

Soumen Chaudhury vs The State (Govt Of Nct Of Delhi) on 1 February, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ BAIL APPLN. 3589/2020 & CRL.M.A. 15870/2020
SOUMEN CHAUDHURY

Through: Mr. Amit Saxena with
Sharma and Ms. Saguna Gupta,

ve

THE STATE (GOVT OF NCT OF DELHI)

Through: Ms. Richa Dhawan,
with SI Manoj Kumar, P.S.
Mr. Roshan Lal Saini and M
Advocates for Complainant
person.

57

+ BAIL APPLN. 3996/2020
ARINDAM CHAUDHURI

Through: Mr. Mohit Mathur, S
with Mr. Kunal Sharma and Mr
Advocates

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THE STATE NCT OF DELHI

Through: Ms. Richa Dhawan,
with SI Manoj Kumar, P.S.
Mr. Roshan Lal Saini and M
Advocates for Complainant
person.

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+ BAIL APPLN. 2412/2022
ARINDHAM CHAUDHURI

Through: Mr. Mohit Mathur, S
with Mr. Kunal Sharma and Mr
Advocates

BAIL APPLN. 3589/2020 & connected matters

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STATE

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

% 01.02.2024 BAIL APPLN. 3589/2020 & BAIL APPLN. 3996/2020

1. These bail applications raise common issues of facts and questions of law and are heard together, with the consent of the parties and on account of similitude of issues involved, are being decided by this common order.

2. These applications have been filed on behalf of Soumen Chaudhury and Arindam Chaudhuri, respectively under Section 438 Cr.P.C. seeking anticipatory bails in case FIR No. 311/2019 dated 04.07.2019 under Sections 468/471 IPC registered at PS: Dwarka South. FIR was registered pursuant to an application filed under Section 156(3) Cr.P.C. by the Complainant Breejesh Nirula, Director of M/s. Zest Systems Private Limited, alleging that a forged medical certificate dated 13.10.2016 was produced by Arindam Chaudhuri before the Court of Sh. Puneet Nagpal, learned M.M., Dwarka Courts on 17.10.2016 in case titled 'Sonitech Travels Company v. Center for Vocational & Entrepreneurship Studies & Others', under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act'), for the purpose of seeking exemption from personal appearance. The case was closed on settlement between the parties in which the Complainant was not a party.

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3. It is the case of Complainant Breejesh Nirula that he had filed a civil suit for recovery of money in respect of laptops supplied by him to Arindam Chaudhuri and in this context, an FIR No. 141/2016 was also registered on his complaint at PS: Rajinder Nagar, New Delhi. Charge Sheet was filed in this FIR without arrest in 2017 and thereafter, further investigation was directed by the Court. Supplementary Charge Sheet was filed in July, 2020 and as per the Complainant's case, Arindam Chaudhuri submitted medical certificates firstly on 10.07.2016 during investigation and later on 06.07.2018 during re-investigation, in support of his medical condition for not joining the investigation, which were forged. The IO conducted an enquiry and found that there was no such clinic or doctor existing at the printed address on the medical certificates.

4. This led to another FIR No.143/2019 dated 20.08.2019 under Section 468/471 IPC registered at PS: Rajinder Nagar against Arindam Chaudhuri in relation to the allegedly forged medical

certificates. Accused was arrested on 14.03.2020 but was released on bail by Duty Magistrate on 15.03.2020. The IO conducted an enquiry and it came to light from an information received from Indian Medical Council that the doctor on whose name the medical certificates were being created had expired in 2006. Charge Sheet was filed in August, 2020 against Arindam Chaudhuri and one of his accomplice. Learned Magistrate took cognizance vide order dated 28.09.2020 under Sections 418/468/471/120B IPC. Complainant alleges that on a search of the websites of different Courts, he discovered that Arindam Chaudhuri has cheated many people across the country and in one such case under Section 138 of NI Act, titled 'Sonitech Travels Company v. Center for Vocational & Entrepreneurship Studies & Others', Arindam Chaudhuri had submitted a This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 20:57:20 similar medical certificate for seeking exemption from appearance in Court, which was forged. Certified copy of the certificate was obtained and a complaint was made to the Police culminating in registration of the present FIR No.311/2019. Arindam Chaudhuri applied for anticipatory bail in the Sessions Court, which was dismissed on 08.12.2020.

5. This application has been preferred for grant of anticipatory bail on behalf of the Applicant Arindam Chaudhuri under Section 438 Cr.P.C. in case FIR No.309/2021 dated 26.10.2021 registered under Sections 198/465/471 IPC at PS: Saket.

6. The genesis of the FIR is a complaint by the Complainant Breejesh Nirula that Applicant is indulging in filing forged medical certificates in various proceedings, some of which are subject matter of the Bail Application Nos.3589/2020 and 3996/2020. It was further alleged by the Complainant that in case titled 'Global Infonet Distribution (P) Limited v. International Institute of Planning and Management', under Section 138 NI Act, in Complaint Case No.189/1/2014 dated 15.03.2014 in the Court of learned MM, Saket, Arindam Chaudhuri had used similar modus operandi of submitting forged medical document to deceive the Court and get exemption from personal appearance. The forged certificate dated 14.09.2015 is in the name of the same doctor on whose name the other certificates are stated to have been issued. On this complaint, the present FIR No.309/2021 was registered against Arindam Chaudhuri. The Complaint Case under Section 138 NI Act, in which the present Complainant was not a party, was settled between the parties to the lis through a Settlement Deed dated 06.04.2018.

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7. Learned counsel for the Complainant urges the Court to dismiss the bail applications on the ground that the allegations against the Applicants are serious as they are indulging in filing forged medical certificates in various proceedings before the Courts as well as during the investigation process before the Investigating Agency. Applicants are involved in multiple cases of cheating and

have cheated many people, on account of which, multiple litigations are pending against them. In fact, Applicants are running an organised racket of fabricating medical certificates using fake letter heads and stamp of a doctor, who has admittedly expired in 2006, as per the information furnished by his widow, during investigation by the IO. It is also stated that there are various other FIRs pending against the Applicants, the details of which have been furnished by the State in a tabular form in the status report. Applicants are not cooperating in the investigation and the original medical certificate as well as the letter heads, etc. are yet to be recovered from the Applicants.

8. Learned APP, on the other hand, relying on the status reports, states that FIR No.311/2019 was registered on the complaint of Breejesh Nirula alleging that a forged medical certificate dated 13.10.2016 was filed by Arindam Chaudhuri in the Court of Shri Puneet Nagpal, learned MM, Dwarka Courts on 17.10.2016 in case titled 'Sonitech Travels Company v. Center for Vocational & Entrepreneurship Studies & Others', under Section 138 NI Act for purpose of seeking exemption from personal appearance. Statement under Section 161 Cr.P.C. of the Complainant was recorded and notices under Section 91 Cr.P.C. were issued to Arindam Chaudhuri and co- accused Soumen Chaudhury, seeking details of the medical certificates and the concerned doctor. No doctor or clinic could be traced at the address This is a digitally signed order.

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9. Learned Senior Counsel appearing for Arindam Chaudhuri and learned counsel appearing for Soumen Chaudhury, per contra, submit that the complaints leading to registration of FIR No.311/2019 and FIR No.309/2021 are motivated and have been filed to take vengeance from the Applicants, since there is a civil suit pending between Arindam Chaudhuri and the Complainant for recovery of money in respect of certain laptops allegedly sold by the Complainant and which is a purely civil transaction. Complaints are nothing but a witch-hunt for the sole purpose of harassing the Applicants and arm-twisting them to recover the money, sought in the civil suit. Complainant has nothing to do with both the Complaint Cases under Section 138 NI Act, as he was not a party in them and parties to the lis had settled the matters amicably, before the concerned Courts. As far as FIR No.143/2019, registered at PS: Rajinder Nagar is concerned, Arindam Chaudhuri joined investigation and his handwriting specimen was taken. Charge Sheet was filed by the State and on arguments on charge, the learned This is a digitally signed order.

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MM vide order dated 02.08.2023, dropped the charge under Section 468 IPC for preparing forged medical certificate, since FSL report did not support the prosecution version qua forgery albeit Revision Petition filed by the Complainant against the said order is pending consideration. Charge has been framed against the Applicants for offences under Sections 417/471/ 120B IPC.

10. Applicant Arindam Chaudhuri has joined investigation and has been cooperating to the best of his ability and capacity and there are no allegations by the State in the status report or even during arguments that the Applicant is extending any threat to the witnesses or tampering with evidence. It is not the case of the State that the Applicant is a flight risk and in any case that can be taken care of by the Court by imposing stringent conditions on the movement of the Applicant such as by a direction to surrender the passport. Applicant satisfies the triple test of grant of anticipatory bail. Repeated insistence of the State to provide original medical certificate is wholly misplaced. Applicant has been consistently denying having possession of any original medical certificate and therefore, on this ground, opposition cannot be laid to the present applications. Since it is the categorical stand of the Applicants that they do not possess the original medical certificate, no purpose will be achieved by taking them into custody as even during custodial interrogation, Applicants will be unable to furnish the originals. Moreover, in case FIR No.309/2021, original medical certificate has been obtained by the State in the case pending before the Saket Court and the document has been sent for forensic examination and the FSL report is awaited. Complainant has filed a protest petition on 24.01.2024 and the matter is next listed on 16.03.2024. Therefore, in any This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 20:57:20 case, custodial interrogation is not required and the result of the forensic examination will decide the future course of the pending cases. Pertinently, during investigation in case FIR No.309/2021, it has come to light that a pharmacist running a pharmacy shop is, in fact, issuing the allegedly forged medical certificates and one of them has been filed by a litigant in a MACT case. This crucial fact, when taken to logical end, would shed light on the falsity of the complaints filed by the Complainant against the Applicant.

11. On behalf of Applicant Soumen Chaudhury, it is urged that this Court granted interim protection to both the Applicants and there are no allegations of tampering with any evidence or threatening or intimidating the Complainant or any person associated with the matters. Charge Sheet was filed in FIR No.143/2019, without arrest of the Applicant and in the other two FIR Nos.311/2019 and 309/2021, Applicant is not named as an Accused. Applicant is also not an Accused in the FIR No.141/2016 registered at PS: Rajinder Nagar under Section 420 IPC, in respect of the laptops allegedly sold to Arindam Chaudhuri by the Complainant. The only role assigned to the Applicant is that Arindam Chaudhuri disclosed that the medical certificate was procured from the Applicant, which is wholly untrue. Applicant has been roped in the matter only because he was an employee of Arindam Chaudhuri. He is neither the beneficiary of the alleged acts nor involved in any crime and has been falsely implicated. The antecedents of the Applicant are clear and he is not involved in any crime in the past. Applicant has rendered complete cooperation in the investigation including giving the handwriting specimen, which was the only requirement of the IO so far.

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12. I have heard learned Senior Counsel for the Applicant Arindam Chaudhuri, learned counsel for the Applicant Soumen Chaudhury, learned APP for the State and learned counsel for the Complainant.

13. Before proceeding to examine the present applications, it would be relevant and useful to look into the factors, which should be taken into consideration while deciding an anticipatory bail application. The Supreme Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee and Another*, (2010) 14 SCC 496, delineated the factors that are relevant, as follows:

"9. We are of the opinion that the impugned order is clearly unsustainable. 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."

14. In this context, I may refer to another judgment of the Supreme Court in *Sushila Aggarwal and Others v. State (NCT of Delhi) and Another*, (2020) 5 SCC 1, relevant paragraphs of which are as follows:

"92.3. Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 20:57:20 bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified -- and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases;

however, such limiting conditions may not be invariably imposed. 92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."

15. These applications will have to be adjudicated keeping the above parameters in mind. On 23.11.2020, interim protection against arrest was granted to Soumen Chaudhury, subject to his joining investigation, as and when directed by the IO. Similar protection was granted to Arindam Chaudhuri on 14.12.2020 in BAIL APPL. No.3996/2020 and on 17.08.2022 in BAIL APPL. No.2412/2022 and interim orders have continued till date. Status reports have been filed on behalf of the State and it is not the case of the State that the Applicants have misused the interim protection granted by the Court or tampered with any evidence or influenced or intimidated the Complainant or any other person associated with the present cases. Applicants have joined investigation, as and when called for and the only ground on which 'non-cooperation' is alleged by the State is, that during investigation, Applicants are not handing over originals of the forged This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/02/2024 at 20:57:20 medical certificates filed in Courts in various proceedings. Applicants, on the other hand, have consistently maintained that they do not possess the original(s) of medical certificate(s) as they are not involved in the alleged forgery. It is also an admitted position that certified copy of one original medical certificate filed before the concerned Court at Saket has been obtained by the police and

sent for forensic examination. FSL result is awaited. Applicants have furnished their handwriting specimens for forensic examination. In the case arising out of FIR No.143/2019, the Trial Court has, vide order dated 02.08.2023, dropped the charge under 468 IPC against Applicants on the ground that no incriminating material has been brought on record to support preparation of forged medical certificates. It would be entirely a matter of trial in the present FIRs, whether the medical certificates are forged or not. Over three years have passed since interim orders of protection were passed by this Court in favour of the Applicants and they have not misused the protection granted and the triple test for grant of anticipatory bails to the Applicants stands satisfied. As per Status Reports, Charge sheet has been filed in case FIR No.309/2021 while investigation is pending in case FIR No.311/2019. As far as other FIRs pending against Arindam Chaudhuri are concerned, it is rightly urged on behalf of the Applicants that the said FIRs have nothing to do with the issues arising in the present cases and are primarily against the Institute and relate to issues of service tax, etc. and thus cannot be the basis to deny Anticipatory Bails in the present applications.

16. Keeping in view the entire facts and circumstances of the case, this Court is inclined to allow the present bail applications and it is directed that in the event of arrest, Applicants shall be released on bail, subject to their This is a digitally signed order.

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- (a) Applicants shall not leave the country without prior permission of the Trial Court;
- (b) They shall furnish their mobile numbers to the concerned IO and keep the same operational at all times;
- (c) They shall not contact the Complainant or extend any threats or intimidate him or any other person associated with the present cases and/or directly or indirectly indulge in any criminal activity;
- (d) They shall provide their permanent addresses to the concerned IO/ Trial Court and any change in the residential addresses will be intimated in writing; and
- (e) They shall join investigation, as and when called for by the IO and/or appear before the Trial Court on every date of hearing.

17. It is made clear that nothing in this order shall tantamount to an expression on the merits of the cases.

18. All Bail Applications are disposed of in the aforesaid terms. Pending application also stands disposed of.

JYOTI SINGH, J FEBRUARY 01, 2024/shivam/kks This is a digitally signed order.

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