

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Reserved on: 21st January, 2022**

Pronounced on: 7th February, 2022

+ **BAIL APPN. NO. 4380/2021 & CRL M.A. 20043/2021**

VIKAS CHAWLA Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate
with Mr. Sumer Singh Boparai,
Mr. Abhishek Pati, Mr. Sidhant
Saraswat and Mr. Shadman
Siddiqui, Advocates

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Kusum Dhalla, APP for State
Mr. Tushar Jarwal, Mr. Rahul Sateerja,
Mr. Ambar Bhushan and Mr. Anurag
Soan, Advocates for BMW
Finance/Complainant
Mr. Kunal Tandon and Mr. Chetan
Roy, Advocates for HDFC Bank/
Complainant

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G E M E N T

(THROUGH VIDEO CONFERENCING)

CHANDRA DHARI SINGH, J.

1. The present application has been filed under section 439 of the Code of Criminal Procedure, 1973 on behalf of the petitioner/applicant

praying for regular bail in FIR bearing No. 043/2021 registered at Police Station EOW Mandir Marg for the offences punishable under Sections 406/420/120B of the Indian Penal Code, 1860.

FACTS

2. As per the FIR the prosecution story is as follows:

a) In the year, 2014, Mr. Vikas Chawla and Ms. Pooja Chawla, Directors of Auto Web Performance Cars Private Limited (hereinafter, "Auto Web") approached the Complainant at the office of HDFC Bank Limited at 2nd Floor, Indian Express Building, Bahadur Shah Zafar Marg, New Delhi-110002 for the grant of Credit Facilities in the nature of Inventory Funding and Cash Credit Limits ("CC Limit") by the Complainant. It was represented that Auto Web was the 'Authorized Dealer' of Hyundai (having dealership code (Hyundai): N1215) and engaged in the business of 'sales' and 'service' of vehicles manufactured by Hyundai since the year 2013.

b) On the basis of the request and representation made by Mr. Vikas Chawla (director of Auto Web) and Ms. Pooja Chawla and the documents submitted by them, the Complainant processed and sanctioned the above-mentioned credit facilities to Auto Web, vide Sanction Letter dated 9th January, 2014. Consequent thereto, Loan Agreement dated 9th April, 2014 was

executed between the Complainant and Auto Web, in relation to the above-mentioned facilities.

c) Mr. Vikas Chawla/Petitioner herein signed the loan agreement in the capacity of Director of Auto Web Performance Cars Private Limited. The stocks of the vehicles (inventory) were the primary security of the complainant, in addition to the cross collateral (i.e., immovable property). Accordingly, from time to time, on the request of Vikas Chawla, and Ms. Pooja Chawla, Directors, existing facilities were modified/enhanced/renewed and other facilities were granted, on the basis of the documents (financial statements like balance-sheet, board resolutions, collateral security documents), to Auto-Web. Last renewal of the facilities was done by the complainant on 26th June, 2019. Pertinently, in all the financial statements (balance-sheets) submitted by Auto Web, it was shown that Auto Web was generating profits.

d) As per the last enhancement/renewal, on 26th June, 2019 the complainant had sanctioned Rs. 15.00 crores towards Inventory funding, Rs. 1.50 crore as CC Limit and adhoc limits of Rs 3.50 crore to Auto Web (Through its Director, Mr. Vikas Chawla and Ms. Pooja Chawla) duly utilized said limits sanctioned by the complainant.

e) The purpose of availing the credit facility (inventory funding) as represented was to fund the inventory/stock to be purchased by the said dealership from the manufacturer

(Hyundai Motors). Based on the request of the accused persons for disbursement of funds (from within the limit sanctioned by the complainant), the complainant used to disburse the amounts (as requested) directly into the account of the manufacturer, whereupon the stocks (Cars) got released to the dealer, which stock was hypothecated to the Complainant.

f) In terms of the arrangement between the complainant and Auto Web, proceeds from the sale of the inventory (Cars) were to be credited into the inventory funding account of the dealer (as maintained with the complainant) for the purposes of repayment of the limits utilized by the dealer (i.e., interest and principal). As the complainant had funded the inventory, in terms of the agreement, the stocks were hypothecated to the complainant and the security for the repayment of the facilities granted by it.

g) Around December, 2019 the officials of Bank noticed stress in the account of Auto Web and also observed certain gaps in stock audit report. The complainant made various attempts to follow-up with Mr. Vikas Chawla and Ms. Pooja Chawla for the regularization of the accounts by making the due payments to the Bank and also seeking clarification on observed gap in stock audit, but to no avail. Mr. Vikas Chawla and Ms. Pooja Chawla remained evasive and thereafter started avoiding contact with the officials of the Bank and the office staff and

Ms. Pooja Chawla used to inform that Mr. Vikas Chawla is unwell or out of station or some other excuse was given.

h) On 17th Feb 2020, upon reconciling accounts it was found that Auto Web have utilized major portion of the credit facilities granted by the complainant since 5th December 2019 towards the purchase of 143 vehicle amounting to Rs. 11,40,75,861/- from Hyundai.

i) The complainant asked for conducting Audit of the stocks of Auto Web and one Mr. Shrray Sharma (one of the Directors in Auto Web) was reluctant in letting the Bank conduct audit and said that all the accounts are in order. However, with great difficulty the same was done on 17th February, 2020 and to the shock and surprise of Bank officials, from an analysis of the stocks available with the dealership and the payments which were overdue to the bank, the Bank found that the vehicles available in stocks was much less than the inventory received from the manufacturer, pursuant to the disbursements made by Complainant. In respect of inventory funding, Auto Web had utilized limits to the tune of Rs. 13.81 crores (as sanctioned by the complainant) and there were stocks only to the tune of Rs. 2.35 Crores. Thus, there was a gap of about Rs. 11.45 crores which was not accounted for.

j) This meant that vehicles worth more than Rs. 11 crores which were purchased from the funds made available by the complainant had been sold by the accused without crediting the

sale proceeds into the inventory funding account of the Bank. In other words, stock of only 34 Vehicles at 2.35 Crores was found available with accused persons and Vehicles amounting to Rs. 11.45 Crores have been found to be fraudulently misappropriated.

k) Thereafter bank vigorously followed up Mr. Shrray Sharma and has been able to recover around Rs.1.62 Crores by sale of vehicles out of the remnant stock. However huge amount of money still remains mis-appropriated and the figures as it stands on June, 2020 the accused persons have stocks only to the tune of Rs. 97.50 Lakhs.

l) Thus, there was a gap of about Rs. 11.21 crores which was not accounted for. This meant that vehicles worth more than 11 crores which were purchased from the funds made available by the complainant had been sold by the accused without crediting the sale proceeds into inventory funding account of Bank.

m) The complainant neither has payments nor any stocks (except worth Rs. 97.50 lacs), as against the total outstanding of approximately Rs. 15 crores. It is clear that the vehicles purchased from the funds of the complainant have been illegally sold without crediting the payments to the complainant and the sale proceeds have been criminally misappropriated.

n) Sh. Balpreet Singh Batra, an authorized Representative of BMW India Financial Service joined the investigation of the

case and filed a complaint after producing the original documents related to the financial facility taken by accused Vikas Chawla of Auto Web Performances Cars Private Limited. Subsequently the complaint was registered and merged into the present FIR.

o) The Company executed Floor Plan Financing Agreement (FPA) with Vikas Chawla & Auto Web Performance on 13th October, 2014 and sanctioned a credit facility of INR 5 crore which over a period of time was increased to an amount of INR 12.5 Crore. Auto Web also executed a Deed of Hypothecation in favour of the Company whereby a charge has been created on the entire stock including the vehicles financed by the Company. The charge that was created in favour of the Company on the assets of Auto Web was duly registered with the Registrar of Companies vide Charge ID No. 10572591. As per the FPA and Deed of hypothecation, Auto Web shall not sell, dispose of or deal with the hypothecated assets except for the purpose of dealing with the same in the ordinary course of business. All hypothecated cars were entrusted to the Borrowers for and on behalf of the Company, with a clear understanding that once the entrusted hypothecated cars were sold by the Borrowers to their respective customers, the sale proceeds of the same would be deposited with the Company in due discharge of the above entrustment by the Borrower.

- p) During one of the stock audits held on 13.07.2020, it was discovered that out of 203 vehicles which were funded under the FPA by the Company, only 77 vehicles were present. Later, Auto Web Performance refused to cooperate, and the status of the said 77 vehicles is unknown till date. Thus, it is evident that accused /borrower have illegally removed all the hypothecated vehicles and misappropriated an amount of Rs. 13,60,72,600/-.
- q) The Petitioner/Applicant was arrested on 5th August 2021.
- r) The Petitioner/Applicant has filed bail application bearing no. 3487/2021 before Additional Sessions Judge (ASJ), Tis Hazari Courts. Vide order dated 9th December, 2021, the ASJ/Special Judge, NDPS (Central), Tis Hazari Courts, Delhi dismissed the aforesaid bail application.

SUBMISSIONS

3. Mr. Vikas Pahwa, Learned senior counsel appearing on behalf of the Petitioner/Applicant submitted that the Petitioner/Applicant was arrested on 5th August, 2021 and since then he is in custody. Investigation of the case has been completed. Chargesheet has been filed. It is submitted that conclusion of trial is likely to take time. During the course of investigation, Investigating Officer has collected all the incriminating materials against the petitioner. It is vehemently submitted that all the incriminating evidences/materials against the petitioner/applicant are of documentary in nature and there are no chances of of petitioner/applicant tempering the same. Therefore, no

useful purpose will be served by keeping Petitioner/Applicant/accused in Jail. It is further submitted that the dispute between the parties is purely of civil nature and requisition of FIR in the present case is glaring case of abuse of process of law

4. Learned senior counsel submitted that arrangement of availing credit facilities from the Complainant bank was continued from 9th January 2014 to till Feb, 2020, for which re-payments along with interest of Rs. 13.27 crores were made by the Accused Company to the Complainant Bank/BMW India Financial Services Private Limited from time to time. It is submitted that the Accused Company has made repayments of Rs. 600 crores approximately to Complainant bank over the course of their business relations.

5. It is submitted by the learned senior counsel that in addition to availing the credit facilities from the Complainant Bank, the Accused Company had also availed credit facilities from BMW India Financial Services Private Limited which was first sanctioned vide Sanction Letter dated 5th August 2014. For the aforesaid purpose, a Floor Plan Financing Agreement dated 13th December 2014 ("FPA") was entered between the Accused Company and BMW India Financial Services Private Limited. The credit facilities provided by BMW were received by the Accused Company in its Current Account maintained with HDFC Bank, and it was further transferred to Inventory Account of the Accused Company maintained with HDFC Bank. The credit facilities were further then transferred to Hyundai and cars were

received by the Accused Company thereof. The credit facilities were amended depending upon the requirement of the Accused Company. This system of availing of credit facilities continued from 2014 to 2020, whereby BMW India Financial Services had provided credit facilities from time to time, for which the Accused Company had made repayments to the tune of Rs. 200 crores approximately along with interest of Rs. 3.81 crores.

6. It is submitted that the dispute with the financiers arose when the Applicant was unjustifiably arrested in UPPPCL Case (FIR No. 540/2019) by UP Police and remained in custody from 6th December 2019 till 11th February 2021. After the arrest of the Petitioner/Applicant, there was nobody to look after the operations of the Accused Company and Staff of the Accused Company had also abandoned the Company. The business deteriorated due to Indian market being hit by the pandemic COVID-19 on 23rd March 2020 and the repayment of the credit facilities and interest got interrupted.

7. It is submitted that the petitioner/applicant was released on the bail by the Hon'ble Supreme Court vide order dated 1st February 2021. After being enlarged on bail, the Applicant had followed up with the Complainant Bank on phone and offered for the settlement, but the same was not heeded by the Complainant Bank. The Applicant had also written an email to the bank explaining all the circumstances stating therein that he was ready to restart/continue his long association with HDFC Bank Ltd. The Applicant did not receive any

positive response from the Applicant Bank. However, on 25th February 2021, the Complainant Bank filed a Police Complaint against the Applicant and its Company with EOW, Delhi Police. Pursuant to the Complaint of HDFC Bank, FIR No. 43/2021 dated 26th February 2021 was registered under Sections 420/406/120B of the IPC, against the Applicant and his Companies M/s Autoweb Performance Cars Pvt. Ltd. and Autoweb India Pvt. Ltd.

8. It is submitted by the learned senior counsel that during the investigation, BMW Financial Services had also filed a Complaint against the Applicant and its company for the recovery of the outstanding due payable to them, which was merged with the aforesaid FIR.

9. It is further submitted that the Investigating Officer had issued notices under Section 91A of the Cr.P.C on 22nd March 2021, 16th March 2021 and 7th June 2021, to which the Accused company had filed a reply dated 3rd July 2021. As a counterblast to order dated 22nd June 2021 passed by the court below whereby the investigating officer was directed to withdraw the notice under Section 91 of the Cr.P.C, the Investigating officer arrested the Petitioner/Applicant on 5th August 2021 and since then he is languishing in Judicial Custody.

10. It is submitted that since the entire evidence in the present case is documentary in nature; the trial is likely to take years to conclude and further owing to the voluminous nature of evidence, the Petitioner/Applicant cannot be allowed to languish in Jail for an

indefinite period. Reliance is placed on *State of Kerala vs. Raneef (2011) 1 SCC 784*.

11. It is vehemently submitted by the senior counsel that the Petitioner/Applicant is ready to clear all the dues against him (the complainant/bank) and an affidavit to this effect has also been filed by the Petitioner/Applicant stating therein the proposal for clearing the dues. The same is retreated below:

Total Liability Against HDFC: Rs 14.72 Crores (Approximately)

Proposal:

“5.2 Against the outstanding of 13.60 crore, the Complainant Bank has the following collaterals/security-

- 1. Mortgage of immovable property situated at M-801, Lagoon Apartments Gurugram valued at 7.13 Cr at the time of sanction of Inventory Funding done by HDFC people. The current market value of the said property has depreciated and is valued at 3.5-4 Cr.*
- 2. Inventory stock of 16 cars vehicles of Hyundai Cars valued at Rs. 97 Lacs. The Bank is in possession of FORM 22 and one key of these vehicles. Since the vehicles are lying in stockyard since 2020, the value has depreciated. Also, 2-3 vehicles have gone obsolete as they are not BS-6 norms vehicle and hence they cannot be registered. The Complainant bank may permit the*

Applicant to sell these cars and accordingly the sale proceeds generated thereof will be deposited with the bank.

3. *Commission of approximately 24.62 lacs and quarter booster of approximately 5-6 lacs is pending with HDFC Bank which is payable to the sister concern- Auto web India Pvt Ltd under the head of Commission. The Complainant bank may adjust this amount against the outstanding amount.*

5.3 PROPOSAL: The Applicant undertakes to deposit the proceeds generated from the sale of the aforementioned 16 Cars. In addition to this the Complainant Bank may adjust the 30 Lacs (approx.) payable to the sister concern. Further, the Applicant undertakes to make an honest and sincere endeavor for the sale of immovable property situated at M-801, Lagoon Residential Apartments Ambience Island NH8, Village Nathupur Tehsil. The current market value of the property is Rs. 3.5-4 crores and he will make genuine efforts for the sale of the property within 3-6 months of his release from custody.

5.4 The Applicant has honest intention to arrive at a full and final settlement with the Bank once he's enlarged on bail. Further, without prejudice to his rights, it is stated that he will make genuine efforts to re-pay the outstanding balance in instalments to the financiers as and when the business becomes operational and profitable.”

Total Liability Against BMW: Rs 11.90 Crores (Approximately)

Proposal:

“6.4 The alleged outstanding amount payable to BMW India Financial Services is Rs. 10.30 Crores (Towards inventory funding) + Rs. 1.60 Crores (Loan taken for Cadillac Car). The Applicant has honest intention to arrive at a full and final settlement with the Bank once he's enlarged on bail. Considering the fact that the Applicant has been in custody for over two years (UPPCL + Present Case), he is not in a position to make an offer right away. He would have to assess his business situation and accordingly will make an honest attempt to come up with a repayment plan in favour of BMW Financial Services.”

12. It is submitted that the Applicant is a bona-fide businessman and has honest intentions to fulfill all his responsibilities. In this regard, without prejudice to any rights, it is stated that he will make genuine efforts to re-pay the outstanding balance in instalments to the financiers as and when the business becomes operational and profitable. It is further on instructions submitted that he undertakes to abide by any condition imposed by this Court while granting bail.

13. It is also submitted by the senior counsel that the petitioner/Applicant is a severe Diabetic patient. His sugar levels are dangerously high i.e. 480+. His HB1AC touches 9.4 which is fatal in nature. He has pain in the lower back. Moreover, the Applicant has had blood in his urine due to his severe diabetic condition. His existing medical condition has been further aggravated by the pre-

existing co-morbidities i.e. spondylitis, etc. His health condition has seriously been deteriorated in custody and the chances of it worsening are extremely high. Therefore, in light of above facts and circumstances, it is prayed that the Petitioner/Applicant be released on bail.

14. *Per Contra*, Ms. Kusum Dhalla, learned APP for State has vehemently opposed the instant application and submitted that allegations against Petitioner/Applicant are of very serious in nature. Petitioner/Applicant had cheated HDFC Bank as well as BMW Financial Services to the tune of several crores of rupees and for committing the offence of cheating. Petitioner/Applicant had used forged and fabricated documents/emails. Petitioner/Applicant was previously also involved in a case of UPPCL Employees' Provident Fund scam and if the Petitioner/Applicant is released on bail, he may commit similar offences.

15. It is also submitted by the learned APP for the state that the trial in the instant case is yet to start and charges against Petitioner/applicant are yet to be framed. Also, statement of material witnesses is yet to be recorded in the Court. It is further submitted that the offence in question was committed in a preplanned manner and continued to have been committed for over a period of long time. It is the Petitioner/Applicant who himself was maintaining/running over the accused company and all the acts/omissions have been committed by the Petitioner/Applicant. Therefore, in light of above facts, the

court below has correctly passed the order while dismissing the bail application and hence the instant application is devoid of any merits and may be dismissed.

16. On the other hand, Mr. Kunal Tandon, learned Counsel appearing on behalf of HDFC Bank (complainant) also vehemently opposed the instant bail application and submitted that the Petitioner/Applicant had cheated HDFC bank approximately to the tune of Rs. 11.40 Crores. Petitioner/Applicant had sold various cars after taking loan from complainant bank and had misappropriated the entire amount by not forwarding the said amount to complainant. Therefore, in such facts, the application of the Petitioner/Applicant is devoid of merits and need to be dismissed.

17. On the other hand, Sh. Tushar Jarwal, Leaned Counsel appearing on behalf of BMW India Financial Services Pvt Ltd, also vehemently opposed the bail application and submitted that the Petitioner/Applicant has committed serious offences of cheating and forgery and the Petitioner/Applicant had dishonest intention right from the very beginning.

18. It is submitted that the Petitioner/Applicant operated two accounts with HDFC Bank and he used to send statements purportedly issued by HDFC Bank showing transfer of funds disbursed by BMW from its current account to inventory funding account in order to show utilization of money for purchase of Hyundai cars and to induce BMW to disburse more money on this basis.

19. It is further submitted that the statement of current account of HDFC Bank purportedly sent to BMW were found to be forged, on comparison with original bank statements since 2016-2017. Petitioner/Applicant had created forged bank statements to make BMW believe that the same are genuine and thereby induced BMW to disburse funds.

20. It is submitted by the learned counsel that in the present case, the money as well as cars have vanished without a trace which clearly shows that wrongful loss has been caused to BMW and wrongful gain has been caused to Petitioner/Applicant. The Petitioner/Applicant had taken money from BMW for purchase of new cars from Hyundai but verification of record shows that some cars were already purchased with other funds and were even sold to customer even prior to receipt of money from BMW and after sale of such cars, Petitioner/Applicant took money from BMW to purchase said cars from Hyundai.

21. It is further submitted that since 2016-2017, the Petitioner/Applicant has induced BMW to disburse money, based on forged statement of account and transaction proofs from HDFC Bank and later on disposed/destroyed data. Therefore, in light of above facts, there are high chances that if the Petitioner/Applicant is released on bail, he may temper the evidence/material.

22. The rival submissions now fall for consideration before this Hon'ble Court.

ANALYSIS

23. Heard the counsels for parties at length and perused the record.

24. This Court has given thoughtful consideration to the submissions made by learned counsel for the parties and has also perused the material on record.

25. The wife of the Petitioner/Applicant filed an affidavit dated 9th January 2022 in pursuance of the order dated 6th January, 2022 of this Court disclosing the mode of repayment to the financial institutions at his place/address of residence once he is enlarged on bail. The same is on the record. On perusal of the affidavit, in paragraph 4, it is contended that the Petitioner/Applicant shifted to Gurugram and all correspondences received at the permanent residence in Janakpuri were duly attended and replied too. It is also contended that the address of the rented accommodation is mentioned in the chargesheet as well as in the arrest memo. It is also stated in the affidavit that after the Petitioner/Applicant being enlarged on bail, he will be residing with his family at 1802, Tower 10, Vipul Belmonte Apartments, Golf Course Road, Sector-53, Gurugram – 122003.

26. Paragraph 5 of the affidavit states about the liability of HDFC Bank and paragraph 5.3 of the affidavit states about the proposal of the mode of repayment of the liability of the HDFC Bank.

27. Paragraph 6 of the affidavit states about the liability of the BMW India Financial Service Private Limited and the proposal of the mode of repayment of the liability of the BMW.

28. In the affidavit, it is also undertaken by the Petitioner/Applicant that he is *bonafide* businessman and has honest intentions to perform all his responsibilities, for which he will make all endeavor to repay the outstanding balance to the financiers.

29. This Court has also perused the medical report of the Petitioner/Applicant which is appended with the application for seeking interim bail on medical grounds, which states that the Petitioner/Applicant is a patient of uncontrolled Diabetes Mellitus type- II, Hypertension and seasonal Bronchial Asthma, sugar levels are dangerously high i.e. 480 + and his HB1AC has touched 9.4, which is extremely fatal in nature.

30. The report of the Senior Medical Officer is reproduced hereinafter:

“...On 17.12.2021, inmate/patient presented in jail Dispensary with complaint of generalized weakness and giddiness, he also gives history of loss of consciousness in the morning around 06:00 am. After examine in OPD, in view of high blood pressure and blood sugar he was advised some injections and referred to emergency of Central Jail Hospital for further management. On examination his blood sugar was 554 mg/dl and blood pressure was 134/87, on the same day, patient was admitted in emergency department of Central Jail Hospital, Tihar. In view of

high blood sugar and unstable condition of the patient and he kept on injectable insuline therapy to control his blood sugar level and advised blood pressure & blood sugar charting.

At present, patient is suffering from uncontrolled Diabetes Mellitus type-II (? Stress induced), Hypertension, seasonal Bronchial Asthma, Prostatomegaly with recurrent Urinary tract infection and having difficulties in passing urine, painful defecation, morning cough with chest congestion and generalized weakness. He admitted in Central Jail Hospital, Tihar and getting treatment for the same...”

31. The admitted facts are that the investigation has been completed, charge sheet has been filed and the petitioner is languishing in jail since 5th August 2021. Sofar as one previous criminal history (i.e. in UPPCL Employees' Provident Fund scam in December 2019 in case FIR No. 540/2019 under Sections 409, 420, 467, 468, 471 IPC and Section 13(2) of the Prevention of Corruption Act, 1988) are concerned, the same have duly been explained by the Petitioner/Applicant. All the incriminating evidences/materials against the Petitioner/Applicant are documentary in nature and have already been seized by the investigating agency. As per the statutory provisions, the maximum sentence for the offence punishable under Section 420 of the IPC is upto seven years.

32. The Hon'ble Supreme Court in the case of ***Joginder Kumar v. State of U.P.***, AIR (1994) SC 1349, has dealt with the contours of Article 21 of the Constitution of India with regard to the arrest of an accused to the effect that the power to arrest cannot be exercised in

isolation, and that it must have justification for the exercise of such power, as no arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person, without reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief *qua* the person's complicity and the need to necessitate such arrest.

33. The Hon'ble Supreme Court in *Arnab Manoranjan Goswami v. State of Maharashtra & Ors.*, (2020) SCC Online SC 964, has reiterated the value of the personal liberty enshrined under Article 21 of the Constitution of India. The Hon'ble Supreme Court further emphasized that basic rule behind the bail jurisprudent is "*to bail not jail*". The Court went on to observe that it is our earnest hope that our courts will exhibit acute awareness to the need to expand that footprint of liberty and use of our approach as a decision-making yardstick for further cases for the grant of bail.

34. In Case of *Sanjay Chandra v. CBI*, (2012) 1 SCC 40, the Hon'ble Supreme court has held that:

"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."

35. The consequences of pre-trial detention are grave and keeping an under-trial in custody would necessarily impact his right to defend himself during trial in as much as he will be clearly denied the right to a fair trial, which is guaranteed under Article 21 of the Constitution.

36. The fundamental rule of Bail in criminal jurisprudence is the presumption of innocence, while granting bail. The Hon'ble Supreme Court in the case of *Dataram Singh v. State of Uttar Pradesh & Anr.*, (2018) 3 SCC 22, held as under:

"1. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another

matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society."

37. It is settled law that fraudulent and dishonest intention should be present since inception for an offence of Cheating. In the present case a non-payment of miniscule amount (due to reasons beyond the control of applicant) in comparison to the huge amounts paid over the years has been deliberately given a criminal colour. The Hon'ble Supreme Court in *Vesa Holding Pvt. Ltd. v. State of Kerala, (2015) 8 SCC 293*, held as under:

"12. From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention

at the time of making initial promise being absent, no offence under Section 420 of the Penal Code, 1860 can be said to have been made out."

38. The Hon'ble Supreme Court in *Sushil Sethi v. State of Arunachal Pradesh*, (2020) 3 SCC 240, held as under:

"7.3. In Hira Lal Hari Lal Bhagwati [Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257: 2003 SCC (Cri) 1121J, in para 40, this Court has observed and held as under:

"40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Penal Code, 1860 does not arise. We have

read the charge-sheet as a whole. There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence. The appellants, in our view, could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a NGO and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. The Kar Vivad Samadhan Scheme certificate along with Duncan [CBI v. Duncans Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045J and Sushila Rani [Sushila Rani v. CIT, (2002) 2 SCC 697J judgments clearly absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded.

It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process."

It is further observed and held by this Court in the aforesaid decision that to bring home the charge of conspiracy within the ambit of Section 120-B IPC, it is necessary to establish that there was an agreement between the

parties for doing an unlawful act. It is further observed and held that it is difficult to establish conspiracy by direct evidence.

7.4. In *V. Y. Jose [V. Y. Jose v. State of Gujarat, (2009) 3 SCC 78: (2009) 1 SCC (Cri) 996J*, it is observed and held by this Court that one of the ingredients of cheating is the existence of fraudulent or dishonest intention of making initial promise or existence thereof from the very beginning of formation of contract. It is further observed and held that it is one thing to say that a case has been made out for trial and as such criminal proceedings should not be quashed, but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.

7.6. In *Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23J*, it is observed and held by this Court that when dispute between the parties constitutes only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

7.7. In *Inder Mohan Goswami v. State of Uttaranchal [Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259]*, it is observed and held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It is further observed and held by this Court that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. It is further observed and held that inherent jurisdiction

of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself.

8. Applying the law laid down by this Court to the facts of the case on hand, we are of the opinion that this is a fit case to exercise powers under Section 482 Cr PC and to quash the impugned criminal proceedings.

8.1. As observed hereinabove, the charge-sheet has been filed against the appellants for the offences under Section 420 read with Section 120-B IPC. However, it is required to be noted that there are no specific allegations and averments in the FIR or even in the charge-sheet that fraudulent and dishonest intention of the accused was from the very beginning of the transaction. It is also required to be noted that contract between WS SPML Infra. Ltd. and the Government was for supply and commissioning of the Nurang Hydel Power Project including three power generating units. The appellants purchased the turbines for the project from another manufacturer. The company used the said turbines in the power project. The contract was in the year 1993. Thereafter in the year 1996 the project was commissioned. In 1997, the Department or Power issued a certificate certifying satisfaction over the execution of the project. Even the defect liability period ended/expired in January 1998. In the year 2000, there was some defect found with respect to three turbines. Immediately, the turbines were replaced. The power project started functioning right from the very beginning -1996 onwards. If the intention of the appellants were to cheat the Government of Arunachal Pradesh, it would not have replaced the turbines which were found to be

defective. In any case there are no specific allegation and averments in the complaint that the accused had fraudulent or dishonest intention at the time of entering into the contract. Therefore, applying the law laid down by this Court in the aforesaid decisions. it cannot be said that even a prima ,facie case for the offence under Section 420 IPC has been made out

39. ***Bharatbhai Jayatilal Shah v. State, (2012) SCC OnLine Guj 3339***, the Hon'ble court held as:

“23. The papers reveal that the case rests primarily upon documentary evidence, a substantial amount of which is already with the investigating agency. It is not a case involving economic offences having national ramifications. The evidence is a matter of appreciation by the Trial Court and the law will take its own course.

26. For the aforestated reasons, in my considered view, it does not prima-facie appear that the grant of anticipatory bail would hinder or hamper the investigation as the material is documentary in nature, and most of it is already in the possession of the investigating agency. Hence, the following order:-

27. The application is allowed.....”

40. Since the investigation is complete, there is no apprehension of tampering any documents, influencing witnesses or absconding the trial. Hence, he satisfies the triple test laid down by the Hon'ble Supreme Court in ***P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791:***

"9. ... It was also submitted that the instant case is a documentary case and being a respectable citizen and former Union Minister, he cannot and will not tamper with the documentary record of the instant case which is currently in the safe and secure possession of the incumbent Government or the trial court.

23. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same in as much as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the under lining conclusion is that

irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

27. ... Except for recording the same, we do not wish to advert to the documents any further since ultimately, these are allegations which would have to be established in the trial wherein the accused/co-accused would have the opportunity of putting forth their case, if any, and an ultimate conclusion would be reached...

30. ...Taking these and all other facts and circumstances including the duration of custody into consideration the appellant in our considered view is entitled to be granted bail... ”

41. It is admitted fact that the evidence to be adduced in the instant case is substantially documentary in nature, which are already in the custody of the Investigation Agency. The petitioner has been languishing in jail for more than five months.

CONCLUSION

42. Taking into consideration the facts of the case, the arguments advanced by the learned counsels appearing on behalf of the parties, the proposal given by the Petitioner/Applicant, the materials on record and the medical reports of the Petitioner/Applicant, this Court is inclined to enlarge the Petitioner on bail.

43. Let the petitioner be released on regular bail pending trial on his furnishing of personal bond in the sum of Rs. 1,00,000/- (Rupees One Lacs only) with two solvent sureties of like amount to the satisfaction of the Trial Court, subject to the further conditions as follows:-

- (a) he shall surrender his passport, if any, to the Investigating Officer and shall under no circumstances leave India without prior permission of the Trial Court;
- (b) he shall cooperate in the trial and appear before the Trial Court of the case as and when required;
- (c) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- (d) he shall provide his mobile number(s) and keep it operational at all times;
- (e) he shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer;
- (f) he shall commit no offence whatsoever during the period he is on bail;
- (g) In case of change of residential address and/or mobile number, the same shall be intimated to the

Investigating Officer/Court concerned by way of an affidavit; and

44. With the above directions, the application is allowed and disposed of accordingly.

45. Other pending applications, if any, also stand disposed of.

46. It is made clear that above observations made by this Court while allowing the instant application shall have no effect on the proceedings pending before the Trial Court.

47. Copy of this order be sent to Superintendent Jail for compliance.

48. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

February 07, 2022
Dy/ot