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

\+ BAIL APPLN. 3625/2024

SURESH CHAND PATHAK .....Petitioner

Through: Mr. Ashok Thagal, Advocate.

versus

THE STATE NCT OF DELHI .....Respondent

Through: Mr. Manoj Pant, APP for the State with SI Mohit Malik, PS EoW.

\+ BAIL APPLN. 3705/2024 & CRL.M.A. 30781/2024

ANKUR PATHAK .....Petitioner

Through: Mr. Ashok Thagal, Advocate.

versus

THE STATE NCT OF DELHI .....Respondent

Through: Mr. Manoj Pant, APP for the State with SI Mohit Malik, PS EoW.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **22.11.2024**

1. The present applications are filed seeking regular bail in FIR No. 93/2022 dated 14.06.2022, registered at Police Station Economic Offences Wing, for offences under Sections 409/406/420/120B of the Indian Penal Code, 1860 (‘**IPC**’). Chargesheet has been filed in the present case.

2. It is the case of the prosecution that complaints were received from 36 victims alleging that the accused persons, including, the applicants, had duped the victims into investing amounts totalling to crores of rupees in their chit fund company– M/s. Avighna India Financial Services on the false assurance of

high returns. Majority of the victims and the accused persons belonged to the same locality. It is alleged that the accused persons had been running investment/monetary schemes since the year 2017. The applicants are alleged to have also collected monthly returns from the victims. Initially, the victims were duly paid against their investments till September, 2020.

3. After winning the trust of the public at large, the accused persons came up with two new batches and took over ₹3 crores for the period of 18 months in their companies– M/s. Avighna India Financial Services, M/s. Avighna India Fisheries Pvt. Ltd. and M/s. Avighna India Nidhi Ltd. Thereafter, the accused persons absconded from their available address with the invested amount. During investigation it was found that the applicant Ankur had been a director in M/s. Avighna India Nidhi Ltd. and M/s. Avighna India Fisheries Pvt. Ltd. (not a registered company) since the incorporation of the said companies. The applicant Suresh had also been a director in M/s. Avighna India Fisheries Pvt. Ltd. since its incorporation.

4. The learned counsel for the applicants submits that the applicants have been falsely implicated in the present case.

5. He submits that the dispute between the applicant and the complainant is civil in nature. He submits that the entire conspiracy was hatched by co-accused Varun and his associates who collected the amount from the victims in their name.

6. He submits that Ms. Hemlata Pathak (the wife of applicant Suresh/ mother of applicant Ankur) had preferred complaints to various authorities against co-accused Varun in the year 2022. He further submits that the applicant Suresh had also made a complaint against co-accused Varun to the concerned ACP,

Economic Offences Wing in the year 2022. He submits that the applicant Suresh and his wife preferred complaints against the co-accused Varun before the registration of the present FIR.

7. He further submits that the applicant Ankur had also preferred a complaint case against co-accused Varun, bearing, Ct Case No. 51/2023.

8. He submits that the applicant Suresh is the father of the applicant Ankur and they both have been in custody since 04.10.2023. He submits that the chargesheet has been filed and no purpose would be served by subjecting the applicants to undergo further incarceration.

9. *Per contra*, the learned Additional Public Prosecutor ('**APP**') for the State vehemently opposes the grant of any relief to the applicants. He submits that multiple victims are involved in the present case and the allegations are serious in nature.

10. He further submits that the applicants are involved in two other cases, being, FIR No. 678/2023, registered at Police Station Sadar, Alwar, Rajasthan and FIR No. 113/2023, registered at Police Station NEB, Alwar, Rajasthan.

11. I have heard the learned counsel and perused the record.

12. It is alleged that the applicants had dishonestly induced a number of victims to invest in their companies on the pretext of huge returns against their investment.

13. The applicants have been chargesheeted for offence under Section 409 of the IPC which provides a maximum punishment of imprisonment for life. Considering the number of victims who are alleged to have been cheated, the offence alleged is grave in nature.

14. It is argued on behalf of the applicants that they have been falsely implicated in the present case and the main conspirator is co-accused Varun who along with his agents collected money from the victims and absconded with the invested amount.

15. While the allegations and defences will be seen during the course of the trial however, it cannot be ignored that the investigating agency has already completed the investigation *qua* the applicants and filed the charge sheet against them.

16. The Hon'ble Apex Court, in the case of ***Sanjay Chandra v. CBI* : (2012) 1 SCC 40**, emphasized that the purpose of pre-trial detention is not punitive and held as under:

> "***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.***
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> ***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.*
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> ***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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***27.** This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.*

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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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43.** There are seventeen accused persons. Statements of witnesses run to several hundred pages and the documents on which reliance is placed by the prosecution, are voluminous.* ***The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that the accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.

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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 ally the apprehension expressed by CBI*.”

(emphasis supplied)

17. It is not the case of the prosecution that the applicants are required for any further investigation. In the present case, the applicants were arrested way back on 04.10.2023. Given the number of victims, speedy trial in the present case does not seem to be possible. The trial is likely going to take a considerable amount of time to conclude. The applicants cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

18. It is also relevant to note that the applicant Suresh is 65 years old. It is relevant to note that the Bharatiya Nagarik Suraksha Sanhita, 2023 (*erstwhile* Section 482 of the Code of Criminal Procedure, 1973) provides for special consideration to be accorded to the factors of sickness and infirmity of the accused person while considering the question of grant of bail. While “infirmity” has not been defined in the Code, the Oxford English Dictionary defines the same as not physically strong or healthy; weak or feeble, especially through old age. The Merriam Webster’s Dictionary also defines the same as of poor or deteriorated vitality, especially : feeble from age.

19. Insofar as the prior criminal antecedents of the applicants are concerned, it is settled law that mere pendency of several criminal cases against an accused cannot itself be a bar for refusal of bail [Ref: ***Prabhakar Tiwari v. State of Uttar Pradesh*: (2020) 11 SCC 648**].

20. Considering the aforesaid discussion, in the opinion of this Court, no purpose will be served by subjecting the applicants to

further incarceration. The applicants have made out a *prima facie* case for grant of bail.

21. However, appropriate conditions ought to be imposed to allay any apprehension of the applicant evading trial or intimidating the witnesses.

22. In view of the same, without commenting further on the merits of the case, the applicant are directed to be released on bail (if not in custody in any other case) on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount respectively, subject to the satisfaction of the learned Trial Court, on the following conditions:

a. The applicants shall cooperate in any further investigation as and when directed by the concerned IO;
b. The applicants 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;
c. The applicants shall under no circumstance leave the country without the permission of the learned Trial Court;
d. The applicants shall appear before the learned Trial Court as and when directed;
e. The applicants shall provide the address where they would be residing after their release and shall not change the address without informing the concerned IO/ SHO;
f. The applicants shall, upon their release, give their mobile number to the concerned IO/SHO and shall

keep their mobile phone switched on at all times;

g. The applicants shall appear before the concerned IO/SHO once every month.

23. In the event of there being any FIR/DD entry / complaint lodged against the applicants, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

24. It is clarified that observations made in the present order are for the purpose of deciding the present bail applications 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.

25. The bail applications are allowed in the aforementioned terms.

26. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

NOVEMBER 22, 2024