



\$~11

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

+ **BAIL APPLN. 4182/2024, CRL.M.A. 34425/2024**

ARUN KUMAR OMAR

.....Petitioner

Through: Mr. Parveen Tyagi, Advocate.

versus

THE STATE N.C.T. OF DELHI

.....Respondent

Through: Ms. Manjeet Arya, APP for State with
Mr. Harish, SI, PH-Lahori Gate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

09.01.2025

%

1. Through the present application filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 439 of the Code of Criminal Procedure, 1973, the Applicant seeks grant of regular bail in relation to FIR No. 525/2023 under Sections 420/34 of the Indian Penal Code, 1860¹ at Police Station Lahori Gate.

2. The case of the prosecution, in brief, is as follows:

2.1. On 21st September, 2023, upon a complaint filed by one Mr. Vaibhav Jain raising allegations of cheating against the partners of M/s Bansal Traders having their shop at Fateh Puri, Khari Baoli, Delhi, the FIR against the Applicant was registered. The Complainant alleged that Mr. Ashok Kumar and the Applicant, who are partners of Bansal Traders, approached



the Complainant for purchasing dry fruits. The partners purchased dry fruits worth INR 60,859/-, INR 1,21,700/- and INR 2,96,695/- and initially made a payment of INR 60,859/-. In this manner, they initially gained faith of the Complainant. Subsequently, another purchase worth INR 17,72,140/- was made by the partners, for which they issued two cheques for an amount of INR 12,48,995/- and INR 4,12,115/- dated 28th August, 2023 and 1st September, 2023, respectively. However, the cheque amounting to INR 4,12,115/- was returned unpaid by the drawee bank as insufficient funds.

2.2. During the investigation the specimen signature of the Applicant was sent to FSL for expert opinion and the FSL reported the signatures on the dishonoured cheques given to the Complainant matched with the Applicant's signature.

2.3. In such circumstances, the APP for the State urges that the Applicant, along with other co-accused have actively participated in the crime. Further, she states that there is a strong apprehension that of the Applicant were to be released on bail, he will threaten the Complainant and other witnesses. She also emphasizes that Petitioner is also implicated in FIR No. 166/2020 under Sections 420 P.S. Roop Nagar.

2.4. *Per contra*, counsel for the Applicant contends that the Applicant is innocent and has been falsely implicated as these allegations are baseless. He further asserts that the instant case only highlights a case of recovery of monies at the highest, for which, no case of cheating can be made out. The Applicant also emphasizes that he has no criminal antecedents and has deep roots in the country with strong familial and social ties, hence, there is no reasonable possibility of him fleeing the country or evading arrest.

¹ "IPC"



3. The Court has considered the afore-noted contentions. The Supreme Court in the case of *Sanjay Chandra v. CBI*,² emphasized that providing bail prevents the accused from undergoing imprisonment before being convicted. The relevant observations made by the Court read 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.*

XX ... XX ... XX

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.

XX ... XX ... XX

*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***

² (2012) 1 SCC 40



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.

XX ... XX ... XX

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.***

[Emphasis Supplied]

4. In the present case, the investigation has been concluded, and the chargesheet has been filed, indicating that the evidence collection process has been substantially completed. This significantly reduces the risk of the Applicant interfering with the investigation or tampering with evidence, as there is no ongoing investigative process that could be impacted by the Applicant's release on bail. Furthermore, the Applicant has been in custody since 4th October, 2023, which amounts to a considerable duration of pre-trial detention. Therefore, keeping the Applicant in prolonged custody, particularly when the investigation has been finalized, may no longer be necessary at this stage.

5. While the allegations in the case are undoubtedly serious, they predominantly pertain to financial disputes and the recovery of monetary dues. Such issues, at their core, are civil in nature and the criminal aspect of the



case, as alleged, can be effectively adjudicated during the trial. It is important to note that granting bail does not suggest an opinion on the merits of the case or the Applicant's innocence. Instead, it ensures that the Applicant retains their right to liberty, thereby balancing the interests of justice with the constitutional principle that detention before conviction should not be punitive.

6. In view of the foregoing, it is directed that the Applicant shall be released on regular bail on furnishing a personal bond in the sum of INR 50,000/- along with one surety of the like amount to the satisfaction of the Trial Court, subject to 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 country without informing the concerned IO;
- c. The Applicant shall appear before the Trial Court on every date;
- d. The Applicant shall, after his release, appear before the concerned IO once in every week;
- e. The Applicant shall provide the address where he would be residing after his release to the concerned IO/SHO 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 not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.



7. Needless to state, any observations concerning the merits of the case are solely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of opinion on the merits of the case.
8. A copy of the order be sent to the Jail Superintendent for information and necessary compliance.
9. With the foregoing directions, the present application is disposed of. Pending application(s), if any, are disposed of as infructuous.

SANJEEV NARULA, J

JANUARY 9, 2025

nk