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

Pronounced on: 28.05.2024

+ **BAIL APPLN. 764/2023 & CRL.M.A. 7435/2024**

DEEPAK GOYAL

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Adv. with Mr.
Vikram Aggarwal and Mr.
Pushendra, Advs.

versus

CBI

..... Respondent

Through: Mr. Anubha Bhardwaj, SPP with
Mr.Dhruv Kothari, Adv. with Piyush
Sharma IO / CBI

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 Code of Criminal Procedure, 1973 seeking regular bail in connection with RC No.219/2013 E0005 under Sections 120B read with Sections 420/467/468/471 IPC registered at PS CBI/EO-I.

2. *Vide* order dated 27.04.2023, notice was issued in the present matter and the respondent/CBI was directed to file a status report. CBI has filed a status report dated 03.07.2023, which forms part of the record.

3. The case of the CBI as borne out from the status report is that the present FIR was registered on the written complaint dated 13.05.2013 of Sh. Varinder Gupta, Zonal Manager, Punjab & Sind Bank, Zonal Office-11,



New Delhi alleging that the petitioner, namely, Deepak Goyal on 26.08.2009 (Proprietor of M/s Balaji Enterprises) had applied and availed of ODP (Over Draft against Property) limit of Rs. 60 lacs and TL (Term Loan) of Rs. 40. As per the case of the prosecution, the said financial facilities were secured by the petitioner by submitting forged/false partition/sale deeds of the following properties being (i) F-19/25, Ground Floor, Sec-8, Rohini in the name of Deepak Goyal (petitioner) and (ii) A-2/32-33, 2nd Floor, Sec-8, Rohini in the name of Smt. Chanchal Goyal.

4. The above noted financial facilities were subsequently enhanced from Rs. 60 lacs to Rs. 3 crores, renewal of 1st TL of Rs. 40 lacs to Rs. 36.17 lacs and further he obtained a fresh term loan of Rs.60 Lacs on 28.05.2010 from Punjab & Sind Bank, Peeragarhi Branch, Delhi. The same was sanctioned against below mentioned properties as collateral security which were found to be mortgaged with different banks at the same time by accused Deepak Goyal by making multiple title deeds of those properties. The following are the details of the properties which were mortgaged are as follows:

S. No.	Details of Property	Name of the bank with whom mortgaged
1.	H-32/103, Ground and Third Floor, Sector -8, Rohini, New Delhi	Punjab and Sind Bank, Peeragarhi
		Dena Bank, Mayapuri
		State Bank of Bikaner and Jaipur, New Rohtak Road



2.	Property bearing no. I-5/89, Second Floor without roof rights, Sector-16, Rohini, Delhi - 1100085	Punjab and Sind Bank, Peeragarhi
		Canara Bank, Kingsway Camp
3.	Property bearing I-5/50, Second Floor and Third Floor with roof rights, Sector-16 Rohini	Punjab and Sind Bank, Peeragarhi
		Bank of India, Bank Street, Karol Bagh
4.	Property bearing No. A-2/32-33, First Floor without roof rights, Sector-8, Rohini, Delhi -85	Punjab and Sind Bank, Peeragarhi
		Bank of India, Bank Street, Karol Bagh.

5. That it was further alleged in the complaint that Smt. Chanchal Goyal (co-accused) w/o Deepak Goyal, also availed a car loan of Rs.15 lacs on 27.03.2010 and also stood guarantor in the above accounts of M/s Balaji Enterprises along with Manish Mittal (co-accused). Another individual, namely, Ajay Kapoor (not chargesheeted as he could not be traced) stood guarantor in the Car Loan account in the name of Smt. Chanchal Goyal. It is also alleged that no asset has been created out of the car loan and the same was misappropriated by opening fictitious account in the name of the car dealer at Dena Bank, Mayapuri, New Delhi. It was further alleged that Manish Mittal and Ajay Kapoor are part of the conspiracy and in connivance with Deepak Goyal and Smt. Chanchal Goyal, they misappropriated the Bank funds.



6. The investigation revealed that on 20.07.2009, the petitioner opened Current Account No. 35202 in the name of M/s Balaji Enterprises in Punjab & Sind Bank, Peeragarhi Branch on the basis of forged VAT registration certificate dated 12.05.2004 showing Registration (TIN) number as 07060019257 and address of the firm as A-2/32-33, 2nd Floor, Sector 8, Rohini. It was also revealed during the investigation that in the loan application dated 06.07.2009, the petitioner discussed the business activity of his firm M/s Balaji Enterprises as 'manufacturing & trading of pet performs'. But the investigation revealed that the Department of Value Added Tax, Delhi Govt., New Delhi has in fact allotted the abovementioned TIN No. to one M/s Balaji Enterprises with address 3456, Gali Bajrang Bali, Chawri Bazar, New Delhi and whose proprietor is one Sh. Sanjeev Gupta and the nature of business being 'trading of pipe fittings/ steel tubes'.

7. That investigation further revealed that the accused/applicant dishonestly replaced the collateral security of F-19/25, Ground Floor, Sector-8 by a new property at plot no. H-32/103, Ground and Third Floor, Sector-8, Rohini, Delhi, where the partition deed was found to be forged and the same property were found to be mortgaged with other banks too.

8. It is also mentioned in the status report that the petitioner did not use the funds for the purpose for which it was sanctioned, but he diverted the funds to the accounts opened in the name of fictitious firms viz. M/s Avantika Enterprises (Prop. Ajay Kapoor), M/s V. R. Enterprises (Prop. Vinod Rajput), M/s Manoj Pure Pet (Prop. Manoj Kumar), M/s Tulsi Enterprises (Prop. Smt. Tina Rajput), M/s Amar Engineering Works (Prop. R. K. Singhal) etc. and siphoned off the same.



9. It is in this backdrop that the present case came to be registered and the petitioner was arrested by the respondent on 04.02.2015 as he was stated to be non-cooperative during investigation.

10. Thereafter, the petitioner was granted interim bail by a co-ordinate bench of this Court on 29.05.2015 on the condition that the petitioner will deposit Rs. 50 lacs within 3 days with the complainant bank and Rs.3 crores within 4 months. However, the petitioner failed to comply with the said condition and his bail was cancelled on 07.12.2015 but the petitioner did not surrender on time and NBWs were issued against the petitioner by the Learned Trial Court on 14.12.2015 and he was subsequently arrested on 20.03.2017. Again the petitioner, was released on interim bail for a period of 7 days by a co-ordinate bench of this Court on 24.05.2018, yet again the petitioner did not surrender on time. The petitioner was declared as a Proclaimed offender by the Ld. Trial Court *vide* order dated 29.11.2018 and he was again arrested on 10.09.2020.

11. At the outset, Mr Ramesh Gupta, learned Senior Counsel for the petitioner referred to the nominal roll dated 26.09.2023, to contend that as on 25.09.2023, the petitioner has been in custody for a period of 04 years, 05 months and 27 days. He thus submits that as on date he has spent about 5 years in custody. He further submits that the petitioner is accused of committing an offence under Sections 120B read with Sections 420/467/468/471 IPC which provides a maximum sentence of life imprisonment, however, as the present case is being tried by the learned Metropolitan Magistrate, therefore, the maximum punishment which can be imposed upon the petitioner is seven years in terms of Sections 29(1) and 325 of the Code of Criminal Procedure, 1973



12. The learned Senior Counsel submits that the petitioner could not repay the loans due to financial difficulty and hence on 30.06.2011 all the aforesaid accounts of the petitioner with the complainant bank were declared as a Non Performing Asset (NPA). He submits that it was always the intention of the petitioner to repay the loan and the same is apparent from the fact that after the declaration of his loan accounts as NPA and before the registration of the aforesaid FIR, the petitioner paid an amount of Rs.98.46 lacs. He submits that after receiving payments from petitioner, the complainant bank even released his three properties out of which two were released as per the orders of the Debt Recovery Tribunal (DRT).

13. That even after registration of instant FIR the complainant bank agreed to settle the matter and *vide* its Letter dated 07.01.2014 issued on its behalf by the counsel of the complainant bank, the complainant bank communicated the settlement to the petitioner, but as the complainant bank materially changed the terms of settlement from the terms offered by the Petitioner, he could not comply with the same. He submits that the *bona fides* of the present petitioner are apparent from the fact that the petitioner is ready and willing to settle the matter with the complainant bank, in as much as, the petitioner *vide* letters dated 02.06.2021 and 13.08.2021 has submitted offers for an OTS.

14. *Per Contra*, the learned SPP appearing on behalf of the CBI has argued on the lines of the status report. She submits that the present petitioner has been accused of a grave and serious economic offence, therefore, he may not be enlarged on bail.

15. She further submits that the petitioner is not entitled to any relief sought under 439 Cr.PC as the petitioner has intentionally evaded the trial



and has been declared as a proclaimed offender *vide* order dated 29.11.2018 by the Trial Court as after availing interim bail of 7 days granted by this Court to attend the last rites of his uncle, he did not surrender before the Ld. Trial Court.

16. She also contends that the ground that the petitioner has already settled the matter with the complainant bank for an amount of Rs. 3.00 Crores, out of which, he has already paid Rs. 1.74 Crores, is not tenable. Elaborating on this, she submits that as per the letter dated 18.05.2023 received from complainant bank, it is clear that due to nonpayment of OTS amount within prescribed time the OTS stood cancelled and no further credit has been received by the bank after 08.12.2015. She further submits that it is well settled law that when a settlement is arrived at between creditor and debtor, the offence committed as such does not come to an end. Mere repayment of the loan does not exonerate the accused from his criminal acts.

17. I have heard the learned Senior Counsel for the petitioner, as well as, the learned SPP for the respondent/CBI and perused the material on record.

18. Undoubtedly, the petitioner/accused has been charged with economic offence. The allegations against the petitioner are that he being the proprietor of M/s. Balaji Enterprises availed overdraft against property to the extent of Rs. 2.5 Crores and two term loans of Rs. 40 lacs and Rs.60 lacs from Punjab and Sind Bank, by submitting forged and fabricated security documents and thereafter siphoned off the funds. Thus, the allegations are serious.

19. However, at the same time the court cannot be unmindful of long incarceration of the petitioner. The nominal roll dated 25.09.2023 manifest that as on that date, the petitioner had spent about 4 years 5 months and 27



days in custody, therefore, it will be safe to presume that as on date the petitioner has spent approx. 5 years 2 months in custody.

20. This Court is conscious of the fact that the punishment for the offences under Sections 420 IPC and 468 IPC is imprisonment for a term which may extend to seven years and for the offence under Section 467 IPC, the punishment is for a term which may extend to ten years or life imprisonment, but there also seems to be some substance in the contention of the learned Senior Counsel appearing on behalf of the petitioner that all the offences with which the petitioner is charged are triable by the Magistrate of the first class / Metropolitan Magistrate and the maximum punishment which could be awarded by the Metropolitan Magistrate is three years under Section 29(2) CrPC, however, if the Metropolitan Magistrate submit his proceedings, and forward the accused, to the Chief Judicial Magistrate (Chief Metropolitan Magistrate) in terms of Section 325(1) CrPC, after recording an opinion that the accused ought to be awarded more punishment than what he could inflict, even then the maximum punishment that could be awarded by the Chief Metropolitan Magistrate is seven years in terms of Section 29(1) CrPC. However, it is for the learned Metropolitan Magistrate to take an ultimate call regarding the quantum of sentence which the petitioner may be inflicted with, if he is found guilty, at an appropriate stage in accordance with the scheme of the Criminal Procedure Code but at the same time, the guilt of the petitioner is yet to be adjudicated and at this pre-conviction stage a presumption of innocence operates in his favour.

21. At this juncture, relevant would it be to refer to the following observations of the Hon'ble Supreme Court made in *Sanjay Chandra v. CBI*,



(2012) 1 SCC 40, made while granting bail to the appellant therein who was an accused and arrested in relation to economic offence:

*“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 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)

22. 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.***

(Emphasis supplied)

23. In ***Satender Kumar Antil v. State of Maharashtra, (2022) 10 SCC 51***, the Supreme Court in the context of economic offences, after observing the law, as laid down in *Sanjay Chandra (supra)* and *P. Chidambaram (supra)*, will govern the field, deprecated the approach of deciding bail applications, 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)

24. As argued by the prosecution, the petitioner was arrested for custodial interrogation as he did not cooperate during the investigation. However, it is a matter of record that the investigation is now complete and the charge-sheet stands filed. 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-sheet. Evidently, the custody of the petitioner is no longer required.

25. 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 the allegation 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

26. In the present case 78 witnesses have been cited by the prosecution in the charge sheet, however, only 5 witnesses have been examined so far. Inevitably, the trial is going to be a protracted one. Having regard to above discussion and long incarceration of the petitioner, it will not be justified to keep the petitioner in custody for indefinite period.

27. It would indeed be a travesty of justice to keep the petitioner behind bars for long if the sentence of imprisonment which could be imposed by the learned Trial Court under the law, or which the Court may eventually propose to impose, in the event he is found guilty, is less than the period already spent in custody by the petitioner.

28. As far as the apprehension expressed by the learned SPP for the respondent, that the petitioner may flee the administration of justice if he is enlarged on bail, the same can be allayed by imposing appropriate conditions.

29. Considering the above discussed circumstances and long incarceration of the petitioner, this Court is 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. 50,000/- with two sureties of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions.

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



- a. Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - b. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
 - c. Petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the present case.
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 an expression of opinion on the merits of the case.
31. The petition along with pending applications, if any, stands disposed of.
32. Order be uploaded on the website of this Court.
33. Order *dasti* under the signatures of the Court Master.

VIKAS MAHAJAN, J.

MAY 28, 2024
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