

2022/DHC/005853

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.12.2022

+ BAIL APPLN. 2521/2022

TARUN DUTT

..... Applicant

versus

GOVT. OF NCT, DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Viraj R. Datar, Senior Adv.
with Mr. Sudershan Joon &
Mr. Saurav Joon, Advocates

For the Respondent : Ms. Richa Dhawan, APP for the
State with Insp. Deep Chand, PS
Vasant Kunj

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439, Code of Criminal Procedure, 1973 ("Cr.P.C."), seeking regular bail in FIR No. 0012/2021 dated 08.01.2021, registered at police station Vasant Kunj, under Sections 420/120B/34 of the Indian Penal Code, 1860 (IPC) and Section 66(D) of Information Technology Act, 2000 ("IT Act").
2. The FIR was registered on a complaint of Shri Matadeen Gora, who alleged to have been dishonestly induced on the pretext of receiving the insurance policy bonus amount and the insurance gratuity value on the lapsed insurance policies from the year 2013 till date.
3. He claimed that a group of people had called him from different mobile numbers claiming to be senior officials with

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insurance regulatory body. They induced him by stating that the unclaimed insurance amount can be released to the complainant. On the allurements, he deposited a sum of ₹ 80 lakhs during the period 2016 to 2018.

4. Again, in the month of June 2020, he received calls that a sum of ₹1.47 crores has been matured and the file is pending with MCA (Ministry of Consumer Affairs) and Income Tax Department.

5. He was induced to deposit a sum of ₹39 lakhs in the bank accounts provided by the accused persons.

6. The chargesheet has already been filed in the present case.

7. It was found during the course of the investigation that a total sum of ₹ 1 crore 20 lakhs has been transferred in various accounts by the complainant since the year 2015.

8. It was found that most of the money was transferred in the accounts of accused persons including the applicant herein. The mobile numbers obtained from the KYC details of the bank accounts were still found to be active and located in Laxmi Nagar area. On a raid, being conducted accused persons were found and the mobile numbers / sim cards used in connection with the crime were found from them.

9. In a disclosure statement made by one of the accused, the present applicant was arrested on 14.01.2021. It is claimed that the accused persons had created fake Email IDs. The applicant has joined the other accused persons – Arvind and Sunil, as partner in fake insurance bonus scam and has cheated innocent victims / persons on pretext of receiving huge insurance policy bonus. The applicant is alleged to be the main caller who induced the complainant and impersonated himself as Senior Director of Income Tax and MCA.

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10. In the chargesheet it is alleged that the accused persons have taken / cheated around ₹39 lakhs from the complainant in various accounts, out of which the applicant took ₹9,04,350/- in the account of his brother-in-law and ₹2,70,600/- in the account of his real brother – Keshav Dutt.

11. The co-accused Sunil was admitted on bail by order dated 30.05.2022 passed by the learned ASJ and the co-accused Arvind was granted bail by this Court by order dated 28.02.2022, whereas one co-accused person Ratnesh Chauhan is stated to be released on interim bail granted by the learned ASJ by order dated 28.04.2022.

12. Learned senior counsel for the applicant submits that the applicant was in employment of the main accused and has been falsely implicated in the case.

13. He further submits that all the other four co-accused have been already enlarged on bail and despite that the applicant is languishing in jail and his application for grant of bail was dismissed by the Trial Court on an erroneous presumption that the applicant is likely to tinker with the ongoing investigation.

14. In the present case, even though the FIR was registered way back in January, 2021 and the chargesheet was filed long back, still even as per the prosecution there is major part of the investigation which is still in progress. Therefore, the trial is not likely to proceed and will take a long period of time before it gets over. The Applicant is in custody for almost 2 years, has a family to look after, including a six year old daughter and an eleven months old son.

15. He further submits that when all the main accused persons have already been enlarged on bail, no purpose would be served by keeping the applicant in further incarceration and he is also

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entitled for bail on the ground of parity.

16. Learned APP for the State opposes the bail application and submits that the gravity of the offence and the manner in which the accused persons are found to have cheated the complainant, disentitles the Applicant of any discretion.

REASONING

17. The Hon'ble Apex Court has, from time to time, laid down the parameters for grant of bail in relation to offences of this nature where the maximum punishment is seven years. The Court has to ascertain if the accused satisfies the triple test while considering any application for bail ie whether he is flight risk, likelihood of tampering with evidence and influencing of witnesses.

18. It is not in dispute that the chargesheet was filed way back on 15.03.2021. It appears that the prosecution is still to find out further evidences and has taken liberty from the Trial Court to file a further supplementary chargesheet.

19. From the very nature of the offence and the allegations made, the entire incriminating material seems to be documentary in nature and is already available with the investigating agency. Even though it is alleged that the applicant will influence the witnesses and tamper with the evidence if released on bail but the same is only a bald assertion.

20. The material against the applicant that is the disclosure statement made by the co-accused and the corroborative material would be tested at the time of trial. There are some contradictions which have been argued by the learned senior counsel for the applicant. The same are not required to be commented upon at

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this stage.

21. It is not denied that the applicant has two minor children aged six years and eleven months. Therefore, apprehension of accused absconding or that he is a flight risk is only a bald assertion. Moreover, the same can be taken care of by putting appropriate conditions.

22. The undertrial prisoners cannot be detained in custody for an indefinite period. The speedy trial in the present case does not seem a possibility. Keeping the applicant in further incarceration would cause deprivation of his right to legal defence. The maximum punishment for offences alleged against the applicant is seven years and the object of Jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time.

23. It is also significant that the co-accused persons, who had a similar role, have already been admitted on bail. State has not challenged the orders granting Bail to co accused persons. Once majority of the co accused are out on Bail it cannot be argued that it is only the applicant against whom there is an apprehension that he will tamper with the evidence and influence the witnesses.

24. Without considering further the merits of the case and keeping in mind the facts and circumstances of the case, I am satisfied that the applicant has made out a case for grant of regular bail. The applicant is, therefore, directed to be released on bail on furnishing a bail bond for a sum of ₹50,000 with one surety of the like amount to the satisfaction of the learned Trial

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Court / Duty Metropolitan Magistrate, subject to the following terms and conditions:

- i) The applicant shall join and cooperate with further investigation as and when directed by the IO.
- ii) The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
- iii) The applicant shall not take adjournment and attend the Trial Court proceedings on every date.
- iv) The applicant will not leave the city without informing the concerned IO / SHO.
- v) The applicant shall not in any manner contact the complainant or the witnesses.
- vi) The applicant shall not leave the country without permission of the learned Trial Court.

25. 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 appropriate application for cancellation of bail.

26. It is also made clear 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.

27. The present application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

DECEMBER 26, 2022

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