

HIGH COURT OF DELHI AT NEW DELHI**Bench: Justice Amit Mahajan****Date of Decision: 22nd January, 2024**

BAIL APPLN. 3629/2023 & CRL. M.A. 29556/2023

SUBHASH NAGAR Applicant**versus****STATE Respondent****Legislation:**

Sections 406, 420, 201, 174A, and 120B of the Indian Penal Code, 1860

Sections 4, 5, and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978

Section 58(B)(4A) of the Reserve Bank of India Act, 1934

Section 439 of the Code of Criminal Procedure, 1973

Subject: Bail application for Subhash Nagar in connection with FIR No. 194/2020 alleging cheating, misappropriation of funds, and involvement in an unlawful money circulation scheme by a company and its Directors.**Headnotes:**

Bail Application – Regular Bail in Economic Offenses – Applicant, a director in a company accused of cheating investors – Seeking regular bail after nine months in custody following a series of complaints and FIRs. [Para 3-9]

Allegations and Investigations – Accusations of fraudulent schemes and misappropriation of funds by the company – Involvement of the applicant in organizing fake events and diverting funds – Previous bail applications and anticipatory bail rejections. [Para 4-7, 17-18]

Applicant's Circumstances and Co-accused – Applicant's role as director and lack of higher education – Comparison with other co-accused who were granted bail – Efforts made by the applicant to settle with complainants. [Para 9-13]

Prosecution's Opposition to Bail – Active involvement of the applicant in the company's operations – Non-compliance with investigation and court orders – Concerns about the applicant influencing the trial or avoiding appearance. [Para 14-19]

Court's Analysis and Decision – Consideration of the nature of allegations and the role of the applicant – Principle that bail is the rule and jail is the exception

– Grant of bail to the applicant on specific conditions considering the release of co-accused on bail and completion of the chargesheet. [Para 20-30]

Referred Cases:

- Sanjay Chandra v. CBI: 2012 1 SC

Representing Advocates:

For the Applicant: Mr. Sudhir Naagar, Mr. Manohar Naagar, and Mr. Piyush Aggarwal

For the Respondent: Mr. Amol Sinha, ASC with Mr. Kshitiz Garg, Mr. Ashvini Kumar, Ms. Chavi Lazarus, and Mr. Arjun Singh Kadian

JUDGMENT

CM. M.A. 29556/2023 (exemption from filing certified/fair typed/official translated copies of the annexures).

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.
BAIL APPLN. 3629/2023
3. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, ('CrPC') seeking regular bail in FIR No. 194/2020, dated 13.11.2020, under Sections 406, 420, 201, 174A & 120B of the Indian Penal Code, 1860 ('IPC') and Sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and Sections 58(B)(4A) of the Reserve Bank of India Act, 1934, registered at Police Station Economic Offences Wing, Delhi.
4. The FIR No. 194/2020 was registered at the behest of 47 complainants / investors, against M/s Swag Production Private Limited (hereafter '**company**') and its Directors, alleging that the company through its Directors had cheated and deceived the complainants. The Directors gave the complainants, wrongful representations and induced them to invest in Feature Films, TV Commercials, Short Films & Events, by promising them a high rate of return, and thereafter siphoned off and misappropriated the money of the complainants.
5. It is also alleged that the company had showed the complainants and other potential investors, pamphlets of bogus printed schemes, and some

documents bearing the seal of the government, thereby dishonestly and fraudulently allured the complainants to invest in their company. Believing the assurances of manifold return on investment, given by the company, the complainants invested in the said schemes and business ventures of the company.

6. Initially, the complainants received the returns as per the business plans drawn up by the company, but the payments stopped after a few months. Upon approaching the company, the Directors and their representatives issued Post Dated Cheques, in favour of the complainants, but those were also dishonoured and returned by the bank due to insufficient funds in the company accounts.
7. During the investigation, it was revealed that the company and its Directors had cheated the complainants by organizing fake events and siphoned off the invested money of the complainants, which is approximately ₹3.5 crores, in the accounts of the family members of the applicant and other Directors.
8. FIR No. 194/2020, was initially registered on the complaints of 33 complainants under Sections 406, 420, 201, 174A and 120B of the IPC, against the company and its Directors, including the applicant, and was later transferred to Economic offences Wing from Police Station Sarita Vihar. The applicant was arrested on 21.03.2023
9. The learned counsel for the applicant submitted that the applicant is a sole bread earner of the family, having a wife and three children. He submitted that the FIR was filed against the company and the applicant was named in the FIR only for the reason that he was the Director of the company.
10. He further submitted that the applicant is not highly educated and therefore was not capable of running the whole business. The daily affairs of the company were looked over by Mr. Pramod Kumar Nagar, who is also a co-accused. He submitted that his role was only to sign papers as advised by other associates.
11. The learned counsel submitted that the applicant and the other co accused, Pramod Kumar Nagar, took steps to repay the complainants and accordingly, FIR No. 254/2019, which was filed against the same accused persons relating to the same kind of offence, was quashed after the settlement with the complainant in the FIR. He submitted that the applicant has taken all the necessary steps to settle the matter, he has even sold his property to pay the complainants, which shows his seriousness towards compensating the complainants.

12. He submitted that the applicant is in judicial custody since 21.03.2023. The investigation is complete and the chargesheet has already been filed against the applicant. He further submitted that the main accused, Pramod Kumar Nagar, was granted interim bail vide order dated 13.10.2022, the same interim bail has been extended till date by the learned Chief Metropolitan Magistrate, Saket Courts. Another co-accused, Udit Oberoi, was also granted Regular bail by an order dated 02.06.2022, passed by the learned Additional Sessions Judge, Saket.
13. The applicant has been in judicial custody for more than nine months and prays for the grant of bail.
14. The Learned Additional Public Prosecutor ('**APP**') opposes the grant of bail on the ground that the applicant was the Director, shareholder and an authorized signatory in the company and was involved in the day to day functioning along with the co accused namely, Pramod Kumar Nagar.
15. It is submitted by the learned APP that the applicant and Mr. Udit Oberoi, co-accused, were the authorized signatory in bank accounts of the company. He also submitted that the company was not authorized by the Reserve Bank of India (hereafter '**RBI**') to accept money from public and the company was not registered with the RBI as NonBanking Financial Company. He submitted that the applicant played an active role in inducing the complainants for investment in the company, despite knowing that the company was not authorized to collect money from common public.
16. The learned APP submitted that the applicant did not cooperate in the investigation despite the service of notices under section 41A(1) of the CrPC. He was declared as a Proclaimed Offender in regard to the present FIR and a reward of ₹50,000/- was declared on his arrest. He also submitted that the records of all the investors' money have also been destroyed by the applicant.
17. He further submitted that two anticipatory bail applications of the applicant have been dismissed earlier, one by the learned Additional Sessions Judge by an order dated 31.05.2022, and another by a Coordinate Bench of this Court by an order dated 22.03.2023. Thereafter, three bail applications were dismissed by the learned Chief Metropolitan Magistrate by orders dated 26.04.2023, 28.07.2023 and 27.09.2023 and another bail application was dismissed by the learned Additional Sessions Judge by an order dated 05.10.2023.
18. He submitted that the supplementary investigation of the case is in progress regarding the money siphoned off by the applicant in the accounts of his relative. He stated that the applicant had given many Post-Dated Cheques in

favour of the complainants, but the same were dishonoured and the applicant is facing trial under Section 138 of the Negotiable Instruments Act, 1881.

19. He submitted that applicant also did not comply with the direction issued by this Court by an order dated 14.07.2022, to deposit ₹50 lakhs in the form of FDR in the name of the Registrar General of this Court, within 15 days.

Analysis

20. The allegation against the accused persons is that they had received money from the complainants by promising high rate of return. It is not denied that the payments were made to the complainants for some period of time and the complaint was made after the complainants stopped receiving the returns as agreed. The transactions in such scenario were commercial, or, was there any element of cheating, would be established during the trial.
21. It is not denied that the co-accused Udit Oberoi, who was also one of the directors in the company, has already been released on bail. The bail application filed by other co-accused Pramod Kumar Nagar, was allowed by the learned Chief Metropolitan Magistrate by an order dated 05.01.2024. The role of the applicant at this stage is not alleged to be any different or graver than the role of the other co-accused persons who have been enlarged on bail.
22. The learned APP for the State has contended that the applicant was declared a Proclaimed Offender and, therefore, chances of him not being available for trial cannot be ruled out.
23. The orders passed by the learned Trial Court during investigation which led to the issuance of process under Section 82 of CrPC is a matter of record.
24. It is not alleged that the applicant has threatened or attempted to influence any of the witnesses. Moreover, any apprehension of applicant not participating in the trial can be taken care by putting appropriate conditions. The case is based on documentary evidence which is already in possession of the prosecution which led to the filing of the chargesheet. It is not a case of the prosecution that an incomplete chargesheet was filed. Though there may be some part of investigation which is pending. However, it cannot be presumed, at this stage, that the release of the applicant would hamper further investigation, especially when the applicant is in custody for more than nine months. The custody of the accused cannot be demanded for a prolonged period on the ground that the investigation is still to be completed.
25. It is a settled principle of law that bail is the rule and jail is an exception. The right to speedy trial and justice has been recognised as a Fundamental Right

by the Hon'ble Supreme Court. In **Sanjay Chandra v. CBI: 2012 1 SCC page 40**, it was 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. 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.

26. Considering the aforesaid and the fact that co-accused persons who have been assigned the similar, if not graver role, have already been released on bail and the fact that the chargesheet has already been filed, this Court is of the opinion that no purpose would be served by keeping the applicant in further incarceration.
27. Without commenting further on the merits of the case, the applicant is directed to be released on bail in FIR No.194/2020 on furnishing a bail bond in the sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court / Duty Metropolitan Magistrate on the following conditions:
 - a. He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
 - b. He shall under no circumstance leave the country without the permission of the Trial Court;
 - c. He shall appear before the learned Trial Court as and when directed;
 - d. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
 - e. He shall not contact any of the witnesses or the complainants while on bail.
28. 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.
29. The bail application is allowed in the aforementioned terms.
30. It is clarified that the observations made in the present case are only for the purpose of considering the 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.

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