2024:DHC:9150

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

% **Date of order: 20th November, 2024.**

\+ BAIL APPLN. 3235/2024

SHUBHAM SAXENA .....Petitioner

Through: Mr. Abdhesh Chaudhary, Mr. Meenesh Dubey, Ms. Geetanjali Setia, Mr. Nishi Kant Singh and Mr. Nilendu Vatsyayan, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI). & ANR. .....Respondents

Through: Mr. Raghuinder Verma, APP for State along with Insp. Harpal Madan, PS- EOW.
Mr. Siddharth Satija, Mr. Akash Sachan and Ms. Anuka Bachawat, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant bail application under Section 439 of the Code of Criminal Procedure, 1973 (now Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been filed on behalf of the petitioner/applicant seeking the following reliefs:

> *"(a) Pass an order directing that the Petitioner (Shubham Saxena) be released on regular bail in FIR No. 144 dated 23.09.2021 registered under section 408/467/468/471/120B/201 IPC, District: South east, PS: EOW*

& presently pending Trial before Ld. CMM, South East District, Sak.et Court, New Delhi;
(b) Pass any other order/orders which this Hon'ble Court may be pleased in the facts & circumstances of the case."

2. The brief facts that led to the filing of the present application are that the present case was registered on the complaint of M/s Eldeco Group of Companies. The complainant reported that one Mr. Shubham Saxena/applicant herein was appointed in their Accounts Department in the year 2009 and currently working as Assistant Manager (Accounts) in the said company. It is stated that during his tenure, the applicant was responsible for the preparation of cheques and processing of payments required to be made to various vendors of the company. In the first week of August, 2021, the DGM (Accounts) discovered that a vendor namely M/s Mahavir Infratech had been paid twice, i.e., Rs. 23,13,136/- on 9th July, 2021 and Rs. 17,90,310/- on 30th July, 2021. Upon seeking clarification from the applicant, he stated that he would initiate the transfer back of the said money and accordingly, these amounts were received back from M/s Mahavir Infratech.

3. Suspecting some foul play, further enquiries were made by the complainant and it was revealed that since the year 2018, the applicant had deceived the company with crores of rupees by opening fictitious accounts in the name of vendors having similar names as those of actual vendors. The same led to the registration of FIR bearing no. 0144/2021 dated 23rd September, 2021 at Police Station – Economic Offences Wing (hereinafter

"EOW") for the offences punishable under Sections 408/468/471/120B of the Indian Penal Code, 1860 (hereinafter "IPC").

4. Thereafter, the applicant was arrested on 7th November, 2021 and is in judicial custody since then. Consequently, the applicant filed a regular bail application, however, the same was dismissed vide order dated 7th November, 2021.

5. The investigating agency then filed a charge sheet on 4th January, 2022. The applicant again filed a bail application which was dismissed vide order dated 12th January, 2022. Another default bail application filed by the applicant was also dismissed vide order dated 13th April, 2022. Thereafter, the applicant filed another bail application which was dismissed as withdrawn vide order dated 11th May, 2022 with liberty to file a revision petition against the order dated 13th April 2022. In view of the same, the applicant filed a revision petition bearing Crl. Revision Petition no. 196/2022 which was dismissed vide order dated 12th July, 2022. A second regular bail application was also dismissed by the Court concerned vide order dated 6th August, 2022.

6. Thereafter, the applicant filed another regular bail application before this Court which was dismissed vide order dated 9th November, 2022. Pursuant to the same, the applicant's interim bail applications were dismissed vide order dated 12th January, 2023 and 21st January, 2023. Another interim bail application filed before this Court was also dismissed vide order dated 6th February, 2023.

7. It is stated that pursuant to the above, the applicant filed his third

regular bail application before the concerned CMM which was dismissed vide order dated 28th June, 2023 and another third regular bail application was dismissed by the concerned ASJ vide order dated 25th July, 2023. Being aggrieved by the same, the applicant filed regular bail application before this Court, however, the same was dismissed vide order dated 21st September, 2023. The same was challenged before the Hon'ble Supreme Court vide SLP (C) no. 16169/2023 which was dismissed vide order dated 15th December, 2023.

8. Thereafter, the aforesaid FIR was quashed against seven accused persons out of fifteen accused persons by the Hon'ble Supreme Court pursuant to which the applicant filed his fourth regular bail application before the concerned CMM which was dismissed vide order dated 23rd July, 2024. Subsequently, the applicant filed his fourth regular bail application before the concerned ASJ which also was dismissed vide order dated 13th August, 2024.

9. Hence, the present application has been filed seeking regular bail.

10. Learned counsel appearing on behalf of the applicant submitted that the applicant was arrested on 7th November, 2021 and has been languishing in jail since then. It is submitted that although a half-baked chargesheet was filed by the police on 4th January, 2022 to disentitle the applicant of default bail, however, it took more than one year for the prosecution to file a supplementary chargesheet.

11. It is submitted that even after a lapse of one year and six months from the date of filing of the supplementary charge sheet and after a lapse of more

than two years and six months from the date of filing of the first charge sheet, the trial is yet to commence and the matter is still at the stage of argument on charge.

12. It is submitted that evidently the delay in trial is not attributable to applicant herein and the same is attributable to the prosecution and the complainant only inasmuch as it is the prosecution who has failed to ensure speedy trial of the case and the complainant who has prolonged the trial of the case by filing frivolous applications for further Investigation. Thus, the applicant has no role whatsoever in delaying the trial of the present case in any manner.

13. It is submitted that the present bail application is being filed in the changed circumstances inasmuch as this is the first bail application filed before this Court after quashing of the FIR against seven co-accused persons including the co-accused person Mr. Vivek Sharma with whom the applicant has been accused to have forged a board resolution dated 17th February, 2017.

14. It is submitted that a bulky charge-sheet of more than 3000 pages have been filed by the police citing around thirty-four witnesses to support the case of the prosecution. It is submitted that admittedly the second supplementary charge-sheet has been filed after an inordinate delay of more than a year and even after lapse of more than one year and six months from the date of filing of supplementary charge sheet, the case is still at the stage of arguments on charge. Therefore, it is evident that it would take some time to commence trial as even the charges have not been framed. It is further

submitted that the record of the proceeding would show that there is no likelihood of framing of charge and commencement of trial against the applicant in the near future.

15. It is submitted that a perusal of the charge-sheet would reveal that there is no case made out against the applicant of any of the offences sought to be charged against him. He has been made a scapegoat by the management of the complainant company for ulterior purposes. In any case, the offences alleged by the complainant in the aforesaid FIR pertain to the period of 2017 to 2021, i.e., for long years and evidently the account had been audited all these years. Therefore, it is anybody's guess as to how the alleged fraud of such a huge amount is sought to be saddled on the applicant without the active participation of the management of the complainant company.

16. It is submitted that there is neither forgery nor any criminal breach of trust by the applicant and the essential ingredients of the said offences are missing in the present case. Similarly, there can be no allegation of forgery for cheating and conspiracy in the given facts and circumstances.

17. It is submitted that after quashing of the FIR against aforesaid accused persons and especially against co-accused persons namely Mr. Vivek Sharma and Mr. Praveen Singh, no bail application has been filed by the present applicant before this Court. As such, in view of the above, it is evident that there is clearly a change in circumstance which may be taken into consideration by this Court for the purpose of considering instant bail application and for granting bail to the applicant herein. Therefore, in view

of the foregoing submissions, it is prayed that the instant application may be allowed.

18. *Per Contra*, the learned APP appearing on behalf of the State vehemently opposed the instant application submitting to the effect that the same is liable to be dismissed being devoid of any merits.

19. It is submitted that during the course of investigation, it has been found that there is a diversion/misappropriation of huge amount of Rs. 21,84,76,325/-. These transactions were allegedly done by the applicant herein during the period 2017 to 2021. These funds were diverted from various bank accounts of the complainant company into personal account of the accused as well as in the accounts of his family members and fictitious firms.

20. It is submitted that it was also found during the investigation that the applicant, during his work, targeted five firms namely M/s Mahavir Infratech, M/s Night Vision Services, M/s Purvee Construction , M/s Tarang Technical Services and M/s Shiv Shakti Constructions. It is further submitted that the below mentioned table would depict the conduct of the applicant in forging and generating fake invoices with regard to the aforesaid firms:

S. No.	Genuine vendors	Fake firm/ vendors created by accused Shubham Saxena	Difference
1.	Purvee Construction, Greater Noida	Purvee Constructions, 75, 3rd floor, Shreshtha Vihar, Delhi	Added 's' in Construction
2.	Tarang Technical Services, Rudrapur, Utthrakhand	Tarang Technical Service, 75, 3rd floor, Shreshtha Vihar, Delhi	Removed 's' of Services
3.	Night Vision Security Services Pvt. Ltd., Jalandhar, Punjab	Night Vision Security Services, 75, 3rd floor, Shreshtha Vihar, Delhi	No change in base name, except Pvt. Ltd.

4.	Mahavir Infratech, Panipat, Haryana	Mahavir Infratach, Jhilmil, Delhi	Changed/replaced 'e' of Infratech with 'a'
5.	Shiv Shakti Constructions, Jalandhar	Shiv Shakti Construction, Jhilmil, Delhi	Removed 's' of Constructions

21. It is submitted that the first three firms (mentioned in the aforesaid table) are registered at the applicant's address, i.e., 75, 3rd floor, Shreshtha Vihar, Delhi. In these firms, mobile number 9871717139 and email ID – ssaxena397@gmail.com of the applicant is registered, which shows that he was managing the account of these firms. The accused/applicant is the proprietor of M/s Purvee Constructions, his wife Mrs. Sakshi Saxena is the proprietor of M/s Tarang Techicnal Service and his mother Mrs. Savita Saxena is the proprietor of M/s Night Vision Security Services. Apart from the above, the following money was spent by the applicant in purchasing mobiles, investment in property etc.:

S.N.	Beneficiary	Amount	Remarks
1.	AVS Complete Solutions	19,00,000/-	Purchase/expenses from the account of Mahavir Infratach.
2.	Gulshan Mobile	1,02,000/-	Purchase/expenses from the account of Mahavir Infratach
3.	The Future Mobile	5,49,000/-	Purchase/expenses from the account of Mahavir Infratach and Shiv Shakti Construction
4.	The future Mobile	2,78,000/-	Expenses from Purvee Construction's account
5.	The future Mobile	2,95,000/-	Expenses from Shubham Saxena's account
6.	The Smart Mobile	3,39,240/-	Purchase/expenses from the account of Mahavir Infratach
7.	Interior/AVI Khanna	3,50,000/-	Expenses from Mahavir Infratach's account

8.	[illegible]/AVI Khanna	3,26,000/-	Expenses from Shubham Saxena's account
9.	Kashish (Uttrakhand property)	18,95,000/-	Payment for Uttrakhand Property from Mahavir Infratech's account
10.	M.S. Enterprises	3,97,914/-	Expenses from the accounts of Mahavir Infratech and Shubham Saxena
11.	Greater Noida Properties	84,18,000/-	Expenses from the accounts of Mahavir, Sakshi Saxena, Shubham Saxena, Night Vision etc.
12.	V. B Enterprises	3,60,000/-	Expenses from Shubham Saxena's account
13.	LIC India	2,14,[illegible]/	Expenses from Shubham Saxena's account
14.	Sunny (Friend)	3,17,909/-	Help to friend from Shubham Saxena's account
15.	Credit Card expenses	3,73,625/-	Expenses from Shubham Saxena's account
16.	Manoj Kumar Friend	1,08,000/-	Expenses from Shubham Saxena's account
17.	TKH Productions	47,80,000/	Transferred/ from Mahavir Infratech's account
18.	TKH Productions	1,00,000/-	Transferred from Shiv Shakti Construction's account
19.	TKH Productions	5,80,000/-	Transferred from Purvee Construction's account
20.	Rapipay Fintech Pvt. Ltd.	11,90,000/-	Amount was transferred from the account of Sakshi Saxena. Against this cash was obtained from service provider.
21.	S.D. Nailwal (house rent)	17,22,000/-	Transferred from Sakshi Saxena's account, as house rent.
22.	Satish Kumar Agarwal	8,92,530/-	Transferred from Sakshi Saxena.
23.	Anita Jain (owner of saloon)	6,44,560/-	Transferred from Sakshi Saxena's account
24.	V.K. Enterprises	5,00,000/-	Transferred from Sakshi Saxena's account.
25.	Dwarka Heights	14,60,500/-	Transferred from Sakshi Saxena's account, it is investment in housing project.
26	Sapna Bhati	2,55,000/-	Transferred from Purvi Construction's account.
27.	Hargobind Enterprises	5,00,000/-	Transferred from Tarang Technical's account
28.	Anshul Sarees	67,214/-	Transferred from Tarang Technical's account
	Total	2,77,15,946/-	

22. It is submitted that the investigating agency, during the course of

investigation, has unearthed that the applicant herein has been involved in withdrawal of cash through ATMs and cheques, and the said funds have been diverted from the company through forged/fake invoices and various other documents.

23. It is submitted that after filing of the chargesheet, criminal proceedings against the accused persons namely Mr. Vivek Sharma, Mr. Sandep Tandon, Mr. Sandep Chawla, Mr. Amit Kumar, Mr. Parag Gupta, Mr. Amit Khosla, Mr. Praveen Singh has been quashed by this Court on the ground of settlement with the complainant.

24. It is submitted that there are strong and material evidence present in the instant case against the applicant. He is the kingpin and major beneficiary of the duped money. The offences are serious in nature having maximum punishment upto life imprisonment and if released on bail, the applicant may flee as he was in hiding before his arrest and there are strong chances that he may abscond.

25. Therefore, in view of the foregoing submissions, it is prayed that the instant application may be dismissed.

26. Heard the learned counsel appearing on behalf of the parties and perused the material on record.

27. This Court has perused the material available on record. Upon perusal of the same, it is found that this is the 19th successive bail application filed by the applicant till date. The said bail application has been vehemently opposed by the State submitting to the effect that the applicant is the kingpin of the entire conspiracy which has led to a huge loss of Rs.21.84 Crores to

the complainant company. Further, the investigating agency has collected a damning quantum of incriminating evidence against the applicant with respect to his *modus operandi*. Moreover, FIR against co-accused persons does not amount to any change of circumstances required for entertaining the present application.

28. Admittedly, the present matter is pending for arguments on charge before the learned Trial Court. However, it is pertinent to note that the Hon'ble Supreme Court, in SLP (C) no. 16169/2023, dismissed the applicant's plea of seeking bail vide order dated 15th December, 2023.

29. The applicant's primary contention in the instant application is that he is languishing in jail since 7th November, 2021 and that the trial has not yet commenced. Further, aforesaid FIR has been quashed *qua* seven co-accused persons including one Mr. Vivek Sharma. In view of the same, the applicant submits that there is a change in the circumstances, thereby, necessitating the filing of the present application.

30. Here, it is pertinent to refer to the judgment of the Hon'ble Supreme Court passed in ***Kalyan Chandra Sarkar v. Rajesh Ranjan,*** **(2005) 2 SCC 42**, wherein, while reiterating its earlier judgments, held that even though there is room for filing subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the factual situation or in law, which requires the earlier view being interfered with or where the earlier findings have become obsolete.

31. Bearing in mind the aforesaid discussions, this Court is of the view that the applicant's bone of contention is that he may be granted bail in view

of the fact that aforesaid FIR has been quashed *qua* seven co-accused persons including one of the co-accused Mr. Vivek Sharma. It has been submitted that as per the allegations, Mr. Vivek Sharma and the present applicant forged a board resolution and committed fraud by duping money illegally. In view of the same, it is held by this Court that quashing of FIR *qua* co-accused persons is not a ground which can be considered as '*change in circumstances*'.

32. In order to show '*change in circumstances*', what needs to be shown is the change in factual situation or change in law as held by the Hon'ble Supreme Court time and again. With regard to the facts of the instant case, it is held by this Court that quashing of FIR *qua* several accused persons is not a change in factual situation. Therefore, the present bail application cannot be allowed on the said pretext and the said ground is accordingly rejected.

33. It is further observed by this Court that the trial is at a nascent stage where the supplementary chargesheet against the applicant was filed on 9th January, 2023 and the matter is fixed for arguments on charge before the Court concerned and the said fact has been duly noted by the learned CMM as well as by the learned ASJ in order dated 23rd July, 2024 and 13th August, 2024, respectively. The learned ASJ has specifically noted in its order that the quashing of FIR *qua* the co-accused does not have any substantial effect on the allegations the applicant is facing currently. This Court does not find any illegality of any kind thereto and is inclined to concur with the same.

34. Thus, it cannot be said that there has been any real change in circumstances since the dismissal of the previous bail application of the

accused as the trial has not progressed any further.

35. It is also observed by this Court that the ground of delay in trial alleged by the accused cannot be considered as a ground for grant of bail as the record of the present matter shows that the allegations leveled in the FIR pertain to multiple persons which must be including voluminous documents involving greater quantum of money. Thus, it is feasible for the investigation to be requiring more time.

36. Therefore, taking into consideration the fact that it has not been denied that the arguments on charge is yet to take place and witnesses are yet to be examined, there is a high possibility that the applicant may evade the process of law as he was in hiding before his arrest, and thus, he is a flight risk as he is alleged to be the main accused. Further, there is also a possibility that if released on bail, the applicant may attempt to influence witnesses and tamper with the evidence.

37. In view of the above facts and circumstances, and in the absence of any substantial grounds, the applicant cannot be released on bail at this stage. Therefore, the instant application is liable to be dismissed.

38. Accordingly, the instant bail application stands dismissed along with the other pending applications, if any.

39. It is made clear that the observations made herein above are only for the purpose of deciding the bail application and the same may be not be taken as expression of this Court on the merits of the case.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 20, 2024
rk/ryp/mk