

Sunder Singh Bhati vs The State on 17 January, 2022

Author: Subramonium Prasad

Bench: Subramonium Prasad

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of decision: 17th January, 2022

IN THE MATTER OF:
+ BAIL APPLN. 3750/2021
SUNDER SINGH BHATI

Through Mr. Pradeep Singh Rana, Mr. Ankit Rana, Mr. Abhishek Rana, Mr. Nitish Pande, Advocates

..... Petitioner

versus

THE STATE

Through Mr. Amit Chadha, APP for the State with SI Shiv Dev, P S EOW

..... Respondent

AND

+ BAIL APPLN. 3921/2021
RAJESH MAHTO

Through Mr. Kumar Piyush Pushkar, Advocate

..... Petitioner

versus

STATE (NCT OF DELHI)

Through Mr. Amit Chadha, APP for the State with SI Shiv Dev, EOW

..... Respondent

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The Petitioners seek regular bail in FIR No. 89/2019 dated 01.06.2019 registered at Police Station Economic Offences Wing for offences under Sections 406/420/409/120B of the Indian Penal Code, 1860 (hereinafter, "IPC").

2. The facts, in brief, leading up to these petitions are as follows:

a. A complaint was filed by ex-serviceman, Sh. Dharmender Singh, stating that SMP IMPEX Pvt. Ltd. (Hello Taxi) (hereinafter, "the Company"), and its Directors/Officials, Dr. Saroj Mahapatra, Mr. Rajesh Mahto, Ms. Daisy Vijay Menon, Mr. Sunder Singh Bhati and other unknown persons had committed cheating and fraud.

b. It is stated that the Complainant had received a message and an email from the Company stating that if he invested his money, they would give him a 200% return within 1 year. The Directors, Dr. Saroj Mahapatra and Rajesh Mahto called the Complainant and invited him to Netaji Subhash Place where they told him about the Company and explained their plans to expand it on the lines of Uber/Ola. They told the Complainant that the Company was registered with RBI and SEBI. They further made the Complainant meet one Mrs. Daisy Vijay Menon who showed the Complainant the plan of the Company. c. It is stated that after much insistence, the Complainant invested Rs. 9,00,000/-. Further, the Complainant's friends, namely Rajesh Kumar, Rajender Singh, Yogender Singh, Umed Singh, Ajay, Sunil also invested Rs. 15 to 20 lakhs. It is stated that on the 10th of every month, instalment would be sent to the account of the investors, however, after the first two months, no instalment was made. On speaking with Harish Bhati and Rajesh Mahto, the Complainant was informed that he would get the third instalment by 15th of the month, i.e. 15th March, however, the third instalment was still not made. On calling the Company, Saroj Mahapatra showed the Complainant a clip from social media showcasing that the Company's accounts had been frozen.

d. It is stated that the Complainant's money has not been returned till date and that the accused do not pick up the calls of the Complainant. Stating that the Complainant and many others have been defrauded of their money, the complaint was filed on the basis of which the instant FIR was registered. e. The Petitioner in BAIL APPLN. 3750/2021 filed an anticipatory bail application before the Ld. Trial Court which was dismissed vide Order dated 03.08.2019. The Petitioner in BAIL APPLN. 3750/2021 was declared absconder/proclaimed offender on 17.02.2020 and was arrested on 09.12.2020. Anticipatory bail application before this Court was dismissed as infructuous vide Order dated 16.08.2021. Bail application under Section 437 Cr.P.C. of Petitioner in BAIL APPLN. 3750/2021 was dismissed vide Order dated 05.07.2021. Bail application under Section 439 Cr.P.C. of Petitioner in BAIL APPLN. 3750/2021 was dismissed by the Sessions Court vide Order dated 23.09.2021.

f. An anticipatory bail application was filed by the Petitioner in BAIL APPLN. 3921/2021 which was dismissed by the Ld. Trial Court vide Order dated 19.09.2019. The Petitioner in BAIL APPLN. 3921/2021 was declared absconder/proclaimed offender on 17.02.2020 and was arrested on 22.08.2020. Bail applications before the Ld. CMM and the Ld. ASJ, Rohini were dismissed vide Orders dated 11.09.2020 and 24.09.2020, respectively. After filing of chargesheet, yet again bail application before the Ld. CMM was dismissed vide Order dated 10.05.2021.

3. Mr. Pradeep Singh Rana, learned Counsel for Petitioner in BAIL APPLN. 3750/2021, submits that the Petitioner has been languishing in jail since 09.12.2020. He submits that no recovery has been made from the Petitioner or at the instance of the Petitioner, and that, therefore, there is no link tying the Petitioner to the alleged scam. He brings to the attention of this Court that the Petitioner is neither an authorized signatory nor a director of the accused Company, and that there is nothing to

suggest that the Petitioner was associated with the accused Company.

4. Mr. Rana submits that the Ld. Trial Court erred in observing that the only investors who had gained from the scheme were relatives of the Petitioner. He states that several of the alleged victims received up to 40- 50% of their invested amount within a month which buttressed the fact that early investors had received significant returns from the accused Company. Mr. Rana argues that it is not rational to assume that the Petitioner would induce his own relatives to invest in a scheme if he possessed the intention to scam people.

5. Mr. Rana submits that there is not an iota of evidence against the Petitioner in BAIL APPLN. 3750/2021. He further relies on *Sadhupati Nageswara Rao v. State of Andhra Pradesh*, (2012) 8 SCC 547-A to submit that the essential ingredient for invoking both Sections 406 and 409 IPC is „entrustment and there is no evidence which suggests that the Petitioner had ever been entrusted with any money or property. He further argues that the FIR in the present case was registered two years ago and that till date the investigation is nowhere near completion. Mr. Rana submits that the declaration of PO is misconceived as the Petitioner had no intention to evade the law and was merely exercising his legal remedy of seeking anticipatory bail.

6. Mr. Pradeep Singh Rana, learned Counsel for the Petitioner in BAIL APPLN. 3750/2021, further submits that there is hardly any complaint which ascribes a distinct role to the Petitioner. He states that the trial is likely to take a long while and that there is no allegation against the Petitioner that he has threatened or approached the Complainant or any of the witnesses. He, therefore, submits that the Petitioner is liable to be granted regular bail.

7. Per contra, Ms. Meenakshi Chauhan, learned APP appearing for the State in BAIL APPLN. 3750/2021, submits that the instant case involves the cheating of a large-scale of money with total investors surpassing 900 and the amount cheated being Rs. 14 crores. She vehemently opposes the instant bail application, stating that the Petitioner in BAIL APPLN. 3750/2021 had previously been declared PO and never joined investigation despite several notices being issued to him. She submits that there are many statements of witnesses/complainants under Section 161 Cr.P.C. that specifically name the Petitioner and state that he took active part in the meetings/representations for inducement.

8. Ms. Chauhan submits that the Petitioner is a direct recipient of the cheated amount through his relatives and that Rs. 1.59 crores approximately were transferred from the account of the accused Company to the accounts of some known persons and then to the account of his son, Nitin Bhati, as well as directly from the account of the accused Company to his nephew, brothers and brother-in-law. She submits that there are other FIRs which have also been registered against the Petitioner, and that as charges are yet to be framed, it would be detrimental to the case to grant the Petitioner bail.

9. Mr. Kumar Piyush Pushkar, learned Counsel appearing for Petitioner in BAIL APPLN. 3921/2021, submits that there is no evidence to indicate that the Petitioner had induced the investors and concocted lies about RBI authorization. He submits that the accused Company was incorporated in

2015 and was named Ayurvedic India, and that the Petitioner only joined the accused Company on 26.06.2018 after the ownership and name was changed and handed over to the promoters of SMP Impex Pvt. Ltd. (Hello Taxi). He submits that the Ld. Trial Court has erred in failing to acknowledge that most of the Complainants have not mentioned the name of the Petitioner herein. Further, the learned Counsel submits that the Petitioner was merely a non-executive director and that he only received Rs. 11 lakhs, which was his remuneration, out of the alleged cheated amount of Rs. 250 crores.

10. Mr. Pushkar argues that the accused Company has suffered heavy losses due to cheating, fraud and misappropriation by two of its Directors, namely Daisy Vijay Menon and Saroj Mahapatra, and Yes Bank illegally froze its accounts on 05.12.2018. He states that as a result, the money could not be given to the investors and that the accused Company is still committed to return the money to its investors. He further submits that even the co-accused Saroj Mahapatra did not mention the Petitioner while his statement under Section 161 Cr.P.C. was being recorded, which indicates that the Petitioner did not play a major role in the accused Company.

11. Mr. Pushkar submits that the trial is likely to take a long while. He submits that the Petitioner is the sole earning member in his family, and that chargesheet as well as supplementary chargesheet have already been filed. He further states that the evidence is primarily documentary in nature and the same is already in the custody of the police. Therefore, further incarceration of the Petitioner is not required and that the Petitioner is liable to be granted regular bail.

12. Per contra, Mr. Amit Chadha, learned APP for the State appearing in BAIL APPLN. 3921/2021, vehemently opposes the bail application and submits that this case is a multi-victim scam. He submits that it over 900 investors are present with the cheated amount running into crores. He further argues that statements under Section 161 Cr.P.C. of the witnesses/complainants specifically name the Petitioner and that he was the Director of the accused Company at the time of the commission of the offences.

13. The learned APP for the State submits that the Petitioner was the beneficiary of the cheated amount, and that a perusal of the bank replies indicate that he was also the authorized signatory of the bank accounts of the accused Company. He submits that the Petitioner took active part in the day- to-day affairs of the accused Company. He further reveals that the investigation had shown that the Petitioner had two PAN cards. Mr. Chadha also submits that there are various other FIRs which have been registered against the Petitioner and, therefore, he should not be granted bail.

14. Heard Mr. Pradeep Singh Rana and Mr. Kumar Piyush Pushkar, learned Counsels appearing for the Petitioners in BAIL APPLN.3750/2021 and BAIL APPLN.3921/2021, respectively, Ms. Meenakshi Chauhan, learned APP for the State in BAIL APPLN. 3750/2021, Mr. Amit Chadha, learned APP for the State in BAIL APPLN. 3921/2021, and perused the material on record.

15. The chargesheet as well as the supplementary chargesheet has been filed. With regard to Petitioner in BAIL APPLN. 3750/2021, the chargesheet and the supplementary chargesheet have been filed under Sections 406/409/420/120-B/174-A IPC and reveal that the Petitioner has been

associated with the accused Company since the very beginning and that he actively participated in inducement of the public. It states that the Petitioner and the other accused were dishonest from the inception and that at the time of the booking, the Hello Taxi scheme had not been sanctioned and requisite permissions had not been obtained. It states that family members of the Petitioner were found to be benefitted from the funds transferred from the accused Company. It states that notices were issued to the family members, and they resorted to the defence that they invested in the scheme and the money transferred was merely a profit. However, it was noted that the Petitioner received the cheated money through the bank accounts of his family members. It is further revealed that notices under Section 41A Cr.P.C. were issued to the Petitioner, but he never joined the investigation, and when efforts were made to arrest him, he was found absconding. It states that the Petitioner was also declared PO. It states that many investors had named the Petitioner in their complaints, and that ingredients of Section 420 IPC were made out against the Petitioner.

16. With regard to Petitioner in BAIL APPLN. 3921/2021, the chargesheet and supplementary chargesheet have been filed under Sections 406/409/471/420/120-B/174-A IPC and reveal that the amount collected from the investors is expected to be more than Rs. 240 crores and the Petitioner was the Managing Director of the accused Company. It states that the Petitioner never joined the investigation despite several notices under Section 41A Cr.P.C. being issued to him. He was also found to be absconding when efforts were made to arrest him. Accordingly, an NBW was obtained against the Petitioner and he was declared an Absconder vide Court order dated 17.02.2020. It further reveals that the Petitioner was in conspiracy with the other Directors and that he was the authorized signatory of the bank accounts of the accused Company. Further, during the investigation, it was found that the Petitioner had two PAN cards. The chargesheet states that the accused persons, including the Petitioner, made false promises and received payments of crores of rupees from a large number of people with no intention of returning the money or fulfilling the promises. It states that by way of fraudulent misrepresentation, concealment of material facts and false assurances, the general public was induced to invest in the accused Company and part with their hard-earned money. It states that ingredients of Section 420/409/120-B IPC are easily made out against the Petitioner.

17. A perusal of the chargesheet, therefore, indicates that both the Petitioners were involved in the multi-person scam involving more than Rs. 200 crores from the inception of the same and that both were instrumental in misleading the public into investing in the scheme with no intention of returning the money. There are more than 900 complaints till date which have been made pertaining to the scam and the investigation has revealed that the Petitioners played an integral role, right from inducing the public to the siphoning off of the cheated money. Further, multiple other FIRs are also pending against both the Petitioners. The gravity of the offences is such that if the Petitioners are subsequently convicted, they will be liable to be sentenced to undergo imprisonment for life.

18. However, gravity of the offence cannot be the sole ground to deny bail to the Petitioners. In *Sanjay Chandra v. CBI*, (2012) 1 SCC 40, the Supreme Court had observed as under:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

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 has 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 provisions 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 jeopardise the personal liberty of an individual.

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude.

We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI."

(emphasis supplied)

19. Therefore, the magnitude of the offence cannot be the only criterion for denial of bail. The object of bail is to secure the presence of the accused at the time of trial; this object is, thus, neither punitive nor preventative, and a person who has not been convicted should only be kept in custody if there are reasons to believe that they might flee from justice or tamper with the evidence or threaten the witnesses. If there is no apprehension of interference in administration of justice in a criminal trial by an accused, then the Court should be circumspect while considering depriving the accused of their personal liberty. Mere vague belief that the accused may thwart the investigation cannot be a ground to prolong the incarceration of the accused.

20. Most importantly, while the Petitioner in BAIL APPLN. 3750/2021 was arrested on 09.12.2020, the Petitioner in BAIL APPLN. 3921/2021 was arrested on 22.08.2020. Both the Petitioners have been in custody for over a year now. Chargesheet as well as supplementary chargesheet have been filed, and all the evidence available is documentary in nature and in custody of the investigating agency. Whether or not the cheated money was entrusted to the Petitioners is a matter of trial and cannot be taken into consideration at this juncture. This Court is, therefore, of the opinion that continued custody of the Petitioners is no longer required and that both the Petitioners should be enlarged on bail.

21. In light of the above observations, this Court is inclined to grant bail to Petitioner in BAIL APPLN. 3750/2021 and Petitioner in BAIL APPLN. 3921/2021, subject to the following conditions:

a) Each petitioner shall furnish a personal bond in the sum of Rs.1,50,000/- with two sureties of the like amount, one of them should be a relative of the petitioner, to the satisfaction of the Trial Court;

b) The Memo of Parties shows that the petitioner in BAIL APPLN.3750/2021 is a resident of E-3, Road No.06 Gazipur Dairy Farms, Gazipur, Delhi-110092 and the

petitioner in BAIL APPLN.3921/2021 is a resident of Flat No.125, Rose Apartment, Sector-18B, Dwarka, New Delhi. The petitioners are directed to reside at their respective address till further orders;

c) The petitioners are directed to report to the concerned Police Stations thrice in a week i.e. on every Monday, Wednesday and Friday at 10:30 AM and they shall be released by 11:00 AM after completing all the formalities;

d) The petitioners are directed to give all their mobile numbers to the Investigating Officer and keep them operational at all times;

e) The petitioners shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner;

f) In case it is established that the petitioners have tried to influence the witnesses or tamper with the evidence, the bail granted to the petitioners shall stand cancelled forthwith.

22. It is made clear that the observations made in this Order are only for the purpose of grant of bail and cannot be taken into consideration during the trial.

23. Accordingly, both the bail applications are disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

JANUARY 17, 2022 Rahul