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

+ **BAIL APPLN. 1338/2024**

CHRISTIAN JAMES MICHEL

.....Petitioner

Through: Mr.Aljo K. Joseph, Mr.Anurag
Kumar and Ms.Meenakshi, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Through: Mr.D.P.Singh, Sr.Adv./SPP for CBI
with Mr.Manu Mishra, Mr.Imraan
Khera and Mr.Achal Mittal, advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

25.09.2024

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1. Present bail application has been filed for grant of bail under Section 439 of Cr.P.C. in R.C.No.217-2013-A-0003. Learned counsel for the petitioner submits that after dismissal of the earlier bail application vide order dated 11.03.2022 by this court in Bail Appln.2586/2021, the investigating agency is still continuing with the further investigation. Learned counsel submits that presently the proceedings under Section 207 Cr.P.C. are taking place. Learned counsel submits that there are thousands of documents which need to be verified and substantial time will take place. Learned counsel for the petitioner further submits that there are more than fifty accused in this case. Learned counsel submits that every day of custody gives a right to the accused to approach the court for bail as liberty is a fundamental right. Learned counsel submits



even while rejecting the bail, the Supreme Court in SLP (Crl) 4145 of 2022 and SLP (Crl) 4327 of 2022 vide order 07.02.2023 has granted the petitioner liberty to move an application for regular bail before the learned trial court. The petitioner moved the trial court for regular bail, however, the bail application was dismissed by the learned trial court on 14.03.2023. Subsequently, the petitioner filed an application for release before the Special CBI Court, citing his prolonged detention beyond five years, the trial court rejected this application also on 23.02.2024, leading the petitioner to approach the Hon'ble Supreme Court with a writ petition, which was dismissed on 18.03.2024. Learned counsel also submits that the petitioner has undergone substantial period of sentence.

2. Mr.D.P.Singh, learned senior counsel/SPP for CBI has refuted all the averments. Learned senior counsel submits that the CBI has already made this statement before the learned trial court that investigation is complete. He also submits that proceedings under Section 207 Cr.P.C. are taking place before the learned trial court and the delay cannot be attributed to the CBI. Learned SPP submits that all the averments having been taken by the petitioner have repeatedly been examined by this court and the Supreme Court and have been rejected. Learned SPP submits that there is no fresh development after rejection of earlier bail application.
3. The law regarding filing successive bail applications is well-settled. It is no longer *res integra* that when successive applications are filed, there must be a significant development in the case.
4. In *State of Maharashtra v. Buddhikota Subha Rao*, 1989 Supp (2)



SCC 605, it was *inter alia* held that in the successive bail application there has to be substantial change in the fact situation which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or of no consequences. In the case of successive bail applications the courts are required to act with restraint and circumspection.

5. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan***, (2005) 2 SCC 42, it was *inter alia* held that high Court could not have allowed the bail application on the sole ground of delay in the conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of prima facie case, gravity of offence, and the allegation of tampering with the witness by threat and inducement when on bail. It was further *inter alia* held that since the above factors go to the root of the right of the accused to seek bail, non-consideration of the same and grant of bail solely on the ground of long incarceration vitiated the order of the High Court granting bail. It was further *inter alia* held that though an accused had a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has duty to consider the reasons and grounds on which the earlier bail applications were rejected and in such cases the court also has a duty to record what are the fresh grounds which persuaded it to take a view different from the one taken in the earlier applications. In ***Kalyan Chandra Sarkar*** (*supra*) it was further *inter alia* held:

“The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the



courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

20. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts earlier, including the Apex Court of the country.”

6. In the earlier Bail Application No. 2586/2021, this Court thoroughly discussed all the submissions in the context of extradition law and the order passed by the Dubai Supreme Court. After considering all the



arguments made by both the accused and the CBI, the Co-ordinate Bench of this Court, inter alia, made the following observations:

39. From a perusal of the material placed on record, it is further discernible that the applicant never joined proceedings before the Court in Italy, and for that reason European Non-Bailable Warrants were issued against him. In India, open ended non-bailable warrants were issued by the learned Special Judge on 24.09.2015. On the basis of the warrant and at the request of CBI, a Red Corner Notice was issued in respect of the applicant by INTERPOL on 25.11.2015. As a result of the same, the applicant came to be arrested in Dubai. A request letter dated 19.03.2017 for extradition of the applicant was sent to the competent authority in UAE, and finally, on 05.12.2018, he came to be arrested by the CBI.

Although, merely because an accused is a foreign national, bail cannot be denied as a matter of course, but at the same time this Court cannot lose sight of the aforementioned facts which indicate as to how the applicant has evaded investigation in the present case. It is also worthwhile to take into account that the applicant could be brought to India only after going through the process of extradition, which in fact was vehemently opposed by him, as apparent from the judgment of the Dubai Supreme Court. For the said reasons, the ground of parity is not available to the applicant in the opinion of this Court.

40. Besides, while dismissing the earlier interim bail application of the applicant, a Co-ordinate Bench of this Court made a categorical observation that he was a flight risk, having no roots in the society. At the time, it was also observed by the learned Judge that in the aforesaid facts, the applicant could not seek parity with co-accused persons. The said order was challenged before the Supreme Court, but the same also came to be dismissed.

41. Considering the peculiar facts and circumstances of the case, including the factum of the applicant evading process/investigation in India/Italy and eventually having been extradited to India, this Court is of the opinion that the applicant, having no roots in the Indian society, is a flight risk. Accordingly, the present bail application is dismissed.



7. This order was challenged by the petitioner in the Supreme Court. The Supreme Court in S.L.P. (Crl.) No.4145/2022 vide order dated 07.02.2023 while considering the application and particularly in light of Section 436A of Cr.P.C., it was inter alia held as under:

“12. In the backdrop of the above discussion, it has emerged before the Court that the fundamental basis on which the petitioner has sought bail, namely, under the provisions of Section 436A, cannot be accepted as valid. Besides the provisions of Sections 415 and 420 read with Section 120B IPC and Section 8 of the PC Act, the petitioner is alleged to have committed offences under Section 467 IPC which is punishable with upto life imprisonment. In this backdrop, the provisions of Section 436A would not stand attracted in the present case.

13. For the above reasons, we are not inclined to accept the submission of the petitioner that he was entitled to the grant of bail on the foundation of Section 436A. The Single Judge of the High Court has, while declining bail, also adverted to the circumstances in which the petitioner was required to be extradited from the UAE to face trial in India. We, therefore, find no merit in the Special Leave Petitions. The Special Leave Petitions are accordingly dismissed. However, we clarify that the present order shall not come in the way of the petitioner moving the trial court afresh for the grant of regular bail.”

8. In ***Babu Singh and others vs. State of U.P.***, AIR 1978 SC 527, *inter alia* held that a subsequent bail application is maintainable only if it is supported by additional material, further developments, or new considerations arising after the earlier application.
9. In ***State of M.P. v. Kajad*** (2001) 7 SCC 673, the Supreme Court *inter alia* held that while successive bail applications are permissible, they must be predicated on changed circumstances. It emphasized that without a change in circumstances, a second bail application would



effectively seek a review of the prior decision, which is not allowed under criminal law.

10. The core argument raised by the petitioner in this case was that he could only be tried for the offence for which he had been extradited. However, this issue was addressed by the Apex Court in its order dated 07.02.2023 in S.L.P. (Crl.) No. 4145/2022, where it was inter alia held that a person extradited should not be tried or punished in the requesting state except for the offences for which the extradition was sought or for offences connected thereto. The CBI contends that Section 467 IPC and the offence of conspiracy are connected to the offence for which the petitioner was extradited. The Apex Court observed that in addition to the provisions of Sections 415 and 420 read with Section 120B IPC and Section 8 of the Prevention of Corruption Act, the petitioner is also alleged to have committed offences under Section 467 IPC, which is punishable with up to life imprisonment. The applicability of Section 436A Cr.P.C. has already been declined by the Apex Court in relation to the petitioner. Even if the second proviso of Section 436A is considered, it would not assist the petitioner, as Section 467 IPC entails life imprisonment.
11. Whether Section 467 IPC is made out or not will still need to be determined by the trial court at the stage of framing charges. A detailed examination of the facts should not detain this Court any further, as the matter has already been examined in detail in Bail Application No. 2586/2021, vide its order dated 11.03.2022. This Court finds that there is no subsequent development or new material on record that would



entitle the petitioner to bail. The grounds on which earlier bail application was dismissed still hold ground and there is no substantial change in the fact situation. Thus, Court is of the considered opinion that merely on period of incarceration, the accused cannot be admitted to bail as he is still a flight risk. However, learned trial court is requested to expedite the proceedings.

12. In view of the discussion made herein above, this Court finds that there are no new or fresh grounds in the current bail application. Furthermore, there has been no substantial change in facts and circumstances concerning the merits of the case.
13. In view of the above, the bail application is dismissed.

DINESH KUMAR SHARMA, J

SEPTEMBER 25, 2024

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