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

+ BAIL APPLN. 21/2022

PULKIT..... Petitioner
Through: Mr. Sunil Dalal, Senior Advocate
with Mr. Kapil Madan,
Mr. Gurmukh Singh Arora,
Ms. Ramya Verma, Mr.Pulkit
Pandey, Advocates.

versus

STATE(NCT OF DELHI)..... Respondent
Through: Mr. Amit Chadha, APP for the
State with Insp. J.S. Mishra, PS
EOW.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **12.04.2022**

The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. The applicant seeks regular bail in connection with FIR No. 263/2018 dated 24.12.2018 registered at Police Station Economic Offences Wing for offences under Sections 420, 468 and 471 of the Indian Penal Code, 1860 ["IPC"].
2. The FIR was registered on 24.12.2018, originally in respect of offences under Sections 420, 468 and 471 of the IPC, and the only accused named in the FIR was one Sanjay Garg, son of Deep Chand Garg. The FIR alleges cheating and fraud by M/s Saraswati Enterprises

[“Saraswati”], of which Sanjay Garg is the proprietor, causing loss to the government for the sum of ₹9.97 crores. Briefly stated, the allegations in the FIR concern unauthorised and fraudulent claim of input tax credit in respect of Goods and Services Tax [“GST”] by Saraswati.

3. The chargesheet has since been filed on 08.10.2021, wherein the applicant has been named as an accused. The allegation against the applicant is that he and a co-accused [Shubham Khandelwal] have set up a number of fictitious companies, which are being used for the purposes of defrauding the government. It is contented that the accused persons have opened banks accounts in fictitious names and provided their telephone numbers and email addresses in this respect.

4. A perusal of the chargesheet reveals that the allegation regarding fraudulent transactions causing loss to the government is based upon transactions for the period 27.08.2017 to 22.11.2017. It is stated that the addresses having been found to be fictitious, the mobile numbers and email addresses used for verification at the time of Value Added Tax [“VAT”]/ GST registration were investigated, as also the bank details disclosed by the accused persons. One of the mobile numbers used in the registration of Saraswati as well as in opening of its bank account was found to be in the name of the present applicant. In this regard, the Status Report filed by Mr. Amit Chadha, learned Additional Public Prosecutor for the State, states as follows:-

*“(5) During investigation, CAF of suspected Mobile Numbers were collected from Nodal officers of Mobile operators. **From analysis of records, it revealed that the mobile No. 9015824684 was found subscribed in the name of Shubham Khandewal since 07.03.2014. Later,***

this number 9015824684 was ported/transferred in the name of accused Pulkit on 13.03.2018, where Mobile No. 7210901568 was given as an alternative number. The Mobile No. 7210901568 was previously subscribed with operator Cellone, which had closed its offices and its record were not available but before that it was ported in Airtel Cellular and was found subscribed in the name of Shubham Khandelwal since 16-03-2018. Also, Mobile No. 9560238036 used at the time of opening of bank account of M/s Saraswati Enterprises in Bandhan Bank, Noida on 18.11.17 was found subscribed in the name of Shubham Khandelwal since 29.11.2016.”

[Emphasis supplied].

5. The email addresses used at the time of registration in the VAT department and the banks have also been verified in respect of which the Status Report states as follows:-

“(6) During the course of investigation, a letter was written to Nodal officer, Google to provide detail of IP-address and other detail of Gmail used by accused persons in VAT Department at the time of registration and banks at the time of opening of the bank account i.e. email ID cauttam@gmail.com, pulkitg04@gmail.com and pulkitgoyal95@gmail.com and reply received. During investigation, **it has been established that email ID of accused Pulkit i.e. pulkitgoyal95@gmail.com used in account of Saraswati Enterprises in Bandhan Bank, Noida, UP was last used by one Umesh Sharma at the instance and request of accused Pulkit for insurance purpose. Mr. Umesh Kaushik, who is a neighbor of accused Pulkit was examined and at his instance Gmail of Pulkit was opened** and various emails from Bandhan Bank, Noida for account of Saraswati Enterprises were seized by taking print out of the same.”

[Emphasis supplied].

6. Mr. Sunil Dalal, learned Senior Counsel for the applicant, submits that the applicant was, in fact, an employee of Shubham Khandelwal only since early 2018 and it is the case of the prosecution itself that the mobile No. 9015824684 was transferred to the applicant's name only on 13.03.2018, after the transactions in question had already taken place. The registration of the suspect accounts and the opening of the bank account using the said mobile number all pre-date the transfer of the said number to the present applicant. Mr. Dalal states that even in the chargesheet, investigation of the transactions with the purchasers dealing with Saraswati revealed that Shubham Khandelwal was the person who supplied the bills and accepted payments in account of Saraswati.

7. Mr. Chadha draws my attention to the contents of the Status Report to submit that the applicant is involved in a complex and well-planned scheme of setting up of fictitious companies, by using fake identities, in order to generate bogus invoices and claiming unauthorised input tax credit to the detriment of the government. He submits that having regard to the facts of this case, the applicant is not entitled to be released on bail.

8. Having heard learned counsel for the parties, I am of the view that the chargesheet and a supplementary chargesheet having been filed, the applicant is entitled to bail in the facts and circumstances of the case. From the Status Report quoted above, it appears that the main link of the present applicant with the transactions in question is on the basis of the use of the mobile No. 9015824684 and his email address. As far as the mobile number in question is concerned, the chargesheet and the Status Report reveal that it was transferred to the applicant only on 13.03.2018. The email addresses mentioned in paragraph 6 of the Status Report were

also accessed not through the applicant but through another party. In the Status Report, the prosecution has made out a case that the applicant, in conspiracy with Shubham Khandelwal, had registered various bogus firms and opened fictitious bank accounts. The events mentioned in paragraphs 7 and 8 all relate to the year 2017. There is no suggestion in the Status Report that the applicant neither has prior criminal antecedents nor is there any material to suggest that he is a flight risk. The applicant has been in custody for a period of approximately nine months since 14.07.2021. The evidence in the present case is largely documentary, and has already been placed before the Trial Court. The chances of the applicant tampering with the evidence is therefore unlikely.

9. The seriousness of the offences alone is not conclusive of the applicant's entitlement to bail, as held by the Supreme Court *inter alia* in *Sanjay Chandra vs. Central Bureau of Investigation* (2012) 1 SCC 40 in the following terms:

“23. 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 ahs 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 purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the

relevant considerations while considering bail applications but that is not the only test or the factor; the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating the scales of justice”.

25. The provision of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.”

10. For the aforesaid reasons, the applicant is admitted to bail in connection with FIR No. 263/2018 dated 24.12.2018 registered at Police Station Economic Offences Wing, subject to the following conditions:-

- a. The applicant will furnish a personal bond in the sum of ₹1,00,000/- with two sureties of the like amount, one of which will be from a blood relative of the applicant, to the satisfaction of the Trial Court.
- b. The applicant will remain resident at the address mentioned in the memo of parties [*House No. 321/29, Gali No. 6, Dev Nagar, Sonipat, Haryana*].

- c. The applicant will inform the Investigating Officer and the Trial Court in advance of any change in his residential address.
 - d. The applicant will appear on each and every date fixed before the Trial Court.
 - e. The applicant will give his mobile numbers to the IO and ensure that the mobile numbers are kept operational and reachable at all times.
 - f. The applicant will not directly or indirectly tamper with evidence or try to influence any of the prosecution witness in the case. In case the same is established, the bail granted to the applicant shall stand cancelled forthwith.
11. The application stands disposed of with these directions.
12. Needless to state, nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.

PRATEEK JALAN, J

APRIL 12, 2022