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

\+ **BAIL APPLN. 1314/2024**

BHARAT KUSHWAHA ..... Applicant

Through Mr. Dinesh Manga, Mr. Mohit Kumar, Mr. Aashu Sharma and Mr. Rawinder Kumar, Advs.

versus

STATE ..... Respondent

Through Mr. Ajay Vikram Singh, APP for the State with Insp. Sushil Kumar, Special Cell.

Mr. Swastik Singh, Mr. Ravinder Hooda, Mr. Atul Singh, Mr. Ankit Hooda and Mr. Divyam Panghal, Advs. for the complainant along with complainant in person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **02.07.2024**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking regular bail in FIR No. 256/2023 dated 03.10.2023, registered at Police Station Special Cell, for offences under Sections 419/420 of the Indian Penal Code, 1860 ('**IPC**') and Section 66(D) of the Information Technology Act, 2000 ('**IT Act**').

2. It is pertinent to note that the chargesheet has already been filed in the present case.

3. The brief facts of the case are that the applicant along with his associates, operating under the guise of different companies, lured the complainant with promises of high returns on investments through deceptive portfolio management services.

4. It is alleged that in January, 2021, the complainant started receiving multiple calls from one Sumit Gupta about portfolio management services. It is alleged that while the applicant initially refused to invest any amount, he ultimately caved in September, 2021 and ended up investing a sum of ₹3,80,80,276/- on the basis of the false assurances of high returns over the course of the next two years.

5. It is mentioned in the Status Report that till 28.06.2023, on the direction of Sumit Gupta and his colleagues, the complainant transferred a total sum of ₹5,00,62,000/- into different bank accounts. The applicant had received the majority of the cheated amount to the tune of ₹4,00,00,000/- in the account of M/s Resource India (applicant is a proprietor of the said firm) from where he had further transferred approximately ₹3,08,00,000/- to his personal accounts.

6. During investigation, it was also found that the applicant had transferred money from the account of M/s Resource India to the account of co-accused Lokesh as well. It was also found that huge part of the cheated sum was transferred by the applicant from his bank accounts. The applicant had also withdrawn the amount of ₹27,95,500/- from his account after transferring the cheated amount.

7. It is the case of the prosecution that the accused persons had created bogus companies to cheat the complainant and other persons. It is alleged that the case was lodged when complainant received no response from Sumit.

8. During the course of investigation, it was found that the WhatsApp number through which Sumit was contacting the complainant was found in active condition on the OPPO phone of

the applicant. The same was found to be registered in the name of one- 'Nitin' from Mumbai. Furthermore, IP logs of one of the alleged email-ID, being, sumitguptaresearch00@gmail.com, used by the accused persons were obtained from Google. IPDR of IP logs of the said email ID was also obtained from Vodafone and the number found liked to the said email ID is registered in the name of the applicant.

9. It is alleged that the applicant himself was impersonating as Sumit Gupta to induce the complainant to invest high sums.

10. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case and he has clean antecedents.

11. He submits that the complainant enjoyed the returns from his investments and also lodged the present case as he was unsatisfied with the returns due to a dip in the market.

12. He submits that the evidence in the present case is documentary in nature and is already present on record whereby the prolonged incarceration of the applicant is no longer needed.

13. He submits that the complaint mentions that the complainant had been cheated out of ₹3,80,00,000/- approximately, however, the amount was inflated in the Status Report to ₹5,00,00,000/-.

14. He submits that the chargesheet and supplementary chargesheet have been filed in the present case. The applicant cannot be made to suffer incarceration indefinitely.

15. The learned counsel for the complainant opposes the bail applicant. He submits that a *prima facie* case of cheating is made out against the applicant.

16. He submits that the applicant has defrauded multiple

victims as is evident from the recovered WhatsApp chats. He submits that multiple ATM cards were recovered from the applicant as well.

17. He submits that the money invested by the complainant was siphoned of by the applicant as is clear from his bank statements.

18. He submits that the applicant introduced himself under a different name to the complainant and had an intention to commit fraud from the start. He submits that the *modus operandi* of the applicant was thus to use a fictitious identity to defraud susceptible victims.

19. The learned Additional Public Prosecutor for the State opposes the grant of any relief to the applicant and echoes the submissions of the complainant.

20. I have heard the learned counsel for the parties.

21. In the present case, it is alleged that the applicant along with the other accomplices in a well-planned manner caused wrongful loss to the complainant and defrauded him of approximately ₹5 crores by luring him with promises of extravagant returns on investment.

22. It is contended by the learned counsel for the applicant that the money was invested by the complainant way back in September, 2021. He submitted that the complainant had invested the money after being satisfied about the prospective returns. No complaint was filed till such time the complainant was getting the promised returns. He further submits that non-payment of the promised returns *ipso facto* does not amount to cheating and the present is a pure commercial dispute.

23. Alleged evidences such as Debit cards of various banks,

stamp of future investment group, stamp of Resource India and cheque books were allegedly recovered from the applicant's house. Further, the applicant himself furnished his mobile phone with the WhatsApp number that was used to contact the complainant as well. He was arrested to unearth the money trail.

24. The case, at this stage, is based on the alleged evidence which is admittedly in possession of the prosecution.

25. The defences and the allegations as to whether the applicant was hand in glove with the other accused persons and had induced the complainant to cause wrongful loss, would be the subject matter of trial and cannot be presumed at this stage.

26. The learned counsel for the complainant states that he has no objection if the bail is granted, subject to the applicant undertaking to return the amount invested by him. It is trite law that criminal courts cannot be made to act as tools for recovery in the hands of litigants. Thus, this Court does not deem it appropriate to pass any order to this effect.

27. Even though it is alleged that the applicant will influence the witnesses and tamper with the evidence if released on bail but the same is only a bald assertion. Moreover, the same can be taken care of by putting appropriate conditions.

28. In the present case, chargesheet and supplementary chargesheet have already been filed and the investigation in the present case is complete. The applicant has been in custody since 23.12.2023.

29. It is trite law that the undertrial prisoners cannot be detained in custody for an indefinite period. It is a settled principle of law that bail is the rule and jail is an exception. The right to speedy trial and justice has been recognised as a

Fundamental Right by the Hon'ble Supreme Court. In ***Sanjay Chandra v. CBI*: 2012 1 SCC page 40**, it was 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**. **<u>The object of bail is neither punitive nor preventative.</u>** 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 un convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances"*
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> (emphasis supplied)

30. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time.

31. Without commenting further on the merits of the present case and keeping in mind the facts and circumstances of the case, I am satisfied that the applicant has made out a case for grant of regular bail.

32. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
c. The applicant shall appear before the learned Trial Court as and when directed;
d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

33. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

34. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

35. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JULY 2, 2024