

Mr Kanon Evarad @ Jekew vs State Of Nct Of Delhi on 28 March, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 21 March 2025

Judgment pronounced on: 28 March 2025

BAIL APPLN. 3157/2024

MR KANON EVARAD @ JEKEW

.....Petitioner

Through: Mr. Lakshay Yadav, Mr.
Gaurav Sharma, Mr.
Shrikant, Mr. Gaurav, Mr.
Ankit Sharma, Mr. Amit
Yadav and Mr. Takshay
Gupta, Advocates

versus

STATE OF NCT OF DELHI.

.....Respondent

Through:

Mr. Aman Usman, APP
for the State with SI
Pankaj Paushar, EOW.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. This is a bail application under Section 483 of Bharatiya Nagrik Suraksha Sanhita, 2023 ["BNSS"], filed on behalf of the applicant/accused Kanon Evarad @ Kanon for the grant of regular bail in case FIR No. 33/2023, PS EOW, Mandir Marg, under Section 419/420/467/468/471/120-B/201 of the Indian Penal Code, 1860 and Section 66 read with Section 43/55 (C) & 66 (D) of the Information & Technology Act.

2. Learned counsel for the applicant/accused submits that the applicant was apprehended and arrested from Greater Noida. However, the Investigating Officer ["IO"] neither informed the concerned Police Station of Greater Noida nor made any entry to this effect at the concerned Police Station of Greater Noida. The alleged search and seizure at the applicant's residence was not as per Section 100 of the Code of Criminal Procedure. No document has been placed on record to indicate that the alleged house from which the recovery has been affected, belongs to the applicant. IO has denied the accused of his right to consult his lawyer before he was taken out of the State. IO failed to adhere to the mandatory procedural requirement of Article 22 of the Constitution of India and Section 50 Cr. PC. It is submitted that IO has neither informed the grounds of arrest to the applicant at the time of apprehending him from his residence nor at the time of arresting him at PS EOW, Mandir Marg.

3. It is further submitted that investigation has been completed and charge sheet has already been filed. Applicant is in custody for the last ten months and there is no possibility of completion of trial shortly. It is also submitted that there is no chance of the applicant absconding from the course of justice, as his passport has already been impounded by the IO.

4. The bail application has been vehemently opposed by the learned Additional PP, appearing for the State, submitting that applicant/accused is a Nigerian National and he along with other co-

accused have cheated huge money by hacking the server of Kangra Cooperative Bank and siphoned off money by using mobile internet/hacking software through various bank accounts. It is submitted that 151 fraudulent transactions were made and the total defrauded amount is to the tune of Rs. 7.79 crores. It has been submitted that applicant/accused has been arrested at the instance of his accomplice Chigozie Kenneth Okonkwo @ Ken, who was caught in CCTV footage while withdrawing the cheated money by using the ATM card of one Ms. Neelima Adhikari.

5. It is further submitted that house search of the applicant has led to the recovery of 13 mobile phones, apart from two high-end mobile phones, 5 laptops, cheque books, bank passbooks of Indian Nationals, 4 International SIM cards and 4 Airtel SIM Cards. It is also stated that on analysis of the personal mobile phone of the applicant, it is found to contain a large number of messages delivered to various mobile numbers having secret bank account details of several Indian Nationals. The applicant is also accused of having installed an application namely "Dingtone" in his mobile phone, which is used for the purpose of calling/messaging from international phone numbers of many countries. It is further submitted that applicant/accused has not cooperated during the police remand and misled the police team while searching the co-accused persons.

6. Learned Additional PP further submits that the accused was provided the copy of the remand application, which contained the grounds of arrest and such grounds were explained to him.

7. In rebuttal, the learned counsel for the petitioner submits that petitioner is a Nigerian National and does not know English and that the grounds of arrest were not explained to him in the language known to him, and therefore, it is not a sufficient compliance of Article 22 of the Constitution. In support of such argument, learned counsel places reliance on the decision of the Supreme Court in the case of Lallu Bhai Jogi Bhai Patel Vs. Union of India (1981 AIR 728).

8. FIR under Section 409/467/468/471/120-B IPC and under Section 66 IT Act was registered at PS Economic Offences Wing on the basis of a complaint received from Kangra Cooperative Bank, Pahar Ganj that a sum of Rs. 7.79 crores was siphoned off/cheated from the settlement account of the bank through 151 fraudulent RTGS transactions from 19.04.2023 to 21.04.2023 during non-banking hours by cyber hacking. The amount was credited in 112 bank accounts, which were opened with 26 banks in 19 states of India. The cheated money was immediately transferred/withdrawn through various banking transactions by the accused persons in whose accounts the cheated money was delivered.

9. The technical investigation revealed that a Remote Access Trojan was inserted into the system of Kangra Cooperative Bank via spoofed email in guise of genuine email. Thereafter, the same was operated through a command and control server of cyber attackers and new user account "Admins" was created.

10. During investigation, in the CCTV footage, one foreign national was seen withdrawing money from the ATM of Federal Bank from the account of Neelima Adhikari. This resulted in the arrest of co-accused Chigozie Kenneth Okonkwo @ Ken from Dwarka. He confessed his involvement. The search of his house led to the recovery of several ATM/Debit Cards of Indian individuals, International SIM Cards, Airtel SIM Cards etc. He disclosed the name of present applicant/accused, who gave him debit cards, SIM cards and mobile phones of Indian individuals and on his instructions, he withdrew the money from the ATM.

11. The present applicant/accused was apprehended at the instance of co-accused Chigozie Kenneth Okonkwo @ Ken from Greater Noida and search of his house, led to recovery of 13 mobile phones, 5 laptops, National/International SIM cards, cheque books, and bank passbooks of Indian citizens.

12. Applicant/accused disclosed that he would get the co-accused persons apprehended. Raids were conducted to arrest them, but they could not be arrested.

13. One of the main contentions urged is that accused was not apprised of the grounds of arrest at the time of arrest. Apex Court in the case of Prabir Purkayastha Vs. State of NCT of Delhi (2024) 8 SCC 254, has observed as under:-

"49. It may be reiterated at the cost of repetition that there is a significant difference in the phrase 'reasons for arrest' and 'grounds of arrest'. The 'reasons for arrest' as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature."

14. A perusal of the above mentioned paragraph shows that Supreme Court has distinguished between the grounds of arrest and the reasons for arrest. Since in this case, the copy of the remand paper which allegedly contained the reasons and grounds of arrest were provided to the petitioner,

the same is prima facie sufficient compliance of legal requirements.

15. The case of Lallu Bhai Jogi Bhai Patel (supra) was a case under detention under Section 3 of Conservation of Foreign Exchange & Prevention of Smuggling Activities Act. In that case, petitioner was served with the grounds of detention in English, which was not known to him. He was not supplied the translation in his mother tongue, and therefore, it was held that the constitutional mandate in Article 22(5) has been infringed.

16. Petitioner, even though is a Nigerian National, has been living in India. Learned Additional PP submits that petitioner signed the documents in English, and therefore, had the knowledge of English language. That being the case, prima facie, it appears that petitioner was duly communicated the grounds of his arrest in the language known to him. Whether or not the search and seizure was in accordance with law, shall be considered only during the trial.

17. There are allegations that exchequer money to the tune of Rs. 7.79 crores has been siphoned off/cheated from Kangra Cooperative Bank by using as many as 151 fraudulent RTGS transactions by the applicant and the co-accused persons. In my view, the allegations are grave and serious in nature, and therefore, this is not a fit case for grant of bail to the petitioner at this stage.

18. The application is dismissed.

RAVINDER DUDEJA, J.

March 28, 2025 RM