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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12th March, 2024
Pronounced on: 04th April, 2024

+ BAIL APPLN. 533/2024 and CRL.M.A. 7680/2024

SAI RAMAKRISHNA KARUTURI

..... Petitioner

Through: Mr. Tanveer Ahmed Mir and
Ms. Ariana D. Ahluwalia Advocates.

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State.
Insp. Amit AEKC/Crime Branch.
Mr. Raman Gandhi, Advocate
for complainant.

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 'Cr.P.C.') seeks regular bail in FIR No. 0135/2018 under Sections 420 and 409 of the Indian Penal Code (hereinafter referred to as 'IPC'), registered at P.S. Crime Branch, Sunlight Colony, Delhi.

Brief Background

2. The present FIR was registered on a complaint filed by H.E. Sh. Said Absieh Warsama, Ambassador of Republic of Djibouti in India. It was alleged

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By: AMIT SHARMA
Signing Date: 04.04.2024
07:39:05

BAIL APPLN. 533/2024



that Mr. Sai Rama Krishna Karuturi, the applicant who is the Director of M/s Karuturi Global Limited (hereinafter referred to as 'KGL') entered into an agreement dated 10.09.2011 through its sister concern, M/s Karuturi Overseas Limited, Dubai (hereinafter referred to as 'KOL') with the Government of Djibouti. By virtue of the said agreement, KOL was supposed to provide 10,000 Hectares of land in Ethiopia for agricultural purposes. It was further alleged that in the year 2012, KOL entered into a second agreement dated 23.02.2012 with the Government of Djibouti for development of 5,000 hectares of land. It was alleged that in order to assist KOL in performing its obligations. The Central Bank of Djibouti issued bank guarantee in the sum of \$ 6.5 Million USD in favour of Bank of Africa. Accordingly, Bank of Africa issued a loan/credit of \$ 6.5 Million USD to KOL. However, KOL allegedly failed to perform its obligations and repay the said loan. It is alleged that consequently, Bank of Africa insisted that the Government of Djibouti repay the loan amount of \$ 6.5 Million USD. It was further the case of the complainant that in the year 2013, the applicant issued a letter of 'Acknowledgment of Debt' dated 10.02.2013 acknowledging to pay \$ 5 Million USD alongwith interest to the Government of Djibouti. It was alleged that the obligations as undertaken by the applicant were not honored and thus, the present FIR came to be registered.

Submissions on behalf of the Applicant

3. Learned counsel for the applicant submitted that the present FIR arises from a complaint dated 04.05.2018 containing misleading facts. It was submitted that several *bonafide* transactions took place between KGL and KOL on one hand and the Republic of Djibouti and its appointed advisory/consultant firm,



namely, Multiplex Biotech FZC ('Multiplex') on the other. It is submitted that aforesaid KGL and KOL, the company of which the present applicant is a Director performed contracts entered into with the Republic of Djibouti and Multiplex, and had suffered losses. It is further submitted that in addition to the aforesaid losses, an amount of approximately \$ 3.5 Million USD (in cash as well as cash equivalent i.e., machinery) had been returned.

4. Learned counsel appearing on behalf of applicant submits that so far as the first tripartite agreement dated 10.09.2011 is concerned, the applicant was to provide and cultivate 10,000 Hectares of land out of 1 Lakh Hectares leased by Ethiopian Government to the present applicant. It is submitted that the land was already in possession of the present applicant and out of the land that had been allotted to him he had to provide 10,000 Hectares of land, the geographical location of which was not defined in the agreement and was left to discretion of the present applicant. It is pointed out that since the cultivation of land is a continuous process involving bush clearing, uprooting, trash removal and disposal through leveling and cultivation; the same had to be in possession of the applicant before he could have entered into said agreement.

5. It is further submitted that even Mahesh G Shetty in his statement admits that in mid 2011 the applicant had taken him and Minister of Agriculture in Djibouti Government on a chartered plane to see his farms in Ethiopia. It is further stated that the said witness also testifies that at that point in time the applicant was in the midst of converting forest into agricultural land. It is pointed out that the applicant had the cultivated land but the crops were destroyed on account of complete disruption caused by floods in 2011-2012 in Ethiopia. It is



submitted that the said flood was given a wide media coverage. It is also stated that the destruction of the cultivated land triggered the clause 8 of the said agreement which provided for *Force Majeure* and was accepted by the complainant and therefore, exonerating him of any liability. Attention of this Court was drawn to an email dated 18.11.2012 sent by Mr. Mohamed A. Awaleh, H.E., Minister of Agriculture, Fisheries, Livestock and Fishery Resource, Republic of Djibouti, Djibouti (complainant), wherein it has been recorded as under:-

“We have accepted the cause of your lost the last year about the floods but for this year we wait the information on your promise to cultivate 3500 Ha of rice and 5000 Ha of maize.”

(Annexure P-13)

6. It is further submitted that since the applicant had been cultivating land prior to 2011 floods he had purchased world class machinery for the same. It is submitted that on 20.10.2011, a bank guarantee for \$ 3 Million U.S.D. was issued in favour of Bank of Africa which finally released to the applicant by way of Standby Letter of Credit (SBLC-I).

7. So far as the second tripartite agreement dated 23.02.2012 is concerned, it was submitted that the same was for developing of 5000 Hectares of land in Ethiopia with irrigation facilities including rain water harvesting. It is submitted that in the second tripartite agreement the applicant was only appointed as a consultant and the services to be provided were in terms of Annexure-A of the said agreement. It is submitted that the 3rd party, i.e., Multiplex Bio-Tech FZC, was to be the implementing agency. It was submitted that the said land was not part of the applicant's land in Ethiopia but was already in possession of the third



party, i.e., Multiplex Bio-Tech FZC In the present agreement the complainant had issued a bank guarantee of \$ 3.5 Million U.S.D. which was released by way of Standby Letter of Credit (SBLC-II) to the applicant. It is submitted that out of the said amount of \$ 3.5 Million U.S.D., HSBC Bank had retained a margin of \$ 0.175 Million U.S.D. and thereafter, on instructions of the complainant, the applicant had admittedly transferred an amount of \$ 1.565 Million U.S.D. to Multiplex Bio-Tech FZC, i.e., third party and therefore the amount which came to the applicant's account was \$1.76 Million U.S.D. It is the case of the applicant that the said amount was utilized by the applicant constantly for performing obligations as per the agreement and was in touch with Mr. Mahesh G Shetty from Multiplex Bio-Tech FZC for helping and aiding him for conducting farming activities in the said land by procuring agricultural inputs and machinery as provided for in the said agreement. It is pointed out that applicant had supplied multiple machinery/fertilizer to Multiplex Bio-Tech FZC in Serofta Modern Farm and Groffer Farm in order to enable them to do agricultural activities as agreed in the applicant's scope of work.

8. It was pointed out that in fact the complainant had defaulted by not issuing the entire amount of bank guarantee which was agreed to be \$ 6.99 Million U.S.D. and therefore, it can be argued that the agreement never came into force due to this default alone. In any case, it is the case of the applicant that the applicant had provided all the machinery and agricultural inputs to Multiplex Bio-Tech FZC which were admittedly used by the latter to develop the Serofta and Groffer farms. It is submitted that the machinery worth over \$ 5 Million U.S.D. had already been supplied to the complainant against the disputed



amount. Attention of this Court has been drawn to e-mails dated 05.01.2013; 09.01.2013; 10.01.2013; 20.01.2013; 18.02.2012; 20.02.2013 and 06.03.2013 to demonstrate that the complainant had agreed to accept the machinery belonging to the present applicant and had also acknowledged the receipt of some of them which as per the applicant is worth more than \$ 2 Million U.S.D. It is submitted that it is for this reason the complainant in the period beginning from 26.12.2012 or 10.02.2013; neither initiated any arbitration proceedings in terms of the said agreements nor lodged any criminal proceedings against the present applicant in their territorial jurisdiction at any point in time. It is submitted that only after 6 years the present complaint was filed in 2018 in order to arm-twist the applicant for further payment.

9. The submission with regard to letter of acknowledgement signed on 10.02.2013 which is relied upon by the prosecution is that the applicant had travelled to Djibouti around the time of signing of the said letter, where he was unlawfully detained by the complainant and Mahesh G Shetty and was threatened that he would not be allowed to leave Djibouti till he signs the said letter. It is submitted that only out of fear of his safety and well-being; the applicant signed the said letter. It is further reiterated that no civil proceedings have been initiated by the complainant on the basis of said letter however, the complainant chose to file the present false complaint.

10. It is further submitted that the investigation in the present case stands complete and chargesheet has been filed and no purpose will be served in keeping the present applicant in judicial custody. It is pointed out that even as per the case of prosecution the letter Rogatories under Section 166A of the



Cr.P.C. have been initiated under the Mutual Legal Assistance Treaty (hereinafter referred to as 'MLAT') and the replies are yet to be received. Similarly, as per the status report filed, the report of Chartered Accountant (CA) is still awaited. Reliance has been placed on the following judgments:

- i) Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228;
- ii) Dalip Kaur v. Jagnar Singh, (2009) 14 SCC 696, Para 10;
- iii) Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 335, Para 6;
- iv) Thermax Ltd. v. K.M. Johny, (2011) 13 SCC 412;
- v) P. Chidambaram v. Directorate of Enforcement, (2020) 12 SCC 791, Para 23

11. It is further submitted that sanction for prosecution in terms of Section 188 of the Cr.P.C. has also not been obtained by the prosecution which is mandatory in the facts and circumstances of the present case. Reliance was placed on judgment of Hon'ble Supreme Court in **Thota Venkateshwarlu v. State of Andhra Pradesh Through Principal Secretary and Another, (2011) 9 SCC 527**, and the order dated 02.08.2021 passed by the Hon'ble Supreme Court in **Special Leave to Appeal (Crl.) No(s). 3978/2021, titled Nerella Chiranjeevi Arun Kumar v. State of Andhra Pradesh & Anr.** Reliance was placed on the aforesaid judgments to agitate that in absence of sanction for prosecution as provided for under Section 188 of the Cr.P.C. cognizance can be taken but the trial cannot be proceeded with till such sanction for prosecution is placed on record.

12. It is further submitted that the applicant is suffering from various medical issues which will bring him in the category of 'sick and infirm' and who



deserves bail on the said ground. It is further submitted that the applicant is not a 'Flight Risk' and while he was on anticipatory bail he had made himself available as and when required by the Investigating Officer.

Submissions on behalf of the State

13. *Per contra*, learned APP for the State, assisted by learned counsel for the complainant, submits that allegation against the present applicant are serious in nature as he had cheated the complainant for an amount of \$ 5 Million U.S.D. and pocketed the said amount without performing any obligations in the two agreements dated 10.09.2011 and 23.02.2012. It was submitted that the present applicant has claimed to have taken on lease 3 lakh Hectares of land from Government of Ethiopia at Gambella. However, as was subsequently revealed the said land was not fit for any agricultural activity. It is submitted that since no agricultural activity was done or started the present applicant had intention to cheat the complainant from the very beginning. Prosecution has relied upon the statement of the witnesses, namely, Mahesh G Shetty, Chairman of Multiplex Bio-Tech FZC made before the Investigating Officer.

14. Learned counsel for the complainant further submitted that the Section 409 of the IPC carry imprisonment up to life and the present applicant should not be granted bail. Reliance was placed on following judgments: -

- i) Vivekanand Mishra v. State of U.P. and Ors., MANU/SC/1133/2022;
- ii) Sajjan Singh Beniwal v. Govt. of NCT of Delhi, MANU/DE/1814/2022;
- iii) Sunil N. Godhwani v. State, MANU/DE/1419/2020



15. Learned counsel appearing on behalf of the complainant further submitted that there is no change of circumstances since the order passed in the SLP whereby the order granting anticipatory bail to the present applicant was set aside. It was submitted that the grounds taken in the present application are same as in the previous application for anticipatory bail. Reliance was placed on **Vivekanand Mishra (*supra*)** to submit that the order passed by learned ASJ while dismissing the bail application of the present applicant suffers from no infirmity and therefore, the same should not set aside. Reliance is also placed on judgment of the Hon'ble Supreme Court in **Tarun Kumar v. Assistant Director Directorate of Enforcement, 2023 SCC OnLine SC 1486**, to submit that bail should not be granted on account of the fact that the investigation is complete and that trial is likely to take long time. Reliance was placed on the said judgment to argue that economic offences constituted a class apart and which needs to be visited with a different approach in the matter of bail (***Paras 22 and 23***). It is further submitted that the applicant suffers from no serious medical infirmity. The examination of the applicant by the medical board as well as the opinion of the said board reflects that the applicant can be treated by way of ordinary process and therefore no extraordinary circumstances exists for consideration for the purposes of the present bail application. It is further pointed out by the learned counsel for the applicant that in the previous bail application filed on behalf of the applicant being BAIL APPLN. 1454/2022, the applicant had taken specific stand that the letter of acknowledgment was not signed by him



however, in the present application clearly distinct stand has been taken that he was forced to sign the letter while he was in Djibouti.

16. As per the status report placed on record authored by Mr. Sushil Kumar, Asstt. Commissioner of Police, Anti Extortion and Kidnapping Cell, Crime Branch, New Delhi dated 06.03.2024, it has been stated that after cancellation of the anticipatory bail granted by this Court from the Hon'ble Supreme Court in a SLP filed by the complainant, the present applicant was taken on police custody remand wherein he provided his bank statement of HSBC Bank, Dubai, of the company KOL for the period from 30.09.2011 to 18.04.2012 alongwith certain other documents. It is stated as per the aforesaid bank statement an amount of \$ 3 Million USD was received in the said bank on 29.12.2011 and on the very same day, \$ 2.4 Million USD was transferred to another current account of Axis Bank which as per the disclosure of the present applicant was of KOL. It is stated that similar *modus operandi* was adopted by the present applicant with respect to the second payment of \$ 3.325 Million USD. It is stated that the said amount received by the applicant was supposed to be used for Gambella project in the aforesaid tripartite agreement but the applicant diverted the said funds to some other accounts to pay his loans.

17. It is further submitted that the defense of the present applicant with regard to non-performance of the first tripartite agreement dated 10.09.2011 was on account of flood in the Gambella region of the Ethiopia. It is pointed out that in support of the aforesaid defense the applicant has provided certain documents including online news clippings which are of October 2011. It is submitted that, as per the first tripartite agreement executed on 10.09.2011, the allocation of land



as per the said agreement was to start after receipt of SBLC-1 consisting of \$ 3 Million USD and the said amount was transmitted to the applicant on 29.12.2011. In view of the same, there was no reason for the applicant to have started the work even prior to the signing of the agreement and on account of the same it is claimed that the said defence is a concocted one. Reliance was placed on the statement of Mr. Mahesh G Shetty who was the third partner in the aforesaid tripartite agreement. It is stated that the aforesaid Mahesh G Shetty has given a statement that the present applicant never allotted any land in terms of the first tripartite agreement and that the applicant after receiving the money with respect to the second tripartite agreement never performed his obligations with respect to the said agreements.

Analysis and Findings

18. As pointed out hereinabove, after completion of the investigation, chargesheet in the present case has been filed. Reply to the letter Rogatories under Section 166A of the Cr.P.C. in furtherance of the MLAT is still awaited. The report from the Chartered Accountant as stated in the status report is also awaited. It is also a matter of record that the chargesheet was filed on 15.01.2024 and prosecution has applied for sanction for prosecution under Section 188 of the Cr.P.C. on 20.02.2024. On a pointed query from the Investigating Officer who was present in the Court, it was informed that no investigation has been done from the Government of Djibouti with respect to the claim of the present applicant on the basis of documents supplied to the Investigating Officer. The interpretation of the said documents in the status report as pointed hereinabove is of the Investigating Officer without any verification. Similarly, with regard to the



payment of \$ 1.65 Million USD given to the Multiplex Bio-Tech FZC, it is stated that the same is not reflected from the bank accounts however, since it has been accepted by Multiplex Bio-Tech FZC therefore, the same is not disputed but the verification is yet to be done.

19. This Court had again made a specific query to learned counsel for the complainant as to the status of the said amount given to Multiplex Bio-Tech FZC in respect of the second tripartite agreement, in response thereto, it was stated that the same is of no consequence. The status of the \$ 1.565 Million USD given to the Multiplex Bio-Tech FZC has also not been investigated by the Investigating Officer. The case of the complainant is that no work was done in pursuance of Second Tripartite Agreement, therefore, whether the amount was returned by Multiplex Bio-Tech FZC or not assumes significance. Similarly, specific query was put to the Investigating Officer with regard to the e-mails relied upon by the applicant dated 18.11.2012, 14.09.2013 and 06.03.2013 and it was stated that the same has not been verified from the Government of Djibouti wherein, it is reflected that certain machineries belonging to the applicant were handed over. The claim of the prosecution that the money received was used by the present applicant to pay his loans is on the basis of the disclosure statement made by the applicant during his police custody remand.

20. E-mail dated 18.11.2012 sent by the complainant is reproduced herein below:-



ram.krishna.sai <ram.krishna.sai5@gmail.com>

(no subject)

3 messages

ahmed awaleh mohamed <mahamed_awaleh@yahoo.fr>
 Reply-To: ahmed awaleh mohamed <mahamed_awaleh@yahoo.fr>
 To: Ram <ram@karuturi.com>

Sun, Nov 18, 2012 at 12:57 PM

Dear friend and associated

I have called you yesterday in the morning many times and again at the night but I didn't you catch you so I decide to send you an email to explain our needs.

1) Stand by LC

1.1) Serofta and Goffer

Reminder your promise to transfer 200 000USD to Multiplex this week.

1.2) Gambella

We have accepted the cause of your lost the last year about the floods but for this year we wait the information on your promise to cultivate 3500Ha of rice and 5000Ha of maize.

2) What about the rice processing factory on the Djibouti Port?

Kindly I will Wait your answer.

Best regards

ahmed awaleh mohamed <mahamed_awaleh@yahoo.fr>
 Reply-To: ahmed awaleh mohamed <mahamed_awaleh@yahoo.fr>
 To: Ram <ram@karuturi.com>

Tue, Nov 20, 2012 at 4:22 PM

— Mail transféré —

De : ahmed awaleh mohamed <mahamed_awaleh@yahoo.fr>

À : Ram <ram@karuturi.com>

Envoyé le : Dimanche 18 novembre 2012 10h27

Objet :

[Quoted text hidden]

ram, <ram@karuturi.com>
 To: ahmed awaleh mohamed <mahamed_awaleh@yahoo.fr>

Wed, Nov 21, 2012 at 1:25 PM

“ Respected Excellency,

(emphasis supplied)

The aforesaid e-mail has two parts, the first part is related to Standby Letter of Credit and the same is further sub-divided into two parts, i.e., “1.1 Serofta and Goffer” and “1.2 Gambella”. With respect to “1.1”, it is stated that an amount of \$ 200,000 USD has to be transferred to Multiplex and with respect to “1.2”, it is recorded that they have accepted the cause of loss on account of

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floods last year. As pointed out above, the said e-mail admitting the fact of floods has not been verified from the complainant.

21. The letter of acknowledgement of debt signed by the applicant is dated 10.02.2013. However, there are two e-mails thereafter dated 06.03.2013 and 14.09.2013, wherein again the complainant is referring to machinery and equipment required to be supplied by the applicant as well as acknowledging the receipt of certain machinery. E-mail dated 14.09.2013 is reproduced herein below:

FW: Machinery

2 messages

Ram karuturi <ram@karuturi.com>
To: umesh.babu@karuturi.com

Wed, Jan 21, 2015 at 12:15 PM

Best Regards,
Sai Ramakrishna S Karuturi

Chairman & Managing Director | Karuturi Global Limited
204 Embassy Center, 11 Crescent Road, Bangalore - 560001 | Ph. : +91 80 41512430
Fax : +91 80 2225 9782 | Mobile : +91 98861 11009 | Ethiopia : +251 911 505930 |
Kenya : +254 728 608327 | Email: ram@karuturi.com

KARUTURI

www.karuturi.com

----- Forwarded Message

From: ahmed awaleh mohamed <mahamed_awaleh@yahoo.fr>
Reply-To: ahmed awaleh mohamed <mahamed_awaleh@yahoo.fr>
Date: **Sat, 14 Sep 2013 08:15:44 +0100 (BST)**
To: Ram karuturi <ram@karuturi.com>
Subject: Machinery

Dear Karuturi,

We have sent you a message asking you to put in place the agricultural machinery to Serofta.

We will highly appreciate to this situation of machinery given and take into consideration to take the necessary action for putting in place the remaining machinery.

Best regards
MOHAMED AHMED AWALEH
MINISTRE OF AGRICULTUR
IN DJIBOUTI

----- End of Forwarded Message

Situation des équipements Karuturi.docx
13K

Signature Not Verified

Digitally Signed
By: AMIT SHARMA
Signing Date: 04.04.2024 07:39:05
BAIL APPLN. 533/2024



In the statement of the complainant annexed alongwith the status report the latter has completely denied the supply of any agricultural machinery. As pointed out hereinabove, the Investigating Officer has not verified this said e-mail also from the complainant and has chosen to rely upon the statement made by Mahesh G. Shetty regarding this, who states that the machineries were never given against the amount due but were only given as goodwill. Reliance has also been placed by the applicant to certain invoices dated 27.09.2011 with regard to the purchase of machineries from U.S. to the port of destination which is shown as Djibouti, Ethiopia.

22. Similarly, the applicant has placed reliance on the Annual Report of KGL for the year 2012 showing that huge expenditure was made for purchasing world class agricultural machinery for the cultivation of land and also the fact that the applicant had already cultivated 10,000 Hectares of agricultural land in June 2011, however, the same was destroyed due to flash floods. It is also stated therein that the applicant had taken remedial measures by engaging company to build dykes spreading over 110 kms around the entire land to protect it from future damage; however, floods in 2012 were of such magnitude that it breached and broke past the dykes so built.

23. The contention of the learned counsel for the applicant with regard to the fact that distinct stands have been taken by the applicant in the previous bail application for the anticipatory bail and in this bail application with regard to the signatures on the aforesaid letter of acknowledgment dated 10.02.2013 is factually correct but it is not the case of the applicant that he never received the money.



24. Admittedly, the allegations *qua* the present applicant are grave in nature, for which he claims to have defence, as noted in the preceding paragraphs. The veracity of the case of the prosecution as well as the defence taken by the applicant will be determined during the course of the trial.

25. At this stage, it would be relevant to refer to the following judicial precedents in relation to bail:-

25.1. In **Satender Kumar Antil v. CBI, (2022) 10 SCC 51**, the Hon'ble Supreme Court held as under:

"Economic offences (Category D)

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:

Precedents

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)

“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.

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 allay 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.

94. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious



failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.

95. This Court in *Arnab Manoranjan Goswami v. State of Maharashtra* [*Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 SCC 427 : (2021) 1 SCC (Cri) 834] , has observed that : (SCC pp. 471-72, para 67)

“67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC ‘or prevent abuse of the process of any court or otherwise to secure the ends of justice’. Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. Post-Independence, the recognition by Parliament [Section 482CrPC, 1973] of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the



criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum—the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum—the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.”

(emphasis supplied)

96. We wish to note the existence of exclusive Acts in the form of Bail Acts prevailing in the United Kingdom and various States of USA. These Acts prescribe adequate guidelines both for investigating agencies and the courts. We shall now take note of Section 4(1) of the Bail Act of 1976 pertaining to United Kingdom:

“General right to bail of accused persons and others.—

4. (1) A person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act.”

97. Even other than the aforesaid provision, the enactment does take into consideration of the principles of law which we have discussed on the presumption of innocence and the grant of bail being a matter of right.



98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.

99. The Bail Act, 1976 of United Kingdom takes into consideration various factors. It is an attempt to have a comprehensive law dealing with bails by following a simple procedure. The Act takes into consideration clogging of the prisons with the undertrial prisoners, cases involving the issuance of warrants, granting of bail both before and after conviction, exercise of the power by the investigating agency and the court, violation of the bail conditions, execution of bond and sureties on the unassailable principle of presumption and right to get bail. Exceptions have been carved out as mentioned in Schedule I dealing with different contingencies and factors including the nature and continuity of offence. They also include Special Acts as well. We believe there is a pressing need for a similar enactment in our country. We do not wish to say anything beyond the observation made, except to call on the Government of India to consider the introduction of an Act specifically meant for granting of bail as done in various other countries like the United Kingdom. Our belief is also for the reason that the Code as it exists today is a continuation of the pre-Independence one with its modifications. We hope and trust that the Government of India would look into the suggestion made in right earnest."

25.2. In **Sanjay Chandra v. CBI, (2012) 1 SCC 40**, the Hon'ble Supreme Court 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.

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.

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."

25.3. In **Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565**, a Constitution Bench of the Hon'ble Supreme Court, while determining the scope of Section 438 of the Cr.P.C., held as under:

"**27.** It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in *Nagendra v. King-Emperor* [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases' observations are to be found regarding the right to bail which deserve a special mention. In *K.N. Joglekar v. Emperor* [AIR 1931



All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In *Emperor v. Hutchinson* [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence."

25.4. In Vaman Narayan Ghiya v. State of Rajasthan, (2009) 2 SCC 281, the Hon'ble Supreme Court held as under:

"7. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the



misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have. (See *A.K. Gopalan v. State of Madras* [1950 SCC 228 : AIR 1950 SC 27])

8. The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt.”

25.5. In Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42, the Hon’ble Supreme Court had held as under:

“18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing require that such persons be released on bail, in spite of his earlier applications being rejected, the courts can do so.”



26. The judgments cited by the learned counsel for the complainant are in different factual context. In **Vivekanand Mishra** (*supra*), the Hon'ble Supreme Court was dealing with the case of challenge to grant of anticipatory bail in a case registered under Section 306 of the IPC. Similarly, in **Tarun Kumar** (*supra*), the Hon'ble Supreme Court was dealing with the bail application with respect to twin conditions in Prevention of Money Laundering Act, 2002 ('PMLA'). Though the present application is not filed by way of revision petition but under the provision of Section 439 of the Cr.P.C. but this Court has also examined the order passed by the learned ASJ while dismissing the application for grant of regular bail to the present applicant. Suffice to say that the learned ASJ has not taken into consideration the facts noted hereinabove by this Court.

27. Opinion from Medical Board, *vide* dated 08.03.2024 with regard to the health condition of the applicant, constituted by Safdarjung Hospital is as under:-

"Patient is a Follow up c/o of Diabetes, Mellitus, hypothyroidism, Dilated Cardiomyopathy with reduced ejection fraction (30%) NYHA Class-II, with post ICD implant and Bipolar Mood Disorder".

As per directions of Hon'ble Court the opinion of Medical Board regarding medical condition of SAI RAMAKRISHNA KARUTURI and future course of treatment is submitted as under:-

"As per the last assessment done on 01/03/2024 the patient is a case of Diabetes Mellitus, hypothyroidism, Dilated Cardiomyopathy with reduced ejection fraction (30%) NYHA Class-II, with post ICD implant and Bipolar Mood Disorder and is on medical treatment. Medical Board was held on 08/03/2024 and experts are of the opinion that patient is stable and is suffering from chronic medical conditions as



mentioned above, for which he needs to regularly follow up in respective OPDs on long term basis.”

28. The applicant is in judicial custody since 25.10.2023. The investigation in the present case stands complete, although the sanction for prosecution under Section 188 of the Cr.P.C. is still awaited. There is no previous involvement of the present applicant. It is pertinent to note that in the statement given by Mahesh G Shetty, it is recorded that the applicant was largest rose producer in the world as well as the largest investor in Ethiopia signifying that the present applicant is not a fly-by-night operator. It is also a matter of record that the Government of Djibouti, after the letter of acknowledgement dated 10.02.2013 till the filing of the complaint, took no steps with regard to recovery of money in any civil proceedings. The applicant was granted anticipatory bail by this Court and after cancellation of the same; he had duly surrendered before the learned Trial Court which demonstrates that he is not a flight risk.

29. In totality of the facts and circumstances of the case, the application is allowed. The applicant is directed to be released on bail upon his furnishing a personal bond in the sum of Rs. 5,00,000/- alongwith two sureties of like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at 1391, 9th Main, 3rd Cross, Judicial Layout, Bangalore. 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.** The application stands disposed of along with all the pending application(s), if any.
- 31.** Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.
- 32.** Let a copy of this judgment be communicated to the concerned Jail Superintendent.
- 33.** Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

APRIL 04, 2024/sn