

Sunil Joshan vs State Of Nct Of Delhi And Anr on 7 August, 2024

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 2484/2024 & CRL.M.A. 20797
SUNIL JOSHAN

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STATE OF NCT OF DELHI AND ANR.Re
Through: Mr. Ajay Vikram
APP for the Sta

+ BAIL APPLN. 2632/2024 & CRL.M.A. 21842
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STATE OF NCT OF DELHI THROUGH SHO & AN
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Through: Mr. Ajay Vikram
APP for the Sta

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN
ORDER

% 07.08.2024 CRL.M.A. 20798/2024 (for exemption) in BAIL APPLN.

1. Exemptions allowed, subject to all just exceptions.

2. The application stands disposed of.

BAIL APPLN. 2484/2024 & CRL.M.A. 20797/2024 BAIL APPLN. 2632/2024 & CRL.M.A.
21842/2024

3. The present applications are filed seeking pre-arrest bail in FIR No. 75/2018 dated 13.04.2018, registered at Baba Haridas Nagar, for offence under Section 420/34 of the Indian Penal Code, 1860 ('IPC').

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4. The present FIR was lodged on the basis of a complaint made by the complainant, namely, Parul Goel. It is alleged that the complainant is a partner in Aggarwal Trading Company and he is engaged in the business of sale and purchase of paddy, grain and other cereals from the Anaz Mandi, Najafgarh. It is alleged that the accused Khalik had approached the complainant on the pretext that a reputed partnership firm, namely, M/s. S.S. Exports, wanted to purchase a large quantity of paddy. It is alleged that the accused Khalik introduced the accused Sumer Chand as one of the partners of M/s. S.S. Exports to the complainant and it was decided that all the deals of paddy would be done through the applicants, who are the sons of accused Sumer Chand.

5. It is alleged that on demands of M/s. S.S. Exports between 19.11.2015 and 15.11.2015, goods worth 2,29,79,544/- were supplied by the complainant. It is alleged that out of the said amount, an amount of 30 lakhs was paid, however, thereafter the accused persons (that is, the applicants and accused Sumer) started giving excuses for not clearing the dues. It is alleged that the said accused persons kept delaying the clearance of dues.

6. It is alleged that it was found in April, 2017 that the applicants and accused Sumer had shifted to Fatehabad, Haryana, whereafter, when the complainant traced the said accused persons, they refused to pay back the outstanding amount and threatened the complainant of dire consequences.

7. It is further alleged that although the accused persons assured the complainant in June, 2017 that they will repay the dues by December, 2017, however, when the complainant contacted the said accused persons in December, 2017, they threw the complainant out of their office and threatened him This is a digitally signed order.

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8. After registration of FIR, the applicant Sunil was arrested and sent to judicial custody after which the accused persons settled with the complainant vide Settlement Deed dated 26.07.2018 wherein the accused persons agreed to pay 1.55 Crores to the complainant. Thereafter, the applicant Sunil Joshan was granted regular bail while the applicant Anil Joshan was granted pre-arrest bail by the learned Trial Court.

9. The Status Reports mentions that while the accused persons paid a sum of 1.02 Crores to the complainant, they failed to comply with the settlement terms later on. In view of the same, the regular bail of the applicant Sunil Joshan and accused Khaliq as well as the pre-arrest bail application of the applicant Anil Joshan and accused Sumer was cancelled by order dated 18.03.2019.

10. The applicants and accused Sumer were declared as absconders on 18.12.2019.

11. The applicants and accused Sumer challenged the order through which their respective bails were cancelled in Crl.M.C.3091/2019, however, the same was dismissed for non- prosecution on

17.12.2019.

12. The learned counsel for the applicants submits that they are innocent and they have been falsely implicated in the present case.

13. He submits that the present dispute is civil in nature regarding non-payment of dues and the complainant has lodged the FIR solely to arm twist the applicant and his family and to give a criminal color to the same.

14. He submits that the applicants have not misused the interim protection granted by this Court.

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15. He submits that the chargesheet as already been filed in the present case and no purpose will be served by the subjecting the applicants to undergo incarceration.

16. Per contra, the learned Additional Public Prosecutor ('APP') for the State vehemently opposes the grant of any relief to the applicants.

17. He submits that the applicants are involved in other cases of similar nature as well and they seem to be habitual criminals.

18. He submits that the applicants have not cooperated with the investigation.

19. The learned counsel for the complainant submits that the applicants had unsuccessfully preferred pre-arrest bail applications on earlier occasions as well.

20. He further submits that the applicants were earlier declared as absconders in the present case.

21. He however fairly concedes that the proceedings against the applicants for the offence under Section 174A of the IPC have been quashed.

22. I have heard the counsel for the parties and perused the record.

23. While determining the parameters in granting pre-arrest bail, the Hon'ble Apex Court in Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694 held as under:

"112.

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

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(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

24. It is the case of the prosecution that the accused persons induced the complainant to supply a large quantity of paddy to them and thereafter they intentionally did not clear his dues. It is alleged that the complainant followed up with the applicants and the accused Sumer for over two years regarding the payment of the outstanding dues, however, they initially gave excuses and later threatened the complainant with dire consequences.

25. The present case essentially relates to non-payment of dues by the accused persons to the complainant for supply of paddy.

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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 12/08/2024 at 23:05:50. Admittedly, a portion of the consideration amount was paid by the accused persons after supply of the goods. In view of the same, it cannot be presumed at this stage that the intent of the accused persons at the very beginning of the transaction was to dishonestly and fraudulently induce the complainant to supply the goods and to then cheat him. Whether any element of criminality or inducement was involved in the transaction would be seen during the course of the trial.

26. In the present case, the applicants and other accused persons were enlarged on bail earlier on the basis of settlement between the parties. However, their bails were cancelled on account of breach of the settlement terms.

27. It is mentioned in the Status Reports that recovery of the remaining settlement amount of 53 lakhs is to be done from the accused persons.

28. It has been emphasised time and again that criminal jurisdiction cannot be abused by litigants to seek a swift remedy to recover money. Recently, the Hon'ble Apex Court in the case of Jay Shri & Anr. v. State of Rajasthan : 2024 INSC 48 has deprecated the efforts to settle civil disputes by applying pressure through criminal prosecution. The fact that some part of settlement amount is yet to be paid by the accused persons, in the opinion of this Court, cannot act as a hindrance in grant of bail to the applicants.

29. Furthermore, as already noted by this Court in order dated 19.07.2024, in BAIL APPLN. 2484/2024, the accused Sumer, who is alleged to be the main accused in the present case, has already been granted regular bail.

30. The chargesheet has already been filed in the present FIR. It is relevant to note that the applicant's have been charge-

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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 12/08/2024 at 23:05:50. sheeted in the present case only for the offence under Section 174A of the IPC. Admittedly, this Court by orders dated 07.03.2024 and 18.03.2024, in Crl.M.C.6576/2023 and CRL.M.C. 2212/2024 separately, has set aside the proceedings under Section 82 of the CrPC initiated against the applicants respectively and quashed the chargesheet against them for the offence under Section 174A of the IPC.

31. The Status Reports mention that inadvertently, the offences under Sections 406/420/120B of the IPC were not mentioned against the name of the applicants in Column 11.

32. Even if the same is taken to be true, the maximum punishment attracted for the offences alleged against the applicants is seven years.

33. The charge sheet, thus, has been filed without arresting the applicants.

34. It is pertinent to note that the Hon'ble Apex Court has laid down guidelines pertaining to cases wherein chargesheet has been filed without arrest of the accused. In *Satender Kumar Antil v. Central Bureau of Investigation* : (2021) 10 SCC 773, Hon'ble Apex Court has observed that if an accused has not been arrested during investigation and has cooperated in the investigation, then certain guidelines must be adhered to while considering the grant of bail. The guidelines have been reproduced as under:

"3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:

"Categories/Types of Offences (A) Offences punishable with imprisonment of 7 years or less not falling in Categories B and D. (B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

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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 12/08/2024 at 23:05:50 (C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act [Section 212(6)], etc. (D) Economic offences not covered by Special Acts.

Requisite Conditions (1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called. (No need to forward such an accused along with the charge- sheet *Siddharth v. State of U.P.* [*Siddharth v. State of U.P.*, (2022) 1 SCC 676]) Category A After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

Category B/D On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

Category C Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section

37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POCSO, etc."

35. The Hon'ble Apex Court in Mohd. Asfak Alam v. State of Jharkhand : (2023) 8 SCC 632 has held as under:

"15. What appears from the record is that the appellant cooperated with the investigation both before 8-8-2022, when no protection was granted to him and after 8-8-2022, when he enjoyed protection till the filing of the charge-sheet and the cognizance thereof on 1-10-2022. Thus, once the charge-sheet was filed and there was no impediment, at least on the part of the accused, the court having regard to the nature of 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 12/08/2024 at 23:05:50 the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail as a matter of course. However, the court did not do so but mechanically rejected and, virtually, to rub salt in the wound directed the appellant to surrender and seek regular bail before the trial court. Therefore, in the opinion of this Court, the High Court fell into error in adopting such a casual approach.

16. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the Court would direct all the courts seized of proceedings to strictly follow the law laid down in Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449 : (2014) 8 SCR 128] and reiterate the directions contained thereunder, as well as other directions."

36. The evidence in the present case seems to be documentary in nature. The photocopies of the important documents, including the bills, ledger account, dealer cards, etc. are already in possession of the Investigating Authority.

37. This Court by order dated 19.07.2024, in BAIL APPLN. 2484/2024, had granted interim protection to the applicant Sunil. Thereafter, this Court by order dated 19.07.2024, in BAIL APPLN.

2632/2024, had granted interim protection to the applicant Anil. It is not disputed that the applicants have since joined the investigation.

38. However, while the learned APP concedes that the applicants have since joined the investigation, it is argued that the applicants have not cooperated in the same as they denied any involvement in the commission of the offence. It is trite law that merely because an accused person does not confess to the allegations levelled against him and make self-incriminating statements, it cannot be said that he isn't cooperating with the investigation [Ref. Bijender v State of Haryana : Special Leave to Appeal (Crl.)No. 1079/2024, decided on 06.03.2024].

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39. It is not in doubt that an order for grant of pre-arrest bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined investigation, he is cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

40. Considering the aforesaid discussion, in the opinion of this Court, no purpose would be served by allowing the custodial interrogation of the applicants.

41. In view of the above, the applicants are admitted on bail, on furnishing a personal bail bond for a sum of 20,000/- with one surety of the like amount respectively, to the satisfaction of the concerned SHO, subject to the following conditions:

- a. The applicants shall join and cooperate with further investigation as and when directed by the IO;
- b. The applicants shall not tamper with the evidence in any manner;
- c. The applicants shall not leave the country without taking permission from the learned Trial Court;
- d. The applicants shall provide their mobile number to the IO/SHO and keep their mobile phone switched on at all times;
- e. The applicants shall provide the details of their residential address to the IO/SHO and inform them before changing the same.

42. In the event of there being any FIR/DD entry/ complaint lodged against the present applicant, it would be open for the This is a digitally signed order.

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43. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial and should not be taken, as an expression of opinion, on the merits of the case.

44. The present applications are allowed in the aforementioned terms. Pending applications stand disposed of.

45. A copy of this order be kept in both the matters.

AMIT MAHAJAN, J AUGUST 7, 2024 "SK"

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