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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision: 1st May, 2025**+ **BAIL APPLN. 4475/2024 & CRL.M.A. 36662/2024****AMIT AGRAWAL**

.....Petitioner

Through: Mr. Tanveer Ahmed Mir, Senior Advocate with Ms. Ariana D. Ahluwalia, Advocate.

versus

STATE OF NCT DELHI & ORS.

.....Respondents

Through: Mr. Tarang Srivastva, APP for the State.
Inspector Kuldeep Bhoirya, EoW.
Mr. Satish Aggarwala, Senior Standing Counsel with Mr. Gagan Vaswani, Advocate for Customs.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**J U D G M E N T****ANUP JAIRAM BHAMBHANI J.**

How long is long enough, before a court realises that an undertrial has been in custody for too long, and the constitutional promise of speedy trial has been repudiated ? It is this concern that is at the heart of the present judgement.

2. By way of this petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner seeks regular bail in case FIR No. 0077/2023 dated 14.10.2023 registered under sections 406/420/467/468/471/120-B/34 of the Indian Penal Code, 1860 ('IPC') at P.S.: Economic Offences Wing, Delhi.



3. Notice on this petition was issued on 06.12.2024; pursuant to which Status Report dated 20.01.2025 has been filed on behalf of the State. Reply dated 03.02.2025 has also been filed on behalf of the Customs Department – the complainant in the subject FIR.
4. Nominal Roll dated 20.01.2025 has been received from the concerned Jail Superintendent.
5. The court has heard Mr. Tanveer Ahmed Mir, learned senior counsel appearing on behalf of the petitioner; Mr. Tarang Srivastava, learned APP appearing on behalf of the State; as well as Mr. Satish Aggarwala, learned Senior Standing Counsel appearing on behalf of the complainant at length.
6. Written synopses have also been filed on behalf of the petitioner as well the State.

BRIEF FACTS

7. Briefly, the present case arises from an alleged criminal conspiracy between one Jayanta Ghosh, a former employee of the Customs Department; co-accused Vijay Singh, a data entry operator with the Customs Department; and co-accused Deepesh Chamoli, who was employed as Senior Manager at the Punjab National Bank, Sansad Marg, New Delhi. The allegation is that the criminal conspiracy was hatched with the intention of cheating the Customs Department of unclaimed and unaccounted amounts lying deposited in their bank accounts towards refund of customs duty to importers.
8. The *modus operandi* alleged to have been employed by the accused persons was to forge various official documents, including scrolls,



forwarding letters and cheques, using the official stamps and signatures of customs officials. It is alleged that these forged documents would in-turn be used to show bogus entities as beneficiaries who were eligible for customs duty refund, in order to misappropriate government funds.

PETITIONER'S SUBMISSIONS

9. In this backdrop, Mr. Mir has made the following submissions in support of the petitioner's bail plea :
 - 9.1. It has been argued that even as per the prosecution case, the present petitioner – Amit Agarwal – was *neither* the key conspirator *nor* did he play a central role in the forgery or cheating in furtherance of the conspiracy. It has been submitted that, at the most, the petitioner's role is limited to being a conduit who merely facilitated the routing and re-routing of funds on the instructions of the main conspirator and co-accused Jayanta Ghosh, after the acts of forgery and/or cheating had already been committed by the other co-accused persons.
 - 9.2. In this behalf, learned senior counsel has explained that the allegation is that to facilitate the conspiracy, the main conspirator – Jayanta Ghosh – required certain fictitious bank accounts for receiving monies from the Customs Department and for further diverting them; and that it is for this purpose that supposed *hawala* operators were employed, who allegedly provided Jayanta Ghosh with 03 bank accounts into which the cheated amount of about Rs.10 crores was received and



subsequently transferred to other accounts. It has been submitted that as per the allegations, the petitioner was one such operator.

- 9.3. It has been argued that the petitioner did not have any knowledge of the nature of the funds received in the accounts; and that Jayanta Ghosh had persuaded the petitioner to allow use of his accounts on the pretext that these would be used only for 'tax saving purposes'; and the petitioner was unaware that the amounts received were a result of a large-scale conspiracy. Learned senior counsel has further submitted, that even as per the prosecution case, a significant portion of the money received by the petitioner was transferred back to Jayanta Ghosh through various other entities held by the latter and his family members.
- 9.4. It has been submitted that the extended period of the petitioner's incarceration as an undertrial is violative of his right to speedy trial enshrined in Article 21 of the Constitution of India. Mr. Mir has pointed-out that the petitioner has already suffered judicial custody for about 13 months as an undertrial for offences which, as could be alleged against the petitioner, are punishable by only upto 07 years.
- 9.5. In this behalf, learned senior counsel has also drawn attention to the fact that chargesheet in the matter already stands filed on 12.01.2024, in which the prosecution has cited 49 witnesses; and that the chargesheet refers to some 10,000 pages of



documentary evidence. It has also been pointed-out that as per the prosecution, further investigation into the matter is still going-on and other entities within the Customs Department are also investigating similar incidents. It is submitted that clearly therefore, trial in the matter would not be concluded in the near future.

9.6. In support of the his submissions Mr. Mir has relied upon the decisions of the Supreme Court in *Sunil Dammani vs. Enforcement Directorate*,¹ *V. Senthil Balaji vs. Deputy Director, Directorate of Enforcement*,² *Prem Prakash vs. Enforcement Directorate*,³ *Manish Sisodia vs. Enforcement Directorate*,⁴ *Ramkripal Meena vs. Enforcement Directorate*,⁵ *Javed Gulam Nabi Shaikh vs. State of Maharashtra & Anr.*,⁶ *Benoy Babu vs. Enforcement Directorate*,⁷ *Sanjay Agarwal vs. Directorate of Enforcement*,⁸ and *Union of India vs. K.A. Najeeb*.⁹

9.7. In addition, learned senior counsel has also relied upon decisions of this court in *Hari Om Rai vs. Enforcement*

¹ 2024 SCC OnLine SC 3601

² 2024 SCC OnLine SC 2626

³ (2024) 9 SCC 787

⁴ 2024 SCC OnLine SC 1920

⁵ 2024 SCC OnLine SC 2276

⁶ (2024) 9 SCC 813

⁷ 2023 SCC OnLine SC 1881

⁸ 2022 SCC OnLine SC 1748

⁹ (2021) 3 SCC 713



*Directorate*¹⁰ and *Chanpreet Singh Rayat vs. Enforcement Directorate*,¹¹ alongwith the decision of the High Court of Himachal Pradesh at Shimla in *Mohinder Bhardwaj vs. State of Himachal Pradesh*.¹²

9.8. Learned senior counsel has also submitted that 03 co-accused persons *i.e.*, Pooja Ghosh, Prasenjit Mitra and Deepesh Chamoli have already been admitted to regular bail either by the learned trial court or by this court. In this behalf, Mr. Mir has drawn attention to the following orders :

9.8.1. Order dated 20.04.2024 passed by the learned CMM, Patiala House District Courts, New Delhi admitting Pooja Ghosh to regular bail, a copy of which order is appended as Annexure P-5 to the present bail petition;

9.8.2. Order dated 09.02.2024 passed by the learned CMM, Patiala House District Courts, New Delhi granting regular bail to Deepesh Chamoli, a copy of which order is appended as Annexure P-7 to the present bail petition; and

9.8.3. Order dated 08.08.2024 passed by this court admitting Prasenjit Mitra to regular bail, a copy of which order is appended as Annexure P-6 to the present bail petition.

¹⁰ 2024 SCC OnLine Del 8095

¹¹ 2024 SCC OnLine Del 6264

¹² 2024 SCC OnLine HP 4751



9.9. It has been clarified that the petitioner has no other criminal involvement; and he has been previously released on interim bail on 03 occasions, and there is no allegation the petitioner ever violated any condition of his interim release.

STATE'S SUBMISSIONS

10. On the other hand, vehemently opposing the grant of regular bail, Mr. Srivastava, learned APP appearing on behalf of the State has made the following submissions :

10.1. It has been argued that the petitioner should not be admitted to regular bail since he is one of the accused in a large-scale economic offence concerning the Customs Department, which is against the economic interests of the State involving misappropriation and cheating of large amounts of public money.

10.2. It has been submitted that the very nature of the offence shows that the petitioner committed it with full calculation and with prior meeting of the minds with other co-accused persons, to cause wrongful loss of crores to the exchequer.

10.3. Furthermore, learned APP has argued that considering the nature of the crime, there is real apprehension that if admitted to regular bail, the petitioner would tamper with the evidence and suborn or intimidate witnesses.

10.4. Insofar as the ground of parity with other co-accused persons to whom bail has been granted is concerned, it has been submitted that the petitioner's role is significantly different from those co-



accused persons. In this behalf, learned APP has submitted, that based on the evidence that has come on record so far, co-accused Deepesh Chamoli's role as the bank manager was restricted only to the last transaction and the said accused was not involved in any conspiracy prior to that. Mr. Srivastava has submitted, that co-accused Prasenjit Mitra was the lawyer of the main accused Jayanta Ghosh, from whom certain sums of money have been recovered. As for co-accused Pooja Ghosh, it is pointed-out that she is involved in the present case being the wife of Jayanta Ghosh. It has been argued that in contrast to the aforementioned co-accused persons, the petitioner has a more significant role in the criminal conspiracy since he was a *hawala* operator, who facilitated in siphoning-off the misappropriated funds.

10.5. It has also been argued that since investigation in the matter is still going on, admitting the petitioner to regular bail at this stage, may lead to obstruction of justice, especially since 02 other co-accused persons are still at large.

11. Mr. Aggarwala, learned counsel appearing on behalf of the complainant – Customs Department – has adopted the submissions made on behalf of the State.

DISCUSSION & CONCLUSIONS

12. Upon a conspectus of the facts and circumstances obtaining in the matter, the considerations that weigh with the court *at this stage* are the following :



- 12.1. From what has come-forth on the record and based on the submissions made, it appears, the role alleged against the petitioner is that he acted as a conduit for the other accused persons to channel and siphon-off funds lying unclaimed with the Customs Department, which monies were routed through the certain bank accounts. There is no allegation that the petitioner himself was involved in *forging* any scroll or cheque or other document relating to the Customs Department.
- 12.2. There is also no material on record to *prima-facie* show that the petitioner was aware either of the ‘nature’ of the money that was being routed through the bank account(s) *or* of the scale or quantum of the offences allegedly committed by the other accused persons.
- 12.3. It is a matter of record that chargesheet in the matter has been filed against the petitioner on 12.01.2024, in which the prosecution has cited 49 witnesses. The chargesheet alongwith the documentary evidence produced by the prosecution run into some 10,000 pages; but charges are yet to be framed and trial is yet to commence.
- 12.4. The petitioner’s nominal roll shows that he has already suffered judicial custody for about 13 months. However, regardless of the maximum punishment prescribed for the offences alleged against the petitioner, the court must never lose sight of the fact that, as of now, the petitioner is only an *accused pending trial* and has not been held guilty for any offences as of date. As



argued on behalf of the petitioner, he cannot be detained in custody endlessly awaiting completion of trial.

13. On point of law, a quick overview of the principles of bail jurisprudence laid-down by the Supreme Court may be made at this juncture :

13.1. An undertrial is required to post bail in order to secure his presence at the trial, for which purpose an undertrial is handed-over from the *custody of the court to the custody of an appropriate surety*. The effect of granting bail is not to set an undertrial completely at liberty but to release him from the custody of law and entrust him to the custody of his surety; and the surety is bound to ensure his production at the trial.¹³

13.2. Bail may be denied *if* the court is not satisfied that an accused would remain available to face trial; *or* the court is of the view that he would intimidate witnesses *or* tamper with evidence *or* otherwise interfere in the course of justice. The ‘operative’ test that a court must apply for grant or denial of bail is the test of ‘necessity’, namely to answer why it is necessary to detain an undertrial in custody.¹⁴

13.3. The purpose of pre-trial custody is neither ‘punitive’ nor ‘preventative’, meaning that an accused cannot be held in custody only with the intention of punishing him for an offence which is yet to be proved against him; *nor* is bail to be denied

¹³ *Sunil Fulchand Shah vs. Union of India*, (2000) 3 SCC 409, para 24 quoting *Halsbury’s Laws of England*, 4th Edition, Volume 11, para 166

¹⁴ *Sanjay Chandra vs. CBI*, (2012) 1 SCC 40, para 22



on the presumption that he would commit an offence if enlarged from custody (*except* where additional twin conditions prescribed by the Legislature under certain special statutes).¹⁵

13.4. Pertinently, bail must not be denied as a *mark of disapproval* of the alleged conduct of an accused; *nor* should it be denied for giving to an accused the *taste of imprisonment as a lesson*.¹⁶ This is a common pitfall since oftentimes courts get swayed by the allegations contained in an FIR or a chargesheet and tend to proceed on the *textual gravity* of the offences alleged, meaning that courts get blinded by the multitude of penal sections foisted against an accused by the prosecution, which builds a textual narrative in the FIR or in the chargesheet. It is important therefore, for a court to look into the *specific allegations* against a particular accused, and how, if at all, those allegations *are supported* by the material or evidence available on record.

13.5. It is extremely important to appreciate that the consequences of pre-trial detention are grave : an accused, who is otherwise presumed innocent until proven guilty, is subject to psychological and physical deprivations of jail life; and is even prevented from contributing to the preparation of his defense.¹⁷

13.6. In its decision in *Mohd. Muslim vs. State (NCT of Delhi)*,¹⁸ the Supreme Court has referred to a piece authored by Donald

¹⁵ *Sanjay Chandra vs. CBI*, (2012) 1 SCC 40, para 21

¹⁶ *Sanjay Chandra vs. CBI*, (2012) 1 SCC 40, para 23

¹⁷ *Moti Ram vs. State of M.P.*, (1978) 4 SCC 47, para 14

¹⁸ (2023) 18 SCC 166



Clemmer titled 'The Prison Community' in 1940, to highlight the dangers of unjust imprisonment. Quoting the author and a decision of the Kerala High Court,¹⁹ the Supreme Court has flagged the risk of 'prisonisation', that is the risk of an undertrial losing his identity; coming to be known only by a number; losing his personal possessions and personal relationships; status, dignity and autonomy over his personal life, all of which affects his self-perception. It has also been highlighted that if an undertrial belongs to the weaker economic strata of society, imprisonment leads to immediate loss of livelihood, scattering of families and alienation from society. The Supreme Court has observed that the courts must be sensitive to these aspects, since in the event of acquittal, these losses would be irreparable.

13.7. It would therefore be sacrilege for a court to disregard the presumption of innocence which enures to the benefit of an accused, while on the other hand failing to ensure speedy trial. The right to speedy trial is the flip-side of the presumption of innocence. It has been held that the right to speedy trial is implicit in the broad-sweep of Article 21 of the Constitution; and a procedure prescribed by law that deprives a person of

¹⁹ *A Convict Prisoner vs. State*, 1993 SCC OnLine Ker 127



liberty can *only* be said to be reasonable, fair and just on the anvil of Article 21 if it also ensures speedy trial.²⁰

14. It is crucial for a court to recognise and be conscious of the right of an accused to speedy trial; and to *prevent* that right from being defeated, rather than *wake-up* much too late and lament that such right has been defeated. In ***Mohd. Hakim vs. State (NCT of Delhi)***,²¹ a Division Bench of this court, of which the undersigned was a member, has urged courts to act as *doctors* instead of *coroners*, to highlight that a court seized of a bail petition must endeavour to assess the pace at which a trial is proceeding and to not wait for too long, by which time the Article 21 right of an accused is already trampled upon.
15. In the present case, for example, the chargesheet comprising about 10,000 pages was filed over 01 year ago citing 49 prosecution witnesses but charges are yet to be framed. It is therefore obvious that trial will take a long time to conclude. In the meantime however, the petitioner has already suffered more than 01 year of judicial custody and has been exposed to ‘prisonisation’; and there appears to be no cogent basis to satisfy the test of ‘necessity’ as discussed above for his continued detention.
16. Upon a conspectus of the foregoing legal position, and considering the allegations in the subject FIR insofar as they relate to the petitioner, this court is accordingly persuaded to admit the petitioner –

²⁰ ***Mohd. Muslim vs. State (NCT of Delhi)***, (2023) 18 SCC 166, para 2 quoting ***Hussainara Khatoon vs. Home Secretary, State of Bihar***, (1980) 1 SCC 81

²¹ 2021 SCC OnLine Del 4623



Amit Agrawal s/o Mahender Kumar Agarwal – to *regular bail*, pending trial, subject to the following conditions :

- 16.1. The petitioner shall furnish a personal bond in the sum of Rs.5,00,000/- (Rupees Five Lacs Only) with 02 sureties in the like amount from family members, subject to the satisfaction of the learned trial court;
- 16.2. The petitioner shall furnish to the Investigating Officer, a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 16.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 16.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial;
- 16.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer in writing; and
- 16.6. The petitioner shall not open or close any bank account, without giving to the Investigating Officer a 30 days prior



written notice; and would furnish to the Investigating Officer the full particulars of any such action that he may take.

17. Nothing in this order shall be construed as an expression of opinion on the merits of the pending case.
18. A copy of this order be sent to the concerned Jail Superintendent *forthwith*, for information and compliance.
19. The petition stands disposed-of in the above terms.
20. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 01, 2025

HJ/ds