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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2413/2024 & CRL.M.A. 20295/2024**

GHANSHYAM YADAVApplicant

Through: Mr. Ajay Goyal & Ms.
Jyoti Sharma, Advs.

versus

STATE GOVT OF NCT DELHIRespondent

Through: Mr. Ajay Vikram Singh,
APP for the State.
Insp. Jitender Malik,
complainant Sh. Rajesh
Kumar, Accounts Officer,
Hans Raj Asstt, Accounts
Officer.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
11.09.2024

1. The present application is filed seeking regular bail in FIR No. 44/2023 dated 18.02.2023 registered at Police Station Special Cell, Delhi for offences under Sections 468/471 of the Indian Penal Code, 1860 ('**IPC**') and Sections 66/66C/66(D) of the Information and Technology Act, 2000 ('**IT Act**').
2. The FIR was registered on a complaint alleging that government money to the tune of ₹70 lakhs belonging to the Permanent Retirement Account Number of employees of BSF had been fraudulently siphoned off through 79 transactions by availing the online facility. The applicant was arrested during the course of the investigation on 27.02.2023 and has been in incarceration since then.
3. It is alleged that the applicant and other accused persons

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changed the personal details of the employees' subscribers by using the login accounts. The applicant was working with BSF till 2019 and was, therefore, aware of the procedure for withdrawal of the pension fund.

4. The applicant is also stated to be involved in another FIR wherein allegations have been made that the applicant has forged an appointment letter for the post of BSF Constable.

5. The bail application filed by the applicant on an earlier occasion was dismissed as withdrawn on 18.01.2024. It is submitted that the trial has not proceeded and even the charges have not been framed as yet. It is not disputed that the chargesheet has already been filed and the investigation is complete.

6. It is also not the case of the prosecution that certain recoveries are left to be done from the applicant. The maximum punishment for the offences alleged against the applicant is 7 years and the applicant has already undergone more than 18 months in custody.

7. Undoubtedly, the allegations against the applicant are grave in nature. The manner in which the applicant is found to have committed the offence and siphoned off money belonging to the BSF employees, is serious in nature. However, the long period of incarceration also is a factor which cannot be ignored.

8. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeeb : AIR 2021 SC 712***, has held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

9. The continued incarceration of the applicant will result in the denial of his fundamental right to life and personal liberty



guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in near future.

10. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

11. In view of the above, without commenting further on the merits of the case, I am of the opinion that the applicant has made out a *prima facie* case for bail.

12. Considering the aforesaid, the applicant is directed to be released on bail (if not custody in any other case) on furnishing a bail bond for a sum of ₹50,000/- with two sureties of the like amount (one of the sureties shall be family member of applicant), 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 boundaries of 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.



11. 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.

12. 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.

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

AMIT MAHAJAN, J

SEPTEMBER 11, 2024
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