2024:DHC:3611

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

Pronounced on: 06.05.2024

\+ **BAIL APPLN. 1712/2023**

SHAYAM SUNDER ..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate with Mr. Gorang Gupta, Mr. Harsh Choudhary, Mr. Shailendra Singh and Ms. Ishaan Jain, Advocates.

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr.Amol Sinha, ASC for State with Mr.Ashvini Kumar and Mr.Kshitiz Garg, Advocates with Insp. Satish Kumar, PSIFSO/Spl.Cell/ND.
Mr.Ranvijay Kumar, Mr.Sushant Nagar, Ms.Rina Roy and Mr. A.Samananda, Advocates for complainant/R-2.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in connection with FIR No 107/2022, initially registered under Sections 419/420/468/471/34 IPC, at PS

Special cell and subsequently charge sheet was filed under Section 419/420/467/468/471/120B/34 IPC and 66 C/ 66 D IT Act.

2. The case of the prosecution as borne out from the status report is that a complaint was received, wherein the complainant alleged that some individuals have induced him to invest in fraudulent investment schemes. It is alleged one Mr. Sumit Jain contacted the complainant telephonically on numerous occasions and informed the complainant that ICICI prudential had declared a bonus for his good customers and that the complainant is also eligible for availing this bonus for his previous policy. To avail the said bonus, the complainant will have to invest a sum of Rs 55,000/- which would be returned to him once he received the bonus. Accordingly, the complainant invested the said amount. Later, when the complainant tried to contact Sumit Jain to know the status of bonus, then the alleged phone number was found switched off.

3. Subsequently, the complainant was approached by one Ms Ritu Verma, who also claimed to be from ICICI Prudential. She fraudulently introduced the complainant to Mr. Bansal, who further fraudulently induced the complainant to part with Rs 32,000/-, Rs 41,600/- and Rs 75,000/- in the account of Chandra Bhushan towards some Code Deactivation charges, NOC charges, FNF Charges. Between 2015 to 2017, there were numerous instances of cheating by suspicious individuals, who tricked the complainant to invest a total of Rs 4,35,500/- in various policies and Rs 14,56,500/- in dubious schemes.

4. In the beginning of 2018, one Mr. Alok Verma, claiming himself to be an officer of the complaint department of Governing Body of Insurance Council, Mumbai, telephonically contacted the complainant and informed

him that he was in receipt of a complaint file. He further assured the complainant that he would register a complaint with the GBIC on behalf of the complainant and would ensure that all payments and due arrears are made to the complainant. Between April 2018 and August 2019, he got the complainant in contact with other officials, namely Mr. Rajan Singh, Mr. Reddy and Mr. Vivek Tiwari.

5. It is alleged that eventually, a group of unknown people had cheated the complainant to the tune of Rs 2.80 Crore over a period of 7-8 years on the pretext of insurance policies and, getting back the money stuck in the insurance policies.

6. On the basis of the complaint of the complainant, FIR No. 107/2022 under Sections 419/420/468/471/34 IPC, at PS Special cell was registered. During the course of investigation, the complainant produced all the fake and fabricated documents sent by the accused persons. The documents thus seized were sent for verification to IRDA (Insurance Regulatory and Development Authority of India) as well as to the Office of Ombudsman for verification and upon their reply the same were found to be fake.

7. In the course of investigation, the complainant provided the bank account details in which he had deposited the money on various occasions. He also furnished several mobile phones from which he had received phone calls. The alleged bank accounts were analysed and the CDRs of the aforesaid mobile phones were obtained. The investigation revealed that the cheated amount was found to be credited in the multiple bank accounts provided by the complainant. During analysis of the bank account details obtained from the concerned banks, it was found that the complainant's money was credited into the alleged accounts and the same was found to be

withdrawn through various ATMs. However, no clue about the accused could be obtained from the money trail as the matter was old and the money was found to be withdrawn upto June, 2021. The account holders of the alleged accounts, the details of which were provided by the complainant, were also found to be either fake or not existing.

8. It was also found that two mobile numbers i.e. 8XXXXX1474 and 9XXXXXX489 were frequently used to call and cheat the complainant Ghanshayam Rai from 2018 onwards. On the basis of the technical and mobile surveillance of the two mobile numbers, the petitioner along with his associate Aryan Nayak, was apprehended near Lal Quan, Ghaziabad on 20.07.2022. On the basis of CDRs it is also alleged that the present petitioner and co-accused Aryan Nayak were operating HDFC ATM Card with which the mobile 9XXXXXX489 found to be linked.

9. The chargesheet was filed on 19.10.2022 with respect to the present petitioner, as well as, co-accused Aryan Nayak. However, liberty was sought from the learned Trial Court during filing of the chargesheet for filing supplementary chargesheet with respect to other co-accused, FSL report, certified copies of CDRs and other remaining investigation.

10. Learned senior counsel for the petitioner submits that there is no allegation that the petitioner has forged any valuable security, therefore, no offence under Section 467 IPC is made out. Relying upon the decision of the Hon'ble Supreme Court in S***heila Sebastian vs. R. Jawaharaj: 2018 (7) SCC 581***, he submits that unless the forger of the document is identified, the offence of forgery cannot be sustained.

11. He submits that the allegations pertain to the year 2015-16 and 2018-19 but the FIR was registered only in the year 2022. Further, no money was

deposited in the bank account of the accused nor the bank accounts in which the money was deposited by the complainant, were opened under the signatures of the petitioner. He contends that there is no evidence on record to show that any money allegedly deposited by the complainant/victims, was withdrawn by the petitioner. The inference being drawn on the basis of CDRs is an aspect which will be considered during the trial and the bail cannot be denied to the petitioner in a case solely based on the CDRs.

12. He submits that the HDFC Bank Debit Card allegedly recovered from the petitioner belongs to Sridhar Govind Kulkarni and the money was deposited in his account, but clean chit has been given to him in the present case and he has not even been arraigned as an accused.

13. Inviting attention of the Court, the learned senior counsel submits that half-baked chargesheet has been filed, inasmuch as the IO has stated in the chargesheet that supplementary chargesheet will be filed after completing investigation in all respects. In support of his contention, the learned counsel has placed reliance on the decisions of a Coordinate Bench of this Court in ***Chitra Ramkrishna vs. Central Bureau of Investigation: 2022 SCC OnLine Del 3124.***

14. He further contends that the investigation in the matter is complete and the custody of the petitioner is no more required. Even otherwise, the case is premised on documentary evidence, which have already been recovered by the police. He further submits that antecedents of the petitioner are clean and the petitioner is also ready to abide by the conditions that may be imposed by this Court.

15. *Per contra*, learned Additional Standing Counsel for the State has argued on the lines of the status report. He submits that the chargesheet

filed against the present petition is complete in all respects and liberty was sought to file chargesheet with regard to other accused persons. Adding further, he submits that the liberty sought by the IO with respect to the FSL report and certificate in support of the CDRs in terms of Section 65-B of the Evidence Act, do not amount to filing of incomplete chargesheet

16. He further contends that benefit of Section 167(2) CrPC can be extended only where the chargesheet is not filed and investigation is kept pending but once a chargesheet is filed, the said right ceases and it does not revive only because further investigation remains pending within the meaning of Section 173(8) CrPC. To buttress this contention, reliance is placed on the decision of the Hon'ble Supreme Court in ***Dinesh Dalmia vs. CBI: (2007) 8 SCC 770***.

17. According to the learned Additional Standing Counsel, co-accused Bablu Malakar and Birendra Kumar Das have jumped the bail after paying first installment as per bail order, therefore, there is every possibility that the petitioner will abscond if released on bail as the accused has heavy financial liability to pay.

18. I have heard the learned Senior Counsel for the petitioner, as well as, the learned Additional Standing Counsel for the State and have perused the record.

19. A perusal of the chargesheet shows that in so far as the petitioner is concerned, the chargesheet was filed on 19.10.2022 within 90 days of petitioner's arrest and the chargesheet appears to be complete *qua* the petitioner and co-accused Aryan Nayak. The IO sought liberty to file supplementary chargesheet qua other accused persons only and such supplementary chargesheet against co-accused was filed on 27.05.2023.

Further, if the chargesheet is not accompanied by an FSL report, it cannot be termed as incomplete chargesheet.[1] Likewise, the certificate under section 65-B of the Evidence Act in support of the CDRs or other electronic record can be produced by the prosecution at any stage before the commencement of trial.[2] In these circumstances the petitioner cannot get the benefit of default bail under Section 167(2) CrPC.

20. The submission of the learned Senior Counsel that since there is no allegation that the petitioner has forged any document, therefore, charge of forgery cannot be sustained against him, as well as, other aspects related to forgery and cheating will be considered by the learned Trial Court during the trial and any comment on the same at this stage will prejudice the case of the prosecution or the defence.

21. However, the allegations of duping the complainant by the petitioner and co-accused are for the period 2015-16 and then of the year 2018, however, the FIR came to be registered after inordinate delay only in the year 2022 for which there is no explanation.

22. It is the case of the prosecution itself that the inquiry revealed that the complainant's money was credited into the bank accounts the details of which the complainant furnished but the same was found to be withdrawn through various ATMs, however, no clue about the accused could be obtained from the money trail as the matter was old and the money was found to be withdrawn upto June, 2021. The account holders of the alleged accounts, the details of which were provided by the complainant, were also found to be either fake or not existing, but there is not an iota of

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[1] Ranbir Singh v. State, 2024 SCC OnLine Del 204 [para 7]

[2] Arjun Panditrao Khotkar V. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 [paras 52 & 56]

incriminating material to connect the petitioner/accused to the same. Therefore, the absence of incriminating material, will enure to the benefit of the petitioner at stage of consideration of his bail application.

23. The allegation of withdrawal of money from the bank account by the petitioner and co-accused by using HDFC bank ATM / Debit Card is based only on the CDR location. It is trite law that the CDR's of the petitioner can only be used as supporting or corroborative piece of evidence and cannot form the sole basis of conviction.[3] Likewise, the evidentiary value of the CDRs can be seen only at the time of trial and not at the stage of considering the bail application. Reference may advantageously be had to the decision of the Supreme Court in ***State (By NCB) Bengaluru v. Pallulabid Ahmad Arimutta***[4] , the relevant extract of which reads as under:-

> *"12. ...The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage trial."*

24. In so far as allegations of forgery and cheating are concerned, the same are yet to be established during trial. It is well settled that at pre-conviction stage, there is presumption of innocence. At this stage, it cannot be overlooked that the petitioner is in custody since 20.07.2022 and the prosecution has cited as many as 33 witnesses which would inevitably lead to a protracted trial.

25. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be awarded to him. Detention is not supposed to be punitive or preventive. The seriousness of

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[3] 2023 SCC OnLine Del 1769 :Azad v. State of GNCT of Delhi
[4] (2022) 12 SCC 633

allegations or the availability of material in support thereof are not the only considerations for declining bail. Delay in the commencement and conclusion of the trial is a factor to be taken into account and the accused cannot be kept in custody for an indefinite period if the trial is not likely to be concluded within a reasonable time.

26. At this juncture, it is also apposite to refer to the following observations of the Hon'ble Supreme Court made in Sanjay Chandra v. CBI, (2012) 1 SCC 40, which read 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 can be 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. 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 India, 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.* ***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 propose of giving him a taste of imprisonment as a lesson.

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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.”

(emphasis supplied)

27. In ***P. Chidambaram v. Directorate of Enforcement*, (2020) 13** *SCC 791*, it was observed by the Supreme Court that even if the allegation is of commission of a grave economic offence, it is not a rule that bail should be denied in every case and 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. Para 23 of the said decision reads thus:

> *"23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench 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."

28. In ***Satender Kumar Antil v. State of Maharashtra,*** *(2022) 10 SCC 51*, the Supreme Court, after observing that law, as laid down in Sanjay Chandra (supra) and P. Chidambaram (supra), will govern the field, deprecated the approach of deciding the bail application strictly, contrary to legal principles. The Supreme Court also emphasized the role of criminal courts as guardian angels of liberty:

> *"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.***
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> ***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."***
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> ***(emphasis supplied)***

29. Notably, the investigation is now complete and the charge-sheet as well as supplementary charge-sheet stand filed *qua* the petitioner. The present case is otherwise based on documents and all incriminating documents have already been recovered by the investigating agency and made part of the charge-sheets. Evidently, the custody of the petitioner is no longer required. In the given circumstances, no useful purpose will be served in keeping the petitioner behind bars.

30. In so far as the apprehension expressed by the learned APP as regards the petitioner being a flight risk, the same can be dispelled by putting stringent conditions. It is also not the case of the prosecution that the petitioner has a criminal record.

31. Considering the above-discussed circumstances and keeping in perspective the law laid down by the Hon'ble Supreme Court, I am of the view that the petitioner is entitled to grant of regular bail pending trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/Jail Superintendent, further subject to the following conditions:

a) Petitioner shall surrender his Passport, if any, before the Trial Court at the time of furnishing bail bond/surety bond.

b) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.

c) Petitioner shall provide all the mobile numbers to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating officer concerned.

d) Petitioner shall not directly or indirectly, make any inducement, threat or promise to the witnesses cited by the prosecution

32. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

33. The petition stands disposed of.

34. Copy of the order be forwarded to the concerned Jail Superintendent for information and necessary compliance.

35. Order dasti under the signatures of the Court Master.

36. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

MAY 06, 2024
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