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

+ **BAIL APPLN. 2576/2023**

SACHIN MITTAL

..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate
with Mr. Garvil Singh, Mr. Sidharth Singh,
Mr. Manish Sharma, Mr. Rishabh Singh,
Mr. Piyush Bhardwaj, Mr. Inder Kumar,
Ms. Janhavi Singh and Ms. Nisha Sharma,
Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Shubhi Gupta, APP for State
with SI Chandan, PS Special Cell.

Mr. Vivek Sood, Senior Advocate with Mr. D.K.
Yati, Dr. Vinod Bidhuri and Mr. Sahib Malhotra,
Advocates for Complainant.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

28.03.2024

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1. Present application has been filed on behalf of the Applicant Sachin Mittal S/o Ashok Mittal, under Section 439 Cr.P.C. seeking regular bail in 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 the Applicant and thereafter both induced him to take two home loans, amounting to

BAIL APPLN. 2576/2023

Page 1 of 21



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 the 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 crore 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 the Applicant 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 the Applicant 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 Applicant 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. As to the role of the Applicant, it is stated that he was arrested in the present case on 11.06.2023 and 14 days police custody was given. During investigation it was revealed that Applicant 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 (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



Applicant and Vishal Oberoi as well as between Himanshu Rasgotra and Vishal Oberoi. One Rajni Bala, resident of Shahdara was examined and she stated that she met the Applicant in his office at Panchsheel Enclave, where Udit Khullar was also present. She was induced by both to take home loan on property No.L-0706, 7th Floor, Godrej Summit, Sector-104, Dwarka Expressway, but thereafter she neither received possession of the property nor any amount from the accused persons.

8. Relying on the status report, learned APP for the State, Ms. Shubhi Gupta submitted that the present offence was committed in a planned and orchestrated manner. Applicant with other co-accused is involved in several cases of cheating and forgery in the past and 7 FIRs have been registered against him under various Sections i.e. 420/468/471/409/120B IPC. Investigation reveals that this is a multi-victim scam and so far 16 victims have been identified. Applicant is the mastermind behind the entire scam, who induced innocent people desirous of buying properties, into taking home loans on the basis of false and fabricated documents of properties, whose ownerships were questionable. Himanshu Rasgotra was granted interim bail but he did not surrender. Mithilesh Kumar and Rahul Sharma are in judicial custody while Vishal Oberoi, Shobhit Agarwal, Saurabh Mittal, Udit Khullar and Swadesh Ranjan have been declared proclaimed offenders. Reliance was placed on the order of this Court in ***Sunil Grover v. State, 2012 SCC OnLine Del 3539***, where the Court distinguishing the applicability of the judgments of the Supreme Court in ***Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40*** and ***Suresh Kalmadi v. CBI, 2012 SCC OnLine Del 361***, observed that there was a fundamental difference between the cases under consideration before the Supreme Court and the case before the High court as in the former, no



member of the general public was directly affected and it was the public exchequer which was put to loss but in the latter, Petitioner floated advertisements and invited offers from members of the public to invest money in their schemes by promising them lucrative returns at regular intervals. This kind of activity shows great deal of deliberation, preparation and operation and the whole exercise is actuated by a mentality to get 'richer overnight', at the instance of general public or investors and it will send a wrong signal in case bail was granted to such persons.

9. Learned Senior Counsel for the Applicant, on the other hand, argued that Applicant is innocent and has been falsely implicated in the present case. He is a respectable businessman with over 300 employees, who are totally dependent upon him for livelihood. Applicant is one of the shareholders in M/s. Naman Finlease Pvt. Ltd. and his responsibility is focussed on expansion and administrative work. Applicant is not involved in disbursing loans or handling documentation for customers. Company has its own established client base and provides loans to them on their requirements and on applicable interest rates. Applicant has been implicated at the behest of his business rival in connivance with the complainant because Applicant was successful in bringing 100-million dollars FDI in the company, which ultimately strengthened the country's economy. M/s. Naman Finlease Pvt. Ltd. has disbursed loans to more than 50,000 customers over the years and it is impossible to track each and every transaction. Moreover, Applicant is only one of the shareholders and other shareholders also participate in and control the functioning of the company.

10. It is submitted that the Applicant is a respectable citizen and has deep roots in the society. He has the responsibility of his wife and three



daughters, who are studying. Applicant is involved in the field of finance and real estate for last several years and has successfully written over 10 highly acclaimed books on real estate and finance. Additionally, he holds an MBA Degree from IIT, Mumbai and has served as a Consultant in several NBFCs. Applicant has travelled to Dubai on earlier occasions and even on 31.03.2022, whereafter he returned in April, 2022, after registration of the present FIR. Even when the earlier FIRs were registered against him, wherein he has been falsely implicated, he made no attempt to leave the country. Applicant has been in judicial custody since 11.07.2023. No recovery has been made from him. Investigation is complete and Charge Sheet and supplementary Charge Sheet have been filed. No useful purpose will be served by keeping him in custody as the 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.

11. It was argued that complainant Sunil Kumar Gupta is involved in various commercial ventures and is a Director in M/s Crossways Vertical Solutions Ltd. Complainant is a Chartered Accountant by profession and it is difficult to believe that he agreed to purchase the properties without verifying the details and conducting due diligence. In fact, complainant is also a DSA (Direct Selling Agent) for various Banks and NBFCs including for Indiabulls Private Limited and is very well versed with all banking procedures and norms. He is himself in the business of arranging loans for his customers and has concealed from the investigating agencies that he has taken numerous loans from Banks, NBFCs for his personal business. His company lends money as a part of the business regime. He has defaulted in several loans, which is manifest from a chart furnished by the Applicant giving the loan details. Out of the approximately 75 loans, many of the



loans were either written off or EMIs are pending. Complainant is a mastermind of the entire conspiracy and has falsely implicated the Applicant, which is evident from the fact that he was the one who received Rs.1.28 crores from the loan amount for purchase of two properties. The loans were disbursed to Himanshu Rasgotra and Vishal Oberoi and complainant received Rs.1 crore from Vishal Oberoi and Rs.28 lacs from Himanshu Rasgotra. Applicant is not a beneficiary of any money from the said transaction. Applicant is, in fact, neither a signatory/buyer/seller or beneficiary of any of the loan amounts disbursed to any co-accused or the alleged victim.

12. It was urged that complainant has furnished no details of alleged forgery of the loans/property documents and not even stated if he paid the EMIs of the said loans or that any of his existing property was mortgaged for these loans, so as to cause loss or prejudice to him. Complainant is silent about the fact that Shobhit Aggarwal had also taken a loan on the property bearing No. P-03-2002, Apartment, Iconic Tower, Paras Quartier, Sector 2, Gurgaon, Haryana, which is in the same locality, where the property, on which complainant had taken the loan, is located. Complainant has admitted that he was well acquainted with Shobhit Agarwal and was fully aware of previous loans taken on the property. He has not been able to furnish any plausible reason for taking two home loans despite the fact he already owns multiple properties and that too involving Shobhit Agarwal, who owed him a huge sum of money and was not re-paying back.

13. The stand of the State and the complainant that 16 victims have been identified by the investigating agency, is completely false and only to prejudice the Court. 16 properties were purchased by the same 5 persons and none of them were sold by the Applicant. One of the alleged victim



Amit Tyagi is himself an accused in FIR No.09/2022 registered at Manesar and the other Rajender Pratap Singh is a friend of Amit Tyagi, who took loans for 5-6 properties. In the FIRs pending against the Applicant, he joined investigation, as and when called for and was either not arrested or is on bail. In one of the FIRs, Charge Sheet has been filed without arrest and in FIR No.449/2014, Applicant is not an accused.

14. The contention of the State that some of the co-accused have been declared as proclaimed offenders and Himanshu Rasgotra jumped interim bail, cannot be a ground to deny bail to the Applicant. The Supreme Court in *Sebil Elanjimpally v. State of Odisha, 2023 SCC OnLine SC 677*, held that if a co-accused who was released on bail, has not surrendered, this cannot be a germane factor to decline bail to another co-accused. In *Munshi Sah v. The State of Bihar & Anr., Criminal Appeal Nos. 3198-3199 of 2023*, decided on 13.10.2023, the Supreme Court observed that question of grant of bail to a co-accused person cannot be made dependent upon surrender of another accused. Reliance was also placed on the following judgments:-

- (a) *P. Chidambaram v. Central Bureau of Investigation, 2019 SCC OnLine SC 1380*, for the proposition that where Charge Sheet has been filed and investigation is complete, bail should be granted;
- (b) *Zahur Haider Zaidi v. Central Bureau of Investigation, 2019 SCC OnLine Supreme Court 643*, to argue that the apprehension of the State that Applicant may intimidate and win over witnesses or influence them, can be overcome by imposing strict conditions.
- (c) *Dataram Singh v. State of Uttar Pradesh and Another, (2018) 3 SCC 22*, to argue that there is a need of humane approach while dealing with applications for remanding matters to police or



judicial custody. Fundamental postulate of criminal jurisprudence is the presumption of innocence until found guilty.

(d) ***Sanjay Chandra (supra)***, where the Supreme Court held that balanced approach is to grant bail, subject to certain conditions rather than keep individuals under detention for an indefinite period, especially where records are voluminous and large number of witnesses have to be examined. The Supreme Court observed that the Court was conscious of the fact that accused were charged with economic offences of huge magnitude and offences, which if proved, will jeopardize the economy of the country, but Court cannot lose sight of the fact that investigating agency has completed investigation and Charge Sheet has been filed and therefore, the presence of the accused may not be necessary for further investigation. Stringent conditions can be imposed to allay the apprehensions of the State that the Applicants may abscond.

(e) ***Jayant Kumar Jain v. The State, Bail Appln. 2442/2020***, decided on 14.09.2020, where this Court granted bail to the Applicant on the ground that Applicant had joined investigations on multiple occasions. It is not stated either in the status report or during the arguments that Applicant was a flight risk. The case arose out of a commercial transaction and is based on documents that stand seized and therefore, no further custody is required.

(f) ***H.B. Chaturvedi v. C.B.I., 2010 SCC OnLine Del 2155***, where this Court granted bail to the Applicant *inter alia* on grounds that there was nothing in the reply of CBI to suggest that there was a reasonable apprehension that Applicant will flee from justice, if



released on bail. Conduct of the Applicant shows that he was joining investigation before his arrest and is an established businessman with roots in the society. Bail is not to be withheld as a punishment and even assuming that the accused is *prima facie* guilty of a grave offence, bail cannot be refused as an indirect method of punishing before the accused is convicted. There is no justification for classifying offences into different categories such as economic offences and refusing bail on the ground that the offence involved belongs to a particular category.

(g) **Suresh Kalmadi** (*supra*), where this Court observed that *prima facie* a case for offence under Section 467 IPC is made out where punishment is upto life imprisonment and thus accusations against the Petitioners are serious in nature. However, the evidence to prove accusation is primarily documentary in nature besides few material witnesses. If seriousness of the offence on the basis of punishment provided is the only criteria, Courts would not be balancing Constitutional rights but recalibrating the scales of justice.

15. Learned Senior Counsel for the complainant *per contra* adopts the arguments made on behalf of the State and adds that the Applicant has been using his position to influence within the NBFCs, to engage in deceptive practices and financial frauds. Under the guise of a legitimate business, Applicant exploits gullible individuals into investing in properties with forged documents. His *modus operandi* involves orchestrating a network of associates like Udit Khullar, Shobhit Agarwal, Vishal Oberoi etc. who mislead numerous individuals into investing their hard-earned money. His criminal antecedents are evident from FIR No.499/2014, PS: I.P. Estate



dating back to 2007, during his tenure in ICICI Bank and from then to now he has 7 other FIRs registered and pending against him. It is urged that Shobhit Agarwal is a business partner of the Applicant; Udit Khullar is a major shareholder in M/s. Naman Finlease Pvt. Ltd.; Mithilesh is an employee of the Applicant; Rahul Mathur is one of his associates and works as a DSA; Vishal Oberoi and Himanshu Rasgotra are the fake sellers of the properties in question. Money trail and call details show connectivity of the Applicant with other co-accused. Most of the other accused like Swadesh Ranjan, Praveen Singh are employees or ex-employees of the Applicant. The case involves not just private monetary transactions with the complainant but a multi victim scam, where over 16 victims cheated by the Applicant and co-accused persons have been identified.

16. I have heard learned Senior Counsels for the Applicant and the complainant and learned APP for the State.

17. 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 (supra)***, 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.

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 allay the apprehension expressed by CBI.”

18. In ***P. Chidambaram (supra)***, 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].”

19. In another case titled ***P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791***, the Supreme Court held as under:-

“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.”

20. Historically, in the year 1978, Krishna Iyer, J., observed in ***Gudikanti Narasimhulu and Others v. Public Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240***, that:-

“1. the issue is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. As Chamber Judge in this summit court I have to deal with this uncanalised case-flow, ad hoc response to the docket being the flickering candle light. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion. Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law”. The last four words of Article 21 are the life of that human right.”

21. In ***Gurcharan Singh and Others v. State (Delhi Administration) (1978) 1 SCC 118***, the Supreme Court observed:-

“29. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

22. 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].”

23. 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.

24. Coming back to the present case, on a perusal of the Charge Sheet, the allegations and the role ascribed to the Applicant are that he was running an NBFC in the name of M/s. Naman Finlease Pvt. Ltd. and in order to infuse funds in the company and to make payment of loans of



private moneylenders, he procured fraudulent loans and along with Udit Khullar, a shareholder in M/s. Naman Finlease Pvt. Ltd., Rahul Mathur and others managed fraudulent home loans from SBI and other banks using forged documents. Applicant was introduced to the complainant by Shobhit Agarwal, who owed Rs.1.30 crore to the complainant under an earlier transaction and both assured disbursement of two home loans to the complainant for buying the two properties in question. Out of the two loans, EMI was to be paid for one home loan by Shobhit Agarwal. After a few days, Applicant and Shobhit Agarwal introduced the complainant to two persons, Vishal Oberoi and Himanshu Rasgotra, the alleged sellers of the two properties. Documents were forged and loans were taken fraudulently, thus cheating the complainant, as he neither received the entire loan amount nor the possession of the two properties. The total amount of home loans, sanctioned and disbursed was Rs.6.80 crores, out of which Rs.3.80 crore was by ICICI Bank for one property and Rs.3 crore by IDBI Bank against the second property and from this amount, Rs.1.28 crore were transferred to the complainant's firm Keshav Fintech LLP.

25. Applicant and the complainant have levelled allegations and counter-allegations. Complainant alleges that several FIRs are pending against the Applicant and he along with a network of persons, has cheated and allured several people into investments by arranging for home loans against forged property documents, while Applicant contends otherwise and states that the complainant is a Chartered Accountant by profession and has been working as a DSA for various banks and NBFCs and is well-versed with banking procedures and norms, besides being in the business of arranging loans for his customers and therefore, it is unbelievable that he was so naïve as not to have exercised due diligence to verify the details of the home loans and



status and documents of the properties, that he proposed to buy and the allegations against the Applicant are wholly false. Interestingly, in the status report and/or the FIR and Charge Sheet, there is not a whisper as to whether the complainant paid any EMIs for the two home loans and/or if any of his existing property was mortgaged against the loans or the loss/prejudice caused. There can be no two opinions on the proposition that allegations of cheating, forgery and/or misappropriation, levelled by the complainant will be tested only after evidence is led and innocence of the Applicant or otherwise is a matter of trial. At this stage, Court cannot be called upon to adjudicate on the merits of the allegations and the accusations.

26. There is no doubt that the allegations against the Applicant are serious. However, looking at the nature of allegations and accusations, the evidence required will be primarily documentary in nature. Documents have been seized during investigation and Charge Sheet and supplementary Charge Sheet have been filed. Applicant has stated that nothing incriminating has been recovered from him and this position was uncontroverted. In *Sanjay Chandra (supra)*, the Supreme Court, looking at the accusations against the Appellants first observed that the charge of cheating and dishonesty inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document was serious and in determining whether to grant bail, both seriousness of the charge and the severity of punishment should be taken into account. The Supreme Court thereafter noted that there were 17 accused persons and the documents relied upon by the prosecution were voluminous and therefore, the trial would take considerable time. It would, therefore, not be in the interest of justice that accused should be in jail for an indefinite period. The Supreme



Court also observed that the accused was charged with economic offences of huge magnitude, which if proved would jeopardise the economy of the country but the Court cannot lose sight of the fact that investigation is complete and Charge Sheet is filed and therefore, presence of the accused in custody may not be necessary. In ***Prabhakar Tewari v. State of Uttar Pradesh and Another, (2020) 11 SCC 648***, the Supreme Court observed that there was no wrong or improper exercise of discretion by the High Court in granting bail to the accused. The offence alleged was, no doubt, grave and serious and there were several criminal cases pending against the accused but these factors by themselves cannot be the basis for refusal of prayer for bail.

27. Applicant is in judicial custody since 11.07.2023. The trial is still at the stage of consideration on charge and looking at the fact that there are 48 witnesses as per the Charge Sheet and 9 in the supplementary Charge Sheet, trial is not likely to conclude any soon. It is not the case of the State that the Applicant is a flight risk or there are chances of his fleeing from justice. In fact, Applicant has stated that he returned back to India from Dubai after the registration of the present FIR and has deep roots in the society with 03 daughters, who are pursuing their education. This apprehension, if any, can be allayed by imposing stringent conditions and restrictions. There is no evidence or even an allegation that the Applicant threatened the witnesses or interfered with or tampered with evidence during investigation. In ***Jayant Kumar Jain (supra)***, this Court granted bail to the Applicant on the ground that he had joined investigation on multiple occasions and it was not the case of the State that Applicant was a flight risk. The case arose out of a commercial transaction and was based on documents that stand seized and therefore, no further custody was required.



In *H.B. Chaturvedi (supra)*, this Court granted bail to the Applicant *inter alia* on grounds that there was nothing in the reply of CBI to suggest that there was a reasonable apprehension that Applicant will flee from justice, if released on bail. Conduct of the Applicant showed that he was joining investigation before his arrest and is an established businessman with roots in the society. Bail is not to be withheld as a punishment and even assuming that the accused is *prima facie* guilty of a grave offence, bail cannot be refused as an indirect method of punishing before the accused is convicted. Applicant cannot indefinitely remain in custody only because some of the co-accused have been declared as proclaimed offenders and one jumped the interim bail, which is one of the grounds to oppose the bail by the State. In *Sebil Elanjimpally (supra)*, the Supreme Court observed that merely because a co-accused, who was released on bail, has not surrendered cannot be a germane factor to decline bail to another co-accused.

28. 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.3 lacs 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;
- v. He shall not indulge in any criminal activity or contact any witness and/or any other person associated with the present case; and
- vi. He shall report to the concerned IO once a month on every third Monday at 2:00 PM.

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

30. Application stands disposed of.

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

JYOTI SINGH, J

MARCH 28, 2024/*DU/shivam*