

HIGH COURT OF DELHI
Bench: Justice Vikas Mahajan
Date of Decision: October 04, 2023

BAIL APPLN. 1228/2023 & CRL.M.A. 9953/2023

MUKESH KUMAR

..... **Petitioner**

Versus

STATE OF NCT OF DELHI

..... **Respondent**

Sections, Acts, Rules, and Articles:

Section 439 of the Code of Criminal Procedure, 1973
Sections 420, 406, 467, 468, 471, 120B IPC (Indian Penal Code)
SARFAESI Act, 2002

Subject: Bail application - fraudulent activities involving banks and submission of forged documents - prolonged detention without trial, the presumption of innocence at the pre-conviction stage - custody is no longer required.

Headnotes:

Bail Application - Regular Bail - Fraudulent Activities - Grant of regular bail sought by the petitioner who is accused of offenses under Sections 420/406/467/468/471/120B IPC - Allegations of defrauding banks and submission of forged documents - Lengthy detention without trial - Pre-conviction stage and presumption of innocence - Role of courts in safeguarding liberty - Completion of investigation and filing of charge-sheets - Custody no longer required - Stringent bail conditions imposed. [Para 1-34]

Referred Cases:

- Sanjay Chandra v. CBI, (2012) 1 SCC 40
- P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791
- Satender Kumar Antil v. State of Maharashtra, (2022) 10 SCC 51

Representing Advocates:

Mr. Mohit Mathur, Sr. Adv. with Mr. Rajesh Mishra, Mr. Tushant, and Mr. V. C. Jha, Advs. for the petitioner.

Ms. Richa Dhawan, APP for the State with IO/Insp. Satish Malik, Crime Branch.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in connection with FIR No. 255/2018 under Sections 420/406/467/468/471/120B IPC, registered at PS EOW (investigated by Crime Branch).
2. *Vide* order dated 24.04.2023, notice was issued in the bail application of the petitioner and the State was directed to file a Status Report. The State has filed the Status Report dated 17.05.2023 which is on record.
3. The case of the prosecution as borne out from the Status Report is that the complainant i.e. M/s Phoenix ARC Pvt Ltd, a Securitization and Asset Reconstruction Company (assignee of Debt of Karnataka Bank), complained that Karnataka Bank, Savita Vihar had sanctioned and disbursed OD credit facility of Rs. 2.50 Crore to the petitioner herein against mortgage of petitioner's entire built up (G+3½ floors) property no. WZ-23/9, Khasra No. 47, Village-Budela, Vikaspuri, Delhi. The said account was declared NPA on 01.05.2014 and accordingly, Karnataka Bank initiated proceedings against the petitioner under the SARFAESI Act, 2002 and vide its notice under section 13(3) of the said Act directed the petitioner not to create any third party rights in respect of the mortgaged property without prior consent of the Karnataka Bank.
4. It is alleged that thereafter the petitioner sold the 3rd floor of the mortgaged property to Indu Malhotra & Deepak Kumar Malhotra, who in turn had mortgaged the same with Union Bank of India for availing home loan amounting to Rs. 1.10 Crores. The loan amount in favour of the aforesaid purchasers was sanctioned *vide* letter dated 8.10.2015 and disbursed on 16.10.2015 in the bank account of the petitioner. Out of the said loan of Rs. 1.10 crore, installments only of Rs. 17,02,083/- were paid. However, on 28.02.2017 the said loan account was declared NPA. It is also the case of the prosecution that the installments of the said loan were also repaid by the petitioner herein.
5. Further investigation revealed that the petitioner had also taken a loan of Rs. 1.80 Crore in the name of the partnership firm M/s Elite Enterprises (in which the petitioner is a partner) from South Indian Bank, Janakpuri, Delhi against the very same property i.e. WZ-23/9, Khasra No. 47, Village-Budela, Vikaspuri, Delhi. It is the case of the prosecution that this loan was availed by

the petitioner by submitting a parallel original chain of title documents of the property in question. 6. The investigation also revealed that the petitioner submitted forged chain of title documents of the mortgaged property including GPA to Karnataka Bank, whereas, forged and fabricated agreement to sell and possession letter were submitted to South Indian Bank to obtain the loans fraudulently. The petitioner also submitted different pan card nos. to conceal his poor CIBIL and loan default history.

7. Mr. Mohit Mathur, the learned Senior counsel for the petitioner at the outset submits that the petitioner is the proprietor of M/s. Mahashakti Enterprises and is engaged in the wholesale trading business of fabrics. In order to run the business, the petitioner availed the OD credit facility from Karnataka Bank and created a primary charge in favour of the Karnataka Bank over all the stocks and book debts of M/s. Mahashakti Enterprises and also created mortgage of his property.

8. He submits that the petitioner failed to repay the loan amount due to sudden financial difficulties and the account was declared NPA on 01.05.2014, later on when Karnataka Bank initiated measures under SARFAESI Act, 2002, the petitioner availed the loan from South Indian Bank to repay Karnataka Bank as well as to bring his business back on track.

9. In respect of the sale to Mr. Deepak Malhotra, it is submitted that the third floor of the property was under tenancy *vide* lease deed dated 01.05.2014 and the same was well within the knowledge of the Karnataka Bank and the property was sold to Deepak Malhotra and his mother *vide* sale deed dated 21.10.2015.

10. Mr. Mathur submits that the petitioner had entered into talks with the officials of South Indian Bank with respect to settlement of loan amount. In support of his submission, the attention of the Court is drawn to letter dated 27.05.2022 (annexed as Annexure P-5), whereby the petitioner has requested South Indian Bank to accept his OTS offer.

11. He submits that the complainant/M/s. Pheonix ARC Private Limited, who is assignee of Karnataka Bank, has already sold off the mortgaged property to Mr. Dinesh Sabharwal and the sale proceeds have thus, been adjusted against the loan.

12. It is further submitted that the petitioner is in custody since 02.03.2021 and investigation in the matter is complete. The prosecution has filed the charge-sheet, as well as, two supplementary charge-sheets before the Ld. Trial Court. Further, there are about 26 witnesses which have been cited by the prosecution and the conclusion of trial will take considerable time.

13. Mr. Mathur, draws the attention of the Court to the main charge-sheet filed by the prosecution, to contend that the petitioner was not shown as an accused in column 11 of the charge-sheet. He submits that the name of the petitioner has only been mentioned in column 11 in the supplementary charge-sheet dated 27.05.2021. 14. He also invites the attention of the Court to order dated 11.10.2022 passed in BAIL APPLN569/2022 entitled '*Deepak Malhotra v. State of NCT of Delhi*' (annexed as Annexure P-10) to contend that the co-accused Deepak Malhotra has already been released on regular bail by this Hon'ble Court.

15. It was also contended by Mr. Mathur that the entire evidence in the matter is documentary in nature and no further recovery is to be made from the petitioner, inasmuch as, the prosecution has already filed the charge-sheet, as well as, supplementary charge sheets dated 27.05.2021 and 26.06.2022. It is thus, urged that the petitioner be enlarged on bail.

16. *Per contra*, the learned APP for the State has argued on the lines of the status report. She submits that the allegations against the petitioner are serious in nature as the petitioner has defrauded the banks of public money to the tune of Rs. 4.60 Crores. She submits that the documents which were submitted by the petitioner were sent to FSL, Rohini and Government Securities Press, Nasik for comparison and report. The Report from FSL, Rohini reveals that some of the documents submitted in Karnataka Bank and South Indian Bank are forged and even the stamp papers were also found to be fake and fabricated.

17. She submits that there is a reasonable apprehension that the petitioner will flee from justice, in case he is enlarged on bail. She finally submits that the antecedents of the petitioner are also not clean in as much as the petitioner is involved in two other cases being FIR No. 28/2021 registered at PS Crime Branch West and also FIR No. 307/2020 registered as PS Kanjhawala. In this backdrop, the learned APP urged that the bail application of the petitioner may be dismissed. 18. I have heard the learned Senior counsel for the petitioner as well as the learned APP for the State and perused the material on record.

19. It is not dispute that the mortgaged property has been sold by the complainant and sale proceeds received from such sale have been adjusted against the outstanding loan amount. Further, it is also not in dispute that civil proceedings have been initiated against the petitioner before the DRT.

20. It is also a matter of record that co-accused Deepak Malhotra has been granted regular bail by this Hon'ble Court *vide* order dated 11.10.2022

passed in BAIL APPLN 569/2022 titled as '*Deepak Malhotra v. State of NCT of Delhi*'.

21. In regard to the loan availed from the South Indian Bank, suffice it to note that said bank is not a complainant in the present case. The petitioner has, however, shown its inclination to settle loan account of South Indian Bank by making an offer for OTS through letter dated 27.05.2022 (Annexure P-5).

22. In so far as allegations of forgery are concerned, the same are yet to be established during trial. It is well settled that at preconviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be awarded to him. Detention is not supposed to be punitive or preventive. The seriousness of allegations or the availability of material in support thereof are not the only considerations for declining bail. Delay in the commencement and conclusion of the trial is a factor to be taken into account and the accused cannot be kept in custody for an indefinite period if the trial is not likely to be concluded within a reasonable time.¹

23. At this stage, it cannot be overlooked that the petitioner is in custody since 02.03.2021 and the prosecution has cited as many as 26 witnesses which would inevitably lead to a protracted trial.

24. At this juncture, it is also apposite to refer to the following observations of the Hon'ble Supreme Court made in *Sanjay Chandra v. CBI, (2012) 1 SCC 40*, which read 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 can be 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. 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 India, 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. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment

¹ Vinod Bhandari v. State of Madhya Pradesh, (2015) 11 SCC 502

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 propose of giving him a taste of imprisonment as a lesson.

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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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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."
(emphasis supplied)

25. In *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791, it was observed by the Supreme Court that even if the allegation is of commission of a grave economic offence, it is not a rule that bail should be denied in every case and 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. Para 23 of the said decision reads thus:

"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.”

26. In *Satender Kumar Antil v. State of Maharashtra*, (2022) 10 SCC 51, the Supreme Court, after observing that law, as laid down in *Sanjay Chandra* (*supra*) and *P. Chidambaram* (*supra*), will govern the field, deprecated the approach of deciding the bail application strictly, contrary to legal principles. The Supreme Court also emphasized the role of criminal courts as guardian angels of liberty:

"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."

(emphasis supplied)

27. Notably, the investigation is now complete and the charge-sheet as well as two supplementary charge-sheets stand filed qua the petitioner. The present case is otherwise based on documents and all incriminating documents have already been recovered by the investigating agency and made part of the charge-sheets. Evidently, the custody of the petitioner is no longer required.

In the given circumstances, no useful purpose will be served in keeping the petitioner behind bars.

28. In so far as the apprehension expressed by the learned APP as regards the petitioner being a flight risk, the same can be dispelled by putting stringent conditions.
29. Considering the above-discussed circumstances and keeping in perspective the law laid down by the Hon'ble Supreme Court, I am of the view that the petitioner is entitled to grant of regular bail pending trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 1,00,000/- with two sureties of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/Jail Superintendent, further subject to the following conditions:
 - a) Petitioner shall not leave limits of Delhi/NCR.
 - b) Petitioner shall surrender his Passport, if any, before the Trial Court at the time of furnishing bail bond/surety bond.
 - c) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - d) Petitioner shall provide all the mobile numbers to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating officer concerned.
 - e) Petitioner shall not directly or indirectly, make any inducement, threat or promise to the witnesses cited by the prosecution.
30. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.
31. The petition stands disposed of.
32. Copy of the order be forwarded to the concerned Jail Superintendent for information and necessary compliance.
33. Order *dasti* under the signatures of the Court Master.
34. Order be uploaded on the website of this Court.

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