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

+ **BAIL APPLN. 3517/2023**

YOGESH MAKKAR

..... Petitioner

Through: Mr. Sunil Dalal, Senior Advocate
with Mr. Rohit Kheriwal, Mr. Nikhil Beniwal,
Ms. Manisha Saroha, Mr. Navish Bhati,
Mr. Anutosh and Mr. Ghayasuddin, Advocates.

versus

THE STATE (GOVT. NCT OF DELHI)

..... Respondent

Through: Ms. Shubhi Gupta, APP for the State
with Insp. Sandeep Maan, PS: EOW.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

26.04.2024

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1. This bail application has been preferred on behalf of the applicant Yogesh Makkar S/o Hans Raj Makkar under Section 439 read with Section 482 Cr.P.C. seeking regular bail in case FIR No. 195/2020 dated 13.11.2020 under Sections 409/420/120B IPC, registered at PS: Economic Offences Wing. Charge sheet has been filed before the Trial Court.
2. Present FIR was registered on a joint complaint of Avinash Chander Mohan and Alka Mohan against M/s. Modex International Securities Ltd. ('MISL'), its Directors and officials namely, Yogesh Makkar (applicant), D.K. Arora, Pavan Sachdeva, Kundan Lal Grover, M/s. Modex Commodity Trade Pvt. Ltd. and officials of Axis Securities Ltd. As per the charge sheet, it was alleged that complainants were earlier dealing in share purchase transactions with one M/s. Way to Wealth but in the year 2012, the officials



of the accused entities approached the complainants to invest and transfer their accounts to MISL. In furtherance of the same, Kundan Lal Grover met the complainants and painted a rosy picture inducing them to transfer their accounts to MISL and invest therein. After continuous persuasion and personal meetings with D.K. Arora and Pavan Sachdeva, on 06.09.2012, complainant No. 1 opened his Demat/trading account with accused Nos. 1 and 2 bearing account No. A-202 jointly with complainant No. 2 and on 08.02.2013, complainant No. 2 opened her Demat/trading account with accused Nos. 1 and 2 bearing account No. A-207 jointly with complainant No. 1. Several agreements and documents were signed by the complainants on the asking of the accused persons giving an impression that they were required for commencing operations/transactions and copies were not shared with the complainants. Pertinently, scrips were also transferred from the earlier accounts to the accounts opened with MISL. Apart from transferring the scrips, complainants also transferred the money for investment so that the same could be utilised for their benefit when needed.

3. It was alleged by the complainants that after all the transfers were made, the accused company along with D.K. Arora and Pavan Sachdeva acquired a complete dominion over the money as brokers or agents. Complainants actively transacted through their respective accounts without any problem until November, 2019. However, commencing December, 2019/January, 2020, certain transactions took place with respect to the accounts of the complainants, which raised suspicion. It was later discovered that in a planned conspiracy, officials of MISL along with officials of Axis Securities Ltd. transferred the shares of the complainants to one of the margin accounts of MISL and thereafter showing those shares as their own,



sold them and misappropriated the proceeds for their personal use, breaching the trust reposed by the complainants. On 01.01.2020, accused persons sold the commodities belonging to the complainants without any authorisation and on 03.01.2020, sold the cash holdings of the complainants amounting to Rs.1,76,91,155/-, out of which Rs.1,15,03,956/- is against A/c No. A-202 held by complainant No. 1 and Rs. 61,87,199/- is against A/c No. A-207 held by complainant No. 2. Subsequently, Futures that were held by the complainants in both the accounts were sold and the act of selling valuable security of the complainants showing them as belonging to MISL is an act of cheating and fraud. It was also alleged that the accused persons settled the trades of complainants in Future & Options Segment on 08.01.2020 thereby causing wrongful loss to the complainants to the tune of Rs.1,76,91,155/-.

4. As per the status report, during investigation, 50 other complainants filed their complaints against MISL and its officials leveling similar allegations, each of which has been clubbed in the present FIR. During the course of investigation, notices were issued to the complainants to join investigation along with relevant documents. Complainants joined investigation and have been examined extensively. Statements of most of the complainants have been recorded under Section 161 Cr.P.C. and they have alleged that they were approached and induced by Sandeep Kher (Vice President/Marketing & Sales), Saurabh Gandhi (Vice President/Sales), Vikram Duggal (Director & Consultant), Kundan Lal Grover (Chief Financial Officer), Yogesh Makkar/applicant (Head of Demat/Depository Service Department), Pavan Sachdeva (Whole Time Director) and D.K. Arora (Whole Time Director) to open Demat accounts with MISL. The officials had offered to pay assured returns to the tune of 10%-12% on the



shares/securities of the complainants and 15% on the cash balance. They also assured that the securities shall be used for keeping margin with the clearing member and the said securities shall be returned to them, as and when desired, irrespective of the debit in their accounts. Most of the complainants denied having executed any trade in Future and Options segment through MISL. However, MISL transferred their shares/scrips to its common pool accounts/margin accounts and traded on behalf of the clients and suffered losses in Future and Options segment and thereafter to settle the loss in clients' accounts, MISL sold the securities of its clients. Moreover, the securities kept as collaterals before the clearing member i.e. Axis Bank were also sold by Axis Bank to cover the bank loss. Therefore, MISL misappropriated the shares of the complainants and caused wrongful loss to them.

5. It is further stated that during investigation, Demat statements and Demat holdings of the complainants were collected from Central Depository Services Limited ('CDSL') and National Securities Depository Limited ('NSDL'), which revealed that MISL had transferred the shares/mutual funds of the complainants to three pool accounts and three collateral accounts and the securities of MISL were also found transferred to its group company M/s. Modex Commodity Trades Pvt. Ltd. It is stated that during investigation, inspection report and forensic audit of MISL conducted by NSE and KPMG has been collected which revealed misappropriation of funds to the tune of approximately Rs.136.29 crores. As per forensic audit and MISL books, MISL had received net cash settlement of Rs.126.31 crores from Exchanges against the sale and purchase of clients' securities, however, MISL had not transferred the said sale proceeds to its clients and



instead transferred the same to Axis Bank to settle its losses in F&O segment. Moreover, MISL received net sum of Rs. 9.98 crores from its clients and as per balance confirmations received from the bank, MISL has a fund shortage of Rs.48.73 crores as on 24.01.2022. This indicates that the net sum of Rs.9.98 crores received from clients has also been potentially misappropriated. Thus, MISL potentially misappropriated a fund of Rs.136.29 crores.

6. It is further stated that during investigation, applicant and three other accused were arrested on 12.10.2022. On 13.10.2022 all accused persons were produced before the Link Metropolitan Magistrate who granted two days' police custody. During the said remand, one server was recovered along with a hard disk at the instance of accused Pavan Sachdeva *albeit* the same was not found in a working condition and therefore, data of MISL could not be retrieved. During PC remand, all accused persons were confronted with each other and interrogated at length and it came to light that the applicant played an active role in the commission of the offences. Applicant was the Compliance Officer for CDSL and responsible for overseeing the operations of securities transactions. Applicant was the Demat Head and looking into the operations of Demat accounts of MISL and was also responsible for taking appropriate instructions from clients prior to transferring their securities to pool and margin accounts and to return the same on instructions from the clients. It is stated that bank statements of the applicant revealed that he had received a salary of Rs.24,000/- to Rs.50,000/- per month from 2011 to 2020 and no other entries were credited into his account from MISL. However, as per reply dated 29.10.2022 received from CDSL, it was clear that applicant has Demat



accounts with FRR Shares and Securities Ltd., Swastika Investment Ltd., two accounts with Bonanza Portfolio Limited, Nirmal Bang Securities Pvt. Ltd., Berkeley Securities Limited, etc. Scrutiny of his Demat accounts further revealed that total 158 times, securities of MISL were found credited in the applicant's Demat accounts. On examination of Axis Bank statement, it came to light that applicant had received an amount of Rs.36,27,403/- from IIFL Securities Limited, Rs.2,52,082/- from F6 Finserve Pvt. Limited, Rs.1,30,000/- from Berkeley Securities Limited, Rs.21,75,175/- from Nirmal Bang Securities Pvt. Ltd., Rs.22,000/- from Bonanza Portfolio Limited and Rs.6,11,804/- from FRR Shares and Securities Ltd. It is evident from the financial statements etc. that applicant being the Depository Head of MISL misappropriated the securities of MISL/clients of MISL and transferred them from pool/margin accounts and other accounts of MISL to his own Demat accounts and later the sale proceeds of misappropriated securities i.e. Rs.68,18,464/- was credited in his Axis Bank account, thereby causing wrongful gain to himself and wrongful loss to the complainants and others. Charge Sheet has been filed against all the four accused persons on 09.01.2023 and applicant is in judicial custody while Kundan Lal Grover and Vikram Duggal have been granted bail by the Sessions Court. Pavan Sachdeva is also in judicial custody. MISL is involved in 6 other cases of similar nature.

7. Learned Senior Counsel appearing on behalf of the applicant submits that he is innocent and has been falsely implicated in the present case. Applicant was working as Back Office Executive in MISL at a salary of Rs.15,000/- per month since 2008. Applicant joined investigation as and when directed. Investigation stands concluded and Charge Sheet has been



filed. No unlawful loss has been caused by him to the complainants and there is no unlawful gain to him. His father, who is 78 years of age, his wife and two children, are completely dependent on him, as he is the sole bread earner of the family. Co-accused Kundan Lal Grover and Vikram Duggal have been granted bails vide orders dated 22.02.2023 and 24.03.2023, respectively. In case FIR No. 33/2020 dated 09.01.2020 under Sections 409/420/120B IPC registered at PS: Sadar Gurugram on similar allegations levelled by some complainants, the Additional Sessions Judge, Gurugram, Haryana had granted bail to the applicant vide order dated 08.08.2023. Applicant is in judicial custody since 12.10.2022 and has already suffered prolonged incarceration. It is not the case of the prosecution that the applicant is a flight risk. Applicant is a respectable citizen with deep roots in the society.

8. It is further urged that even on merits, applicant has a good case, as he has no role to play in any of the transactions between MISL and the complainants/investors. The securities/shares transferred to the Demat accounts of the applicant do not belong to the complainants or investors and this is evident from the fact that till date, prosecution has not been able to segregate and bring out clearly and definitely, as to which of the securities/shares in the Demat accounts of the applicant pertain to the complainants. Applicant is not a beneficiary of any investments made by the complainants. In any case, alleged investments made by the complainants or shares/securities transferred to the account of MISL and/or their alleged transfer in the Demat accounts of the applicant from the margin or common pool account and/or transfer of sale proceeds amounting to Rs.68,18,464/- in the Axis bank account of the applicant as also whether or not the cheated



money was entrusted to MISL and/or to the accused persons, are all matters of trial and cannot be decided at this juncture. Since Charge Sheet has been filed no useful purpose would be served in keeping the applicant in custody. Charge Sheet indicates that there are 81 witnesses to be examined on behalf of the prosecution and therefore, the trial is not likely to conclude soon.

9. Learned Senior counsel placed reliance on the judgment of this Court in ***Sunder Singh Bhati v. State, 2022 SCC OnLine Del 134***, where the offences alleged against the applicants were under Sections 406/409/420/120B IPC and the Court enlarged the applicants on regular bail observing that magnitude of offence cannot be the only criteria for denial of bail, as also that the applicants were in custody for over a year and Charge Sheet had been filed. Court also observed that the evidence available was documentary in nature and whether or not the applicants were entrusted with the cheated money, was a matter of trial. Continued custody of the applicants was not required in these circumstances, in the considered view of the Court. Reliance was also placed on the judgment of the Supreme Court in ***Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40***, highlighting the observations of the Supreme Court that object of bail is neither punitive nor preventive and that to continue an accused in custody indefinitely, would be contrary to the concept of personal liberty enshrined in the Constitution that no person should be punished in respect of a matter in which he is yet to be convicted or on the belief that he would tamper with evidence if left at liberty, except in extraordinary circumstances. Even in cases of economic offences of huge magnitude, where the charge sheet is filed and investigation stands concluded, presence in the custody may not be



necessary and the accused can be enlarged on bail pending trial, subject to stringent conditions imposed by the Court granting bail.

10. Ms. Shubhi Gupta, learned APP appearing on behalf of the State, *per contra*, opposes the bail application relying on the status reports. It is urged that the present offences were committed in a planned and orchestrated manner by the applicant along with the other co-accused. The allegations are grave and serious and this is a case of multi-victim scam in which so far, over 50 victims have been identified and have been joined as complainants in the present FIR.

11. It is argued that applicant is not innocent and has not been falsely implicated. It is incorrect for the applicant to argue that the securities/shares transferred to the Demat accounts of the applicant did not belong to the complainants in the present FIR or that there is no segregation of the securities/shares to definitely ascertain as to which of them belonged to MISL and which were investments by the complainants. Statements of the complainants reveal that their securities/shares were transferred into the following accounts of MISL:-

#	DP ID of MISL	A/c No	Sub Type	Depository
1.	12042900	00091351	Client A/c	CDSL
2.	12042900	00101086	Client Unpaid Securities A/c	CDSL
3.	12042900	00026866	Collateral A/c	CDSL
4.	12042900	00000011	Pool A/c	CDSL
5.	12042900	00000442	Own/Proprietary A/c	CDSL
6.	12042900	00101257	Client Collateral A/c	CDSL
7.	12042900	00014041	Client A/c	CDSL
8.	12042900	00000024	Pool A/c	CDSL
9.	12042900	00000613	Pool A/c	CDSL

12. On perusal of the Demat accounts' statements of the applicant



maintained with 9 other depositories, it is evident that securities/shares from Demat account of MISL were transferred to personal Demat accounts of the applicant between January, 2018 to May, 2020. Details of securities/shares in respect of each investor were maintained in their respective Register of Securities and Financial Ledger. To ascertain the correct position of the investors' funds and securities, the Exchange had appointed KPMG as forensic auditor and as per the audit report, as on 24.01.2020, there was a shortfall of client securities amounting to Rs.95.29 crores and shortfall of client funds amounting to Rs.30.53 crores with MISL. Applicant was Compliance Officer for CDSL and responsible for overseeing the operations of securities transactions. As per Delivery Instruction Slip recovered from the accused persons, applicant had verified the entries of client's securities from client's Demat account to the Demat accounts of MISL. He misappropriated Rs.68,18,464/- by converting the securities/shares of investors of MISL to his personal use.

13. It is argued that parity cannot be claimed by the applicant with co-accused Kundan Lal Grover and Vikram Duggal. Kundan Lal Grover was granted bail on the ground that he was only a salaried employee of MISL and had not received any monetary benefit except his own salary. Vikram Duggal was granted bail on the ground that the authority/right to transfer the complainants' money from their accounts to the margin account and from there to make investments in the stock market was in the hands of Whole Time Directors of MISL and beyond the domain of Vikram Duggal, who was an independent Director. Moreover, it was held by the Court that MISL was primarily controlled by two Vice Presidents and three Whole Time Directors whereas, admittedly, Vikram Duggal was non-designated Director.



14. It is submitted that Charge Sheet has been filed and thereafter, vide order dated 26.03.2024, applicant along with other co-accused has been charged for offences under Sections 409/120B IPC, which are serious economic offences punishable upto life imprisonment.

15. Heard learned Senior counsel for the applicant and learned APP for the State.

16. In a nutshell, the case of the prosecution is that the complainants for the purpose of investments deposited money with MISL and securities/shares were also transferred to the Demat accounts of the accused company. The investments were made on inducements by the officials of MISL, assuring profits and returns to the tune of 10%-12% on securities/shares and 15% on cash balance. Complainants were allegedly assured that their securities will be used for keeping margin with the clearing member and shall be returned on demand. However, MISL transferred its securities/shares/scrips to its common pool/margin accounts and traded on behalf of the clients and suffered losses in F&O segment and to settle the loss, MISL sold the securities of the clients. The role attributed to the applicant is that being the Depository Head, he transferred the securities/ shares from the Demat accounts of MISL to his personal Demat accounts between January, 2018 to May, 2020 and sale proceeds of some of these securities/shares were converted to his personal use and an amount of Rs.68,18,464/- was transferred into his personal Axis Bank account.

17. Bail is strongly opposed by the State on the ground that the allegations are grave and serious and being economic offences, punishable upto life imprisonment, applicant is not deserving of being enlarged on bail. It is settled that gravity or seriousness of the offence cannot be a sole ground



to deny bail to an applicant. In *Sanjay Chandra (supra)*, the Supreme Court observed that even where accused are charged with economic offences of huge magnitude, which if proved may jeopardise the economy of the country, the Courts cannot lose sight of the fact that when investigation is complete and Charge Sheet has been filed, presence in the custody may not be necessary and the apprehensions of the State that an accused may flee from justice can be allayed by imposing stringent conditions. Supreme Court also observed that detention in custody pending completion of trial could cause great hardship. 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. The principles that bail is the rule and jail is an exception as also that a man is presumed innocent till found guilty, were reiterated and restated. Relevant paragraphs of the judgment are 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 v. Central Bureau of Investigation, (2020) 13 SCC 337***, the Supreme Court noted the fact that Charge Sheet had been filed against the Appellant and he was in custody for about 2 months. Appellant was not a flight risk and conditions could be imposed to ensure that there was no possibility of his absconding from trial. Elucidating on the well-settled principles on which the jurisdiction to grant bail has to be exercised, the Supreme Court enumerated the factors to be taken into consideration as follows:-

“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 ***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. In *Satender Kumar Antil v. Central Bureau of Investigation and Another*, (2022) 10 SCC 51, the Supreme Court observed that the law laid down in *Sanjay Chandra* (*supra*) and *P. Chidambaram* (*supra*) will govern the field even in the case of economic offences. The role of criminal Courts as guardian angels of liberty was highlighted and emphasised as follows:-

“Role of the court

93. *The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.*

94. *Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.”*

24. 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. It is settled that at pre-conviction stage, there is a presumption of innocence and that detention cannot be punitive or preventive.



25. There is no doubt that the allegations against the applicant are serious. This Court is also conscious of the fact that for the offence under Section 409 IPC, the punishment is for a term which may extend to 10 years or life imprisonment, but it cannot be overlooked that it is yet to be adjudicated whether applicant is guilty and/or what is his exact role in the alleged offences. In other words, it is yet to be ascertained whether ingredients of Section 409/120B are made out against the Applicant. It is also evident from the nature of the allegations and accusations that the evidence will mostly be documentary in nature and documents have been seized during investigation and Charge Sheet has been filed. 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 were 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 was complete and Charge Sheet was filed and therefore, presence of the accused in custody may not be necessary.

26. Applicant is in judicial custody since 12.10.2022. The Trial Court has framed charges under Sections 409/120B IPC vide order dated 09.04.2024



and prosecution evidence is yet to commence. 81 witnesses have to be examined on behalf of the prosecution and thus conclusion of trial is likely to take considerable time. It is not the case of the State that the applicant is a flight risk or there are chances of his fleeing from justice. There is no evidence or even an allegation that applicant threatened the witnesses or interfered with or tampered with evidence during investigation. In ***Jayant Kumar Jain v. The State, Bail Appln. 2442/2020***, decided on 14.09.2020, 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 were already seized and therefore, no further custody was required. In ***H.B. Chaturvedi v. C.B.I., 2010 SCC OnLine Del 2155***, this Court granted bail to the applicant *inter alia* on ground 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. This Court in ***Sunder Singh Bhati (supra); Sanjeeva Shukla v. State through EOW, 2023 SCC OnLine Del 5326*** and ***Ajay Kumar v. State NCT of Delhi, 2023 SCC OnLine Del 7303***, has granted bail to the applicants therein charged with similar offences, considering that conclusion of trial was likely to take a long time, evidence was primarily documentary and accused had been in custody for a long time.



27. 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.2 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; and
- v. He shall not indulge in any criminal activity or contact any witness and/or any other person associated with the present case.

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

29. Application stands disposed of.

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

JYOTI SINGH, J

APRIL 26, 2024/shivam