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

\+ BAIL APPLN. 1722/2024

PRASENJIT MITRA .....Petitioner

Through: Mr. N. Hariharan, Senior Advocate with Mr. Shikhar Sharma, Mr. Fahad Khan, Ms. Deepika Singh, Mr. Sankalp Malik, Mr. Paras Nath Mishra, Ms. Punya Rekha Angara, Mr. Sharian Mukherji and Mr. Aman Akhtar, Advocates.

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Manoj Pant, APP for the State with Mr. S. N. Verma, Mr. Vinod Kumar, Mr. Aditya Raina, Ms. M. Gupta Mishra, Advocates with Inspector Rajiv Gulati, P.S.: EoW, Delhi.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% **08.08.2024**

By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No.77/2023 dated 14.10.2023 registered under sections 406/420/467/468/471/120B/34 of the Indian Penal Code, 1860 (‘IPC’).

2. Notice on this petition was issued on 15.05.2024.

3. Status Report dated 09.07.2024 has been filed.

4. Nominal Roll dated 09.07.2024 has been received from the Jail Superintendent.

5. Mr. N. Hariharan, learned senior counsel appearing for the petitioner submits, that upon completion of investigation, chargesheet dated 12.01.2024 has been filed *inter-alia* against the petitioner; however upon a perusal of the allegations made against the petitioner in the chargesheet, it is clear that there is no material or evidence to connect the petitioner with the essential offence alleged against the several other accused persons in the chargesheet.

6. Mr. Hariharan has drawn attention to the following portion of the chargesheet, which sets-out the allegations against the petitioner :

> *"It is further submitted that during interrogation, accused Jayanta Ghosh further disclosed that his one accomplice namely Prasenjit Mitra was also in exclusive knowledge about the cheating done by him with Customs Department and he came to Delhi from Kolkata, to associate him. He further added that when Customs Department detected their fraud, on suggestion of Prasenjit Mitra, he alongwith his family, left his house in the night of 11-12/10/2023 and concealed themselves in the house of his brother -in-law, in Dehradun. During interrogation, he further disclosed that out of total cheated amount, Rs 90 Lacs were given over to co-conspirator/accused Prasenjit, as he was actively involved in the criminal conspiracy and in the commission of offence. In this regard, on 18.10.2023, supplementary disclosure statement of accused Jayanta Ghosh was recorded separately.*
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> *During investigation, on 18.10.2023, a raid was conducted at Sonar Bangla Restaurant, where accused Prasenjit Mitra with three ladies namely Kokila Mitra, Priyanka Mitra, Ritika Ghosh and one other person namely Prodip Kar met to be present. The accused Prasenjit Mitra was apprehended and interrogated in detailed. On interrogation, he admitted his active involvement/connivance in the commission of crime and also a beneficiary of huge amount of cheating. During further interrogation, he disclosed that he had collected a part of cheated amount, i.e., Rs. 90 Lakhs, from main accused Jayanta Ghosh to misappropriate it. In interrogation, he*

admitted that the said amount has been concealed by him in two Hotels in Delhi. He further admitted that he can help to recover the said amount on his instance. Accordingly, the accused Prasenjit Mitra was most required for custodial interrogation to recover the cheated money and unearth the whole conspiracy. Accordingly, the accused Prasenjit Mitra s/o Sh. Pranab Mitra R/o H. No. 318, VIIP Nagar, Kolkata, West Bengal, was arrested in present case through separate arrest memo and his persons search was conducted as per the law but nothing article were recovered from his possession. Further, under police custody, he disclosed that the cash amount of Rs 65 Lacs was concealed by him in a grey color trolly bag American Tourist in Room No. 208 of Hotel Oakland Plaza, CC 27, Nehru Place, New Delhi and amount of Rs 23.5 lacs were concealed by him in black color Lenova Bag in Hotel Le Cadre at E - 23, East of Kailash in Room no. 206. On interrogation, he disclosed that co-accused Jayanta Ghosh stated him that he had cheated the Customs Department for a huge amount and on his instructions, he came in Delhi from Kolkata and met to co-accused Jayanta Ghosh. He further disclosed that out of total cheated amount, he collected total cheated/ misappropriated money of Rs. 90 Lakhs as his share from the, from co-accused Jayanta Ghosh.

Further, ***accused Prasenjit Mitra led the police party to Room no. 208, Hotel Oakland Plaza, CC 27, Nehru Enclave, New Delhi and pointed out towards a Grey color trolly bag American Tourist and on his instance, bag was opened in which a huge amount was found lying. In the presence of hotel Manager Ankur Singh and present witnesses, the notes available in Bag, were counted and on counting, total amount of Rs 65 Lacs of denomination of Rs 500 (500X130X100=65,00,000/- was recovered****. The above amount of Rs 65 Lacs was kept in Grey color trolly bag American Tourist and the bag was kept in white cloth and a Pulinda/parcel was prepared & the Pulinda was sealed with the seal of 'G.K.' The above Pulinda was taken into police possession for the purpose of investigation through seizure memo.*

Further, ***accused Prasenjit Mitra led the police party to Room no. 206, Hotel Le Cadre, E-23, East of Kailash, New Delhi and he pointed out towards a Black Color Lenovo Bag and on his***

instance, the bag was opened in which a huge amount was found lying. In the presence of Hotel Manager Mukesh Kumar and present witnesses, the notes found in Bag, were counted and on counting, total amount of Rs 23.5 Lacs of denomination of Rs 500 (500X47X100=23,50,000/-, was recovered. *The above amount of Rs 23.5 Lacs was kept in Black Color Lenovo Bag and the bag was kept in white cloth and a Pulinda/parcel was prepared & the Pulinda was sealed with the seal of 'G.K.' The above Pulinda was taken into police possession through seizure.*

(emphasis supplied)

7. Mr. Hariharan submits that, the alleged recovery of Rs. 65 lacs and Rs. 23.5 lacs at the instance of the petitioner is false; and that, in any event, even if the prosecution narrative is taken to be correct, there is no material on record to connect the amount alleged to have been recovered at the petitioner's instance to the amount that is alleged to have been cheated from the Customs Department by the other co-accused persons as per details in the chargesheet.

8. Mr. Hariharan also points-out that the prosecution has sought to explain the money-trail in the case in tabular form in the chargesheet (at internal page CS-28 of the chargesheet), alleging that the money-trail establishes a connection between the amount recovered by them with the sum of Rs.9,87,85,008/- which is alleged to have been cheated from the Customs Department; but it will be seen that, yet again, the petitioner's name does not figure anywhere in relation to the offence in the tabular explanation contained in the charge-sheet.

9. It is argued that the petitioner was the associate of the Advocate, who was representing Jayanta Ghosh, the main accused in this matter; and has been roped-in without any evidence or basis.

10. Mr. Hariharan submits, that the record would show, that the two hotel rooms from which the money is alleged to have been recovered, were not booked in the sole name of the petitioner; but rather, one of the rooms was booked jointly with another associate, one Ritika Ghosh and the second room was booked jointly in the names of the petitioner and his family members since he was travelling to Delhi with his family.

11. Learned senior counsel also submits that the petitioner is a practising Advocate by profession; and was representing Jayanta Ghosh and his family in several cases pending against them in various courts, including the Bombay High Court. Copies of certain order sheets have been placed on record to support this submission.

12. Furthermore, learned senior counsel also submits, that two of the co-accused persons in the matter, one Deepak Chamoli and one Pooja Ghosh have already been admitted to regular bail *vide* orders dated 09.02.2024 and 20.04.2024 made by the learned CMM, Patiala House Court, New Delhi.

13. On the other hand, opposing the grant of bail, Mr. Manoj Pant, learned APP appearing for the State submits, that the recovery of the sum of Rs.65 lacs from Hotel Oakland Plaza and another sum of Rs.23.5 lacs from Hotel Le Cadre co-relates with the share that Jayanta Ghosh says he had given to the petitioner as the latter's share from the cheated amount. This, it is argued, is seen from Jayanta Ghosh's Disclosure Statement dated 18.10.2023 recorded in the matter.

14. Mr. Pant argues that the recovery of the aforesaid sums of money pursuant to the disclosure statement of the petitioner clearly connects him to the offence and accordingly, at the very least, the petitioner is liable for criminal conspiracy under section 120-B IPC. It is also pointed-out that the recovery of the sum of Rs.65 lacs and Rs.23.5 lacs at the behest of the petitioner, stands substantiated by Seizure Memo dated 18.10.2023 which evidences the recovery of money in the presence of two independent witnesses *i.e.,* the hotel managers of the said two hotels.

15. Upon a conspectus of the contents of the petition, the material on record, and the submissions made by learned counsel for the parties; and after considering the disclosure statements of Jayanta Ghosh and Prasenjit Mitra as have been handed-up in the court, the following considerations weigh with the court, at this stage:

15.1. Assuming that the prosecution succeeds in proving in the course of trial, that the recovery of the sums of Rs.65 lacs and Rs.23.5 lacs was based on the disclosure statement of the petitioner, at best what would be proved is that a sum of Rs. 88.5 lacs was recovered on the basis of the petitioner's statement. However, that would not establish any connection between the money so recovered and the offence alleged in the chargesheet.

15.2. The money stated to have been recovered at the instance of the petitioner is sought to be connected with the offence based solely upon the disclosure statement of Jayanta Ghosh. However, in his disclosure statement, Jayanta Ghosh has said that he had paid Rs.90 lacs to the petitioner as the latter's share of the amount that was cheated from the Customs Department. On first principles, the statement of Jayanta Ghosh, which has not even led to the recovery of the sum of Rs.90 lacs, cannot be read against the petitioner; nor can it be taken to *prima-facie* show the provenance or connection of the money allegedly recovered at the petitioner's instance with the money stated to have been cheated from the Customs Department.

15.3. The petitioner is stated to be a practicing Advocate, who has placed on record order sheets of various courts, including the Bombay High Court, to show that he was engaged in his professional capacity to represent Jayanta Ghosh and his family in various matters, as their Advocate.

16. The nominal roll shows that the petitioner has been in judicial custody since 18.10.2023, *i.e.,* for almost 10 months; that his overall jail conduct has been 'satisfactory'; and that he has no other criminal involvements.

17. Needless to add, that if the money allegedly recovered at the instance of the petitioner remains unaccounted-for, the petitioner may be liable therefor under other fiscal statutes such as the Income Tax Act, 1961. However, that is not the concern of the State in the prosecution from which the present proceedings arise.

18. As a sequitur to the above, this court is persuaded to admit the petitioner -**Prasenjit Mitra s/o Pranab Mitra -** to *regular bail* pending trial, subject to the following conditions :

18.1. The petitioner shall furnish a personal bond in the sum of Rs.1,00,000/- (Rupees One LacOnly) with 02 sureties in the like amount from a family members, subject to the satisfaction of the learned trial court;

18.2. The petitioner shall furnish to the Investigating Officer ('I.O.') a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

18.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of this court. Since the petitioner is ordinarily a resident of Kolkata, West Bengal, as prayed-for, he is granted 10 days time from the date of his release to deposit his passport with the learned trial court;

18.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

18.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O.

19. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

20. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.

21. The petition stands disposed-of.

22. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 8, 2024/ak