

# Sumit Malhotra vs State Of Nct Of Delhi on 24 April, 2023

**Author: Swarana Kanta Sharma**

**Bench: Swarana Kanta Sharma**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
BAIL APPLN. 3847/2022 & CRL.M.(BAIL) 1574/2022  
SUMIT MALHOTRA

Through: Mr. Arshdeep Singh Kh  
Mr.Akshay Sharma, Mr.  
Tomar, Mr. Harsh Mitta  
Surabhi, Advocates.

versus

STATE OF NCT OF DELHI

Through: Mr. Manoj Pant, APP fo

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA  
ORDER

% 24.04.2023

1. The present bail application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed by applicant seeking grant of regular bail in FIR bearing no. 50/2021, registered at Police Station ('PS') Shakarpur, Delhi, for offences punishable under Sections 420/406/34 of Indian Penal Code, 1860 ('IPC').

2. Issue notice. Mr. Manoj Pant, learned APP accepts notice on behalf of State.

3. Brief facts of the case are that instant FIR was registered on the compliant made by Mr. Saurabh Gupta i.e., the complainant on 14.02.2021 wherein it has been alleged that present petitioner i.e. Sumit Malhotra and one Sachin Malhotra had induced the complainant to invest in a scheme wherein, the complainant had to pay Rs 1800 /- per day for a period of two years i.e. from 01.01.2019 to 01.01.2021. It is alleged that ass per the scheme rules, the complainant was supposed to get Rs 15,00,000/- (Fifteen Lakh Rupees). It is alleged by the complainant that he had paid a total sum of Rs 13,14,000 (Thirteen Lakh Fourteen Thousand Rupees). After that, on 28.01.2021 two days prior to the completion of said scheme, present applicant had called the complainant and had informed him that accused/applicant and his family members are suffering from Covid - 19, so he would pay the complainant on 15.02.2021. Thereafter, complainant had been informed that fraud had been committed by the applicant/accused and that they had absconded from area. Therefore, present FIR was registered.

4. During investigation, it was revealed that the accused/applicant along with other co-accused persons were involved in running financial and chit funds schemes in the name of a firm i.e. Ruchika Trading Company and had cheated several other persons. After completing the investigation against the accused persons chargesheet against them was filed on 15.05.2021 under Sections 409/420/406/34 of IPC and Section-4 of Prize Chits & Money Circulation Schemes (Banning) Act, 1978 in learned Trial Court.

5. Learned counsel for petitioner states that petitioner has been in judicial custody for more than two years. He also draw the attention of the Court to the order on charge passed by learned Trial Court vide which the petitioner had been discharged for the offences under Section 409 of IPC. It is stated by learned counsel for petitioner that charges in this case have been framed and petitioner cannot be kept in custody for infinite time. It is also stated that there is no document on record to reflect that any money was paid to the petitioner. He, therefore, states that bail be granted.

6. Learned APP for the State, on the other hand vehemently opposes the present application and states that it is a multi-victim case where present accused/applicant had cheated about 37 victims of amount more than Rs. 5 crores. It is stated that on several occasions huge amount was received in the bank account of the petitioner herein and it will be only during the trial of the case that the money trail and other evidence will be brought on record. It is also stated that co-accused has joined investigation and the money trail for her is also being investigated as it is alleged that it was wife of the petitioner who used to collect money on his behalf in cash from the victims. It is, therefore, stated that since the victims are yet to be examined by learned Trial Court, bail be rejected.

7. I have heard arguments on behalf of both the parties and have perused the material on record.

8. Before going into the facts of the case, a reference can be made to the decision of the Apex Court in *P. Chidambaram v. Central Bureau of Investigation*, (2020) 13 SCC 337 wherein it was observed as under:

"...21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations."

9. In *Kamla Devi v. State of Rajasthan and Another*, (2022) 6 SCC 725, the Hon'ble Supreme Court held that:

"25. This Court has, on several occasions has discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) the seriousness of the offence; (ii) the likelihood of the accused fleeing from justice; (iii) the impact of release of the accused on the prosecution witnesses; (iv) likelihood of the accused tampering with evidence. While such list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, vide *Gudikanti Narasimhulu & Ors. V. Public Prosecutor*; *Prahlad Singh Bhati v. NCT of Delhi & Ors.*; *Anil Kumar Yadav v. State (NCT of Delhi)*."

10. The Hon'ble Supreme Court in *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) and Another*, (2021) 6 SCC 230, held that:

"24. The principles governing the grant of bail were reiterated by a two judge Bench in *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496:

"9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

Explicating the power of this Court to set aside an order granting bail, this Court held:

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal...

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39. Grant of bail under Section 439 of the Cr.P.C. is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail - as in the case of any other discretion which is vested in a court as a judicial institution - is not unstructured..."

11. As far as the contention of learned counsel for petitioner regarding discharge of accused for offence punishable under Section 409 of IPC is concerned, this Court is of the opinion that it is not disputed that the said order is under challenge in which notice already stands issued to the petitioners. For grant of bail, this Court has to consider the allegations which are levelled in the complaint and the overall facts & circumstances of the case which add or mitigate the gravity of the offence. The present case is a case of multi victims offence of cheating wherein the hard earned money of the investors had been taken in cash by the accused and his wife. From the material on record, it is noticed that the allegations levelled against the applicant are serious in nature as the accused/applicant knowingly committed fraud upon the complainant and other victims.

12. Therefore, the arguments of learned counsel for petitioner that the entire trail of money has not been placed on record by the prosecution can be of no help to him. Regarding the cash amount which is alleged to be the money belonging to the present accused applicant, it will be tested only during trial as to whether the money is the proceeds of crime or was earned by him. It is not essential that entire money trail of Rs. 5 crores would be in one account of the accused. In the present case, since it is case involving multiple victims and multiple accused persons are involved and that one is yet to be arrested who allegedly used to collect money on behalf of her husband also The trail of money will be ascertained and tracked when the said accused joined the investigation and interrogated. Another FIR No. 60/2021 u/s 406/504/506 IPC has been found registered at PS Sector 58, Noida, UP against the accused persons.

13. Considering overall facts & circumstances of the case and the precedent laid down by Apex Court this Court finds no ground for grant of bail especially when victims are yet to be examined in this case and the money of the victims has not yet been returned even partially.

14. The bail application stands disposed of.

15. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J APRIL 24, 2023/kss [Click here to check corrigendum, if any](#)