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

+ **BAIL APPLN. 835/2024**

NAKUL SHARMA

.....Petitioner

Through: Mr. Banka Bihari Panda and Mr. Anil
Kumar Tanwar, Advocates.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for the State.
Mr. Saurabh Kansal, Ms. Pallavi
Sharma Kansal, Mr. Manish Kumar,
Mr. Suraj Kumar Jha, Mr. Raghav
Vij, Mr. Pratham Malik Advocates for
Respondent No.2.
SI Kiran Dayal, D-2009, PS Moti
Nagar.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

19.09.2024

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1. The Petitioner has approached this Court for grant of bail in the event of arrest in FIR No.746/2023 dated 31.12.2023 registered at Police Station Moti Nagar for offences punishable under Sections 498A/406/354/34 IPC.
2. The present case arises out of a matrimonial dispute. This Court on 06.03.2024 had issued notice and passed an order restraining the Police from taking any coercive steps against the Petitioner. Thereafter an attempt was made to settle the disputes through mediation and parties were referred to Delhi High Court Mediation & Conciliation Centre *vide* Order dated 13.08.2024. Unfortunately, the mediation has failed.
3. After this Court granted protection, the Petitioner has joined



investigation and chargesheet has been filed. The Apex Court in Satender Kumar Antil v. Central Bureau of Investigation, (2021) 10 SCC 773, has observed as under:-

“3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:

“Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B and D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

Requisite Conditions

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge-sheet Siddharth v. State of U.P. [Siddharth v. State of U.P., (2022) 1 SCC 676])

Category A

After filing of charge-sheet/complaint taking of cognizance



(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

Category B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

Category C

Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, Pocso, etc.”

4. Needless to say that the Category A deals with both police cases and complaint cases.



5. The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by the learned ASG is that where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

6. We may also notice an aspect submitted by Mr Luthra that while issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.

7. The suggestions of the learned ASG which we have adopted have categorised a separate set of offences as “economic offences” not covered by the special Acts. In this behalf, suffice to say on the submission of Mr Luthra that this Court in *Sanjay Chandra v. CBI* [*Sanjay Chandra v. CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

(a) seriousness of the charge, and

(b) severity of punishment.

Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a



different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.”

4. Applying the ratio of the said judgment to the present case, this Court is inclined to grant bail to the Petitioner in the event of arrest, subject to the following conditions:-

- i. The Petitioner shall furnish a security for the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the concerned IO/SHO/Duty Magistrate.
- ii. The Petitioner shall not leave the city of Delhi without the permission of the Trial Court.
- iii. The Petitioner shall not contact the Prosecutrix or any of the family members directly or indirectly.
- iv. The Petitioner shall not harass Respondent No.2 by visiting the school or creating any unnecessary pressure on her.
- v. The Petitioner is directed to deposit his Passport with the learned Trial Court.

5. It is made clear that this order is only restricted to the present bail application and cannot be taken as an observation regarding other complaints filed by Respondents No.2.

6. With these observations, the bail application is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 19, 2024

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