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

\+ BAIL APPLN. 914/2024

MITHILESH KUMAR SHARMA ..... Petitioner

Through: Mr. Vijay Kumar Dwivedi and Mr. Satender Kumar, Advocates.

versus

STATE OF GOVT NCT OF DELHI ..... Respondent

Through: Ms. Shubhi Gupta, APP for State. Dr. Vinod Bidhuri and Mr. D.K. Yati, Advocates for complainant with complainant in person.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **06.05.2024**

1. Present application has been filed by the applicant Mithilesh Kumar Sharma S/o Ram Lal Sharma under Section 439 Cr.P.C. for grant of regular bail in case FIR No. 84/2023 dated 28.03.2023 registered under Sections 420/467/468/471/384/506/120B IPC at PS: Special Cell.

2. Case of the prosecution is that present FIR was registered on a complaint of Sunil Kumar Gupta, who alleged that one Shobhit Agarwal owed Rs.1.30 crore to him under some earlier transaction between them and when he approached accused Shobhit Agarwal for payment of money and to buy property in Gurugram, Shobhit introduced him to Sachin Mittal, the co-accused, who allured him into obtaining two home loans, amounting to Rs.6.80 Crores from the banks. After availing the loans, he was not given possession of the two properties sold to him and on enquiries, he later learnt

that the two along with their associates, Vishal Oberoi and Himanshu Rasgotra had, under a well-orchestrated plan, managed the loans against two properties by preparing forged documents. Complainant neither received the entire loan amount nor possession of the properties and realised that he had been cheated. Complainant also received threats and extortion calls to pay the EMIs of the two home loans.

3. As per the status report, during investigation, it was found that home loan of Rs.3 crores was taken by the complainant vide Loan Account No.HL00830000340538 from IDBI Bank, Green Park against property Villa A-3, The Hermitage, Sector-103, Gurugram, Haryana, in a project developed by Satya Developers Pvt. Ltd. The home loan was disbursed on 19.04.2022 by Banker's Cheque No. 010632 dated 31.03.2022 in Bank of Baroda Account No.36290100019187, which was the account of accused Himanshu Rasgotra, who allegedly sold the above property to the complainant. Analysis of the bank statement, revealed that this savings account was opened on 20.10.2021 and thereafter Rs.3 lacs were transferred in this account on 27.10.2021 from ICICI Bank Account No.084305001370 pertaining to M/s. Naman Finlease Pvt. Ltd., company of Sachin Mittal and on the same day, the said amount was transferred through RTGS and NEFT to Satya Developers Pvt. Ltd. Again on 09.03.2022, a sum of Rs.5 lacs was first transferred in the above account of Himanshu Rasgotra by M/s. Naman Finlease Pvt. Ltd. and thereafter to Satya Developers Pvt. Ltd.

4. It is further stated that replies received from IDBI Bank Limited and Satya Developers Pvt. Ltd. were examined and it was found that Himanshu Rasgotra in connivance with other co-accused, first booked property in 'The Hermitage' project to obtain allotment letter and other related documents

and thereafter the documents were forged to obtain the home loan of Rs.3 crore from IDBI Bank. Himanshu Rasgotra was arrested on 11.06.2023 and during his police remand of 12 days, during interrogation, disclosed that he had come in contact with Vishal Oberoi 3 years ago. Due to pandemic COVID-19 he had incurred losses in business and was in need of money. Two years ago, Vishal Oberoi introduced him to Udit Khullar and Sachin Mittal and to earn quick money he agreed to become a fake seller of 5 properties on which home loans were to be taken from the banks. After receiving Rs.3 crore in his bank account, he transferred the money in different banks as per directions of Vishal Oberoi and Udit Khullar. He transferred different amounts in the bank account of AV Global, a trading firm of Vishal Oberoi, from the savings account of his mother Chitra Rani Rasgotra, since Vishal Oberoi told him not to make direct transactions from his account to Vishal's bank account. He stated that he was paid Rs.10/12 lacs for this purpose.

5. It is stated that on further interrogation, Himanshu Rasgotra disclosed that Vishal Oberoi and Udit Khullar used to send him forged documents and details of account numbers through WhatsApp, in which the fraudulently obtained loan amounts were transferred by him. He had given his mobile number to one Saurabh Mittal, as per instructions, so that police could not find any data. Vishal Oberoi and Udit Khullar kept their shares of money in his bank account and got the funds transferred in different banks, as and when they needed money for spending in clubs and hotels. Himanshu also disclosed that in March, 2023, he along with Vishal Oberoi and Udit Khullar fled to Dubai to evade the arrest and that it was Udit Khullar who had prepared forged documents of all the five fraudulent home loans.

6. On the aspect of second home loan bearing No. LBDEL00006045247, with respect to property being Flat No.PL-3/0202, Paras Enterprises, Gurugram, case of the prosecution is that respective replies received from M/s. Fantasy Buildwell Pvt. Ltd. and ICICI Bank revealed that Vishal Oberoi was also involved in the fraudulent act of taking the loan and selling the property in question. The amount of Rs.3.80, crore was transferred on 20.04.2022 by ICICI Bank in Axis Bank account of Vishal Oberoi, who on the same day transferred Rs. 5 lacs in the bank account of his firm AV Global and thereafter in the ICICI Bank Account of M/s. Naman Finlease Pvt. Ltd., in which Sachin Mittal is a Director and a major shareholder. During investigation conducted so far, 16 other fraudulent home loan cases have come to light, in which Himanshu Rasgotra, Vishal Oberoi, Shobhit Agarwal and his employee Saurabh Mittal as well as Udit Khullar are involved as either fake sellers or buyers.

7. During investigation, it was revealed that Sachin Mittal runs an NBFC in the name of M/s. Naman Finlease Pvt. Ltd. and on interrogation, he disclosed that in order to infuse funds in the said firm and to make payment of loans of private money lenders, he along with his associates procured fraudulent loans. On his directions, his associates, Mithilesh Kumar Sharma (applicant herein), an employee of M/s. Naman Finlease Pvt. Ltd., Udit Khullar (shareholder in M/s. Naman Finlease Pvt. Ltd.) and Rahul Mathur, who managed fraudulent home loans from SBI, used to prepare forged documents for obtaining loans from nationalised and private banks. Mobile connectivity was found between Sachin Mittal and Vishal Oberoi as well as between Himanshu Rasgotra and Vishal Oberoi.

8. As for the role of the applicant herein is concerned, it is stated in the

Status Report that investigation revealed that applicant was an employee in M/s. Naman Finlease Pvt. Ltd., an NBFC controlled by co-accused Sachin Mittal, Udit Khullar and others. Co-accused Sachin Mittal and Udit Khullar managed finances for persons requiring loans, through private financers on exorbitant rates of interest and compelled them to obtain home loans and thereafter extorted money through musclemen. On 26.08.2023, hand written letter of the applicant was received by post in Special Cell, in which it was disclosed that he had availed 7 loans i.e., 5 car loans and 2 personal loans on the basis of forged documents. During investigation, Statement of bank account numbers *viz.* xxxxxx8235 and xxxxxx9523 of Kotak Mahindra Bank, operated by the applicant was received and analysed and it was found that while the applicant was employed at a monthly salary of Rs. 95,000/- per month by M/s. Naman Finlease Pvt. Ltd., the total transactions in the accounts were more than Rs. 90 lacs since 2019.

9. It is further stated that on 10.10.2023, applicant filed an application for surrender before the learned CMM, Patiala House Courts, New Delhi, wherein he was formally arrested and 7 days PC remand was obtained. During investigation, applicant disclosed that he worked as computer operator in M/s. Naman Finlease Pvt. Ltd. and had prepared forged documents of fake properties to obtain home loans from different banks in connivance with co-accused Udit Khullar, Rahul Mathur and Kajal Dubey. One laptop and one mobile phone were recovered from the house of the applicant at his instance, which were sent to FSL for examination and the report is awaited. Specimen signatures and handwriting of the applicant have also been sent for forensic examination.

10. It is stated that CDR of mobile number xxxxxx2690 of the applicant

was analysed and it was found that he had made several calls to Sachin Mittal and others. As many as 1780 calls and 40 SMSs were exchanged between Udit Khullar and the applicant and a total of 490 calls and 03 SMSs were exchanged between Swadesh Ranjan Mishra and the applicant showing their active involvement in the crime.

11. Learned counsel for the applicant states that the applicant is innocent and has been falsely implicated in the present case. Applicant belongs to a lower middle class family and is a resident of Gorakhpur, Uttar Pradesh. He came to Delhi in search of a job as he had no source of livelihood. In Delhi, he met Sachin Mittal, who was running a company providing business and home loans and after interviewing him and looking at his skills in computers, Sachin Mittal employed the applicant at a monthly salary. Applicant has no role in the alleged offences and not wanting to evade the process of law and/or flee from justice, applicant himself surrendered before the Court of learned CMM, Patiala House Courts.

12. It is further urged that Charge Sheet has been filed and investigation stands completed. No useful purpose will be achieved in keeping the applicant in custody as trial is likely to take a long time since even charges have not been framed till date and 57 witnesses are to be examined by the prosecution. The main accused Sachin Mittal has been granted regular bail by this Court vide order dated 28.03.2024 in BAIL APPLN. 2576/2023 and the role ascribed to the applicant is much less compared to that of Sachin Mittal.

13. Ms. Shubhi Gupta, learned APP appearing on behalf of the State submits that applicant was a part of the well-orchestrated plan and conspiracy. Investigations have revealed that applicant was employed with

M/s. Naman Finlease Pvt. Ltd., an NBFC controlled and run by the main accused Sachin Mittal, Udit Khullar and others, who compelled people in need of loans to borrow money at exorbitant rates of interest and thereafter extorted money. They forged documents of properties and mortgaged them with the banks for obtaining loans. Applicant was not just an employee of M/s. Naman Finlease Pvt. Ltd. but had an active role in commission of the crime and his bank accounts would reflect that he was also a beneficiary of the proceeds of crime. CDR analysis of his mobile number shows that he was regularly speaking to the co-accused Sachin Mittal, Udit Khullar and others. Ms. Gupta, however, candidly admits that the main accused Sachin Mittal has been enlarged on bail by this Court.

14. Heard learned counsels for the applicant and the complainant and learned APP for the State.

15. The principles that govern the grant of bail have been elucidated and re-stated and re-affirmed again and again. In order to avoid prolixity, I may refer to a few judicial precedents before proceeding to examine the present case. In ***Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40***, the Supreme Court observed as follows:-

> ***"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.

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.*

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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."*

16. In ***P. Chidambaram v. Central Bureau of Investigation, 2019 SCC OnLine SC 1380,*** the Supreme Court held as under:-

*"**21.** The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:*

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

[Vide Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280 : 2001 SCC (Cri) 674]."

17. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee and Another, (2010) 14 SCC 496,*** the Supreme Court culled out the following factors which govern the grant of bail and ought to be kept in mind by the Courts while taking a decision to grant or reject bail:-

*"**9**. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the*

accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674], and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688].”

18. It has been time and again emphasised and highlighted by the Courts that the rationale and reasons for permitting judicial custody of an under trial are to: (a) prevent an accused from committing another offence; (b) to conduct investigation; (c) to prevent from tampering with evidence or threatening/intimidating witnesses; and (d) to ensure the presence of the accused to face trial and to ensure that the accused is available to receive sentence, if convicted.

19. The allegations in the FIR are no doubt serious. However, the truth of the allegations and/or the exact role of the applicant in the commission of the alleged offences will only be known and established during trial. Investigation stands concluded and Charge Sheet and Supplementary Charge

Sheet have been filed. So far, even charges have not been framed by the Sessions Court and 57 witnesses have been listed for examination by the prosecution. Therefore, there is no likelihood of the trial concluding in the near future. Looking at the nature of accusations and allegations, the evidence will be primarily documentary in nature and as per the Status Report, the Statements of accounts, mobile phones and requisite documents pertaining to the applicant have been seized and analysed by the Investigating Officer and/or sent for forensic examination and the reports are awaited. No useful purpose will be thus achieved by continuing the incarceration of the applicant. Nominal Roll dated 23.04.2024 reflects that applicant is in judicial custody from 10.10.2023. His antecedents are clean and his overall Jail conduct is satisfactory. It is not the case of the prosecution that applicant is a flight risk and there is an apprehension of his fleeing from justice, if released on bail.

20. Pertinently, Sachin Mittal, who is claimed to be the main accused and against whom the allegations are of disbursing home loans by inducing several persons and forging property documents, etc. has been enlarged on regular bail by this Court. Prosecution has stated that applicant was an employee of M/s. Naman Finlease Pvt. Ltd. and has placed heavy reliance on the CDR analysis of the mobile number of the applicant to show that he was in regular communication with the co-accused. Reliance on the CDRs at this stage is misconceived and does not *per se* inculpate the applicant as the CDR analysis of the mobile number would be a matter of trial. ***[Ref.: State (BY NCB) Bengaluru v. Pallulabid Ahmad Arimutta and Another, (2022) 12 SCC 633].***

21. In the facts and circumstances of this case, I am inclined to grant bail

to the applicant. It is, therefore, directed that applicant shall be released on bail on his furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court and further subject to the following conditions:-

i. Applicant shall not leave the country without prior permission of the Trial Court;

ii. He shall provide his mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;

iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;

iv. He shall appear before the Trial Court as and when the matter is taken up for hearing; and

v. He shall not indulge in any criminal activity or contact any witness and/or any other person associated with the present case.

22. It is made clear that nothing stated in this order shall tantamount to expression of opinion on merits of the case.

23. Application stands disposed of.

24. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

MAY 6, 2024/*DU*/kks