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

\+ BAIL APPLN. 4648/2024

SANDEEP TILWANI .....Applicant

Through: Mr. Utkarsh Singh, Mr. Mayank Gupta, Mr. Humaid & Ms. Suajata Kumari, Advocates.

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Manoj Pant, APP for the State.
Mr. Manmay Sarawagi, Advocate for Complainant.
SI Ajay Moral (P.S. EOW/Delhi).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **24.12.2024**

1. The present application is filed seeking regular bail in FIR No. 220/2020 dated 18.12.2020, registered by Economic Offences Wing, for offences under Sections 420/406 of the Indian Penal Code, 1860 (‘**IPC**’). Chargesheet has been filed against the applicant for the offences under Sections 406/420/467/468/471/474/120B of the IPC.

2. The brief facts of the case are that the complainant is a Director of Cargomasters Logistics Pvt. Ltd which is engaged in the business of freight forwarding and logistics services. The applicant is a Director or J Sai Kripa Import & Export Co. Ltd. and he used to act as a middle man between importers and companies that provide freight services. It is alleged that in the year 2018, the applicant assigned 74 bookings of 640 rice containers to the complainant company to the tune of ₹11.2 crores. Although initial payments were made, however, the payments were later stopped. Consequently, the complainant

stopped the release of remaining Bill of Ladings. The applicant allegedly induced the complainant into releasing the remaining 3 Bill of Ladings by sending copies of two Telegraphic Transfers. It is alleged that the due payment as well as the payment against the remaining 3 Bill of Ladings was not transferred by the applicant. Later on, it was found that the Telegraphic Transfers were never deposited in the concerned bank in Thailand. It is alleged that the applicant cheated the complainant to the tune of ₹7 crores and did not make the necessary payments to the complainant in connivance with the importers.

3. During investigation, documents were obtained from the complainant and the images of the Telegraphic Transfers received by the complainant were sent to FSL. The signatures of the applicant on the same were found to be genuine.

4. The bail application preferred by the applicant was dismissed by this Court on 07.03.2023 on noting the previous involvements of the applicant and nature of allegations. Subsequently, the applicant had withdrawn his 2nd bail application before this Court on 20.10.2023.

5. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that that the relationship between the parties is purely commercial and the FIR is registered only on account of financial losses faced by the complainant.

6. He submits that the applicant is only a middle man and his only role was to introduce the seller and the buyers.

7. He submits that no supplementary chargesheet in relation to the FSL result has been filed by the prosecution till date despite seeking repeated extensions to do the same.

8. He submits that the cheated amount was initially alleged to

be ₹11.2 crores, however, it was later alleged to be ₹6.91 crores.

9. He submits that the chargesheet is filed and no purpose would be served by subjecting the applicant to further incarceration. He submits that the chargesheet is devoid of any cogent document to prove that any payment was received by the applicant against the supplied material.

10. He further submits that there is nothing to show that the complainant has been cheated or induced to enter into the business transaction with the applicant.

11. *Per contra*, the learned Additional Public Prosecutor ('**APP**') for the State submits that the applicant is a habitual offender and he has committed similar offences in Thailand. He submits that the applicant's passport has already been seized by the Court of Thailand.

12. He submits that the applicant has multiple passports and there is a strong apprehension that he may abscond from India by using the fake passports. He submits that fake IDs were also recovered from the applicant.

13. He further submits that the applicant has changed his address many times and he has no permanent address.

14. The learned counsel for the complainant also opposes the grant of bail to the applicant. He submits that there are strong apprehensions that the applicant will evade trial if he is granted bail.

15. The learned counsel for the applicant contests the aforesaid submissions. He submits that the applicant had only changed his address once after demise of his father. He further submits that the applicant was issued 3 passports only because the pages of the passports were fully stamped.

16. He, however, submits that to assuage such apprehensions,

the applicant is willing to adduce sureties in the sum of ₹50,00,000/- by his family members.

17. I have heard the counsel and perused the record.

18. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

19. It is alleged that the applicant has cheated the complainant of almost ₹7 crores in connivance with the importers.

20. It is argued on behalf of the applicant that the FIR is based on a business transaction and he was merely acting as a middleman.

21. It is relevant to note that the bail of the applicant has already been rejected by this Court on merits by way of order dated 07.03.2023.

22. No fresh ground on merits has been argued by the applicant.

23. While the allegations and defences will be seen during the course of the trial, however, it is pertinent to note that the FIR was registered way back in the year 2020. The applicant was arrested on 25.04.2022 and he has remained in custody since then.

24. Undisputably, the offence as alleged against the applicant and the manner in which it is committed is serious in nature,

however, the long period of incarceration is a relevant factor which is to be kept in mind.

25. The Hon'ble Apex Court in a catena of cases has observed that every day spent in custody can provide a new cause of action for filing a bail application under certain circumstances. This principle is part of a broader approach emphasizing that the law prefers bail over jail, aiming to balance the rights of the accused with the requirements of the criminal justice system. This leads to the principle that each additional day in custody could potentially alter the circumstances under which bail is considered, thereby necessitating a fresh evaluation of the bail application.

26. 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.

27. The Hon'ble Apex Court in the case of ***Javed Gulam Nabi Shaikh v. State of Maharashtra and Another*** **: Crl.A.2787/2024** has observed as under:

> *"19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.*
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> *20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be."*

28. On being pointedly asked, it is submitted that the charges

have not been framed till now and repeated adjournments have been sought by the prosecution to file the supplementary chargesheet. More than an year has passed since the dismissal of the applicant's bail application by this Court and the trial is yet to start. As noted above, the applicant has spent more than two years in custody. There is no likelihood of the trial being completed in near future. In such circumstances, incarceration of the applicant for an endless period on account of non-examination of witnesses falls foul of Article 21 of the Constitution of India.

29. The object of jail is to secure the appearance of the accused during the trial. Serious apprehensions have been raised in regard to the applicant being a flight risk. It is alleged that the applicant has multiple fake passports and fake IDs have also been recovered from him.

30. Such apprehensions can be allayed by imposing appropriate conditions. The prosecution is at liberty to open an LOC against the applicant.

31. In view of the same, without commenting on the merits of the case, the applicant is directed to be released on bail (if not in custody in any other case) on furnishing a personal bond for a sum of ₹50,00,000/- with two sureties for a sum of ₹50,00,000/- respectively (one of the sureties must be a family member of the applicant), subject to the satisfaction of the learned Trial Court/ Duty MM/ Link MM, on the following conditions:

a. The applicant shall cooperate in any further investigation as and when directed by the concerned IO;
b. 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;

c. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
d. The applicant shall appear before the learned Trial Court as and when directed;
e. 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;
f. 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;
g. The applicant shall appear before the concerned IO/SHO once every week.

32. 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.

33. It is clarified that 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.

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

35. A copy of this order be sent to the FRRO for information.

AMIT MAHAJAN, J

DECEMBER 24, 2024

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