applicant is residing at A-3, Indian Express Apartment, Mayur Vihar-1, New Delhi - 110096. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.

ii. The applicant shall not leave India without the prior permission of the learned Trial Court.

iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.

iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.

v. The applicant shall join the investigation, as and when required by the Investigating Officer.

vi. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.

30. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.

31. The application stands disposed of along with all the pending application(s), if any.

32. Let a copy of this order be communicated to the concerned Jail Superintendent, for necessary information and compliance.

AMIT SHARMA
JUDGE

JANUARY 24, 2023/*ab*