

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 30.12.2022

+ BAIL APPLN. 3343/2022

TIKA RAM KHARE

..... Applicant

versus

STATE OF NCT DELHI

..... Respondent

Advocates who appeared in this case:

For the Appellant :Mr. Sumit R. Sharma, Mr. Sumeet Anand,
Mr. Pratyush Primal & Mr. Shantanu
Chauhan, Advs

For the Respondents :Ms. Richa Dhawan, APP for the State
alongwith SI Amit Kumar, PS EOW

CORAM

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The present application under section 439 Code of Criminal Procedure, 1973 (Cr.P.C.) for grant of regular bail is filed in FIR No. 119/2021, dated 06.08.2021 registered at Police Station Economic Offences Wing, under Sections 409/420/120-B of the Indian Penal Code, 1860 (IPC).

2. The FIR was registered on a joint complaint given by Dr. Sanat Kaul, Dr. Ranjana Kaul, Mr Anil Ram, Ms. Sadhana Ram and Ms. Gita Ram who alleged that a company named M/s Kumar

Sharebrokers Ltd. (KSBL) is a member of National Stock Exchange of India (NSE), engaged in stock exchange related activities including that of arbitrage, future and option, stock trading etc. The company through its director namely Ramesh Chand Arora had approached and lured the complainants/victims inducing them that they would get assured guaranteed returns upto 15% p.a. on their investments. Complainants alleged to have been cheated for a sum of ₹3.72 crores collectively plus the agreed interest. The amount was paid over a period of time, that is, 2013 to 2016.

3. It is further alleged that the present applicant was also a director and an authorized signatory to the bank accounts of the company at the relevant time.

4. Learned Counsel for the Applicant submits that the applicant is 70-year-old man suffering from various age-related ailments and is in judicial custody since 14.06.2022.

5. He submits that the Applicant was a salaried director in the company and his role in the company was only limited to matters pertaining to administration, legal, business development, human resource and correspondence with different institutions. The Applicant had no role whatsoever in handling the management and day-to-day affairs of the Company especially with respect to execution of agreements with the Complainants or trading of shares. He further states that the Applicant neither had any role in dealing with the NSE, BSE and/or SEBI for and on behalf of the Company nor had any role in the transfer / sale / purchase of shares for and/or on behalf of the Company.

6. He further submits that in the present case the investigation is complete and the charge-sheet has already been filed. He states that even the chargesheet does not reveal any recovery from the Applicant and also there is no evidence to show that any funds / assets / investments of the Complainants were misused / disposed / siphoned off by the Applicant and/or that the Applicant has got any monetary gains from the same. He states that the dispute is purely civil and commercial in nature.

7. Learned Counsel for the State opposes the present application and has filed status report.

8. She states that upon investigation it was revealed that the company was not an NBFC and the present applicant along- with other co-accused namely Ramesh Chand Arora were signatories to the bank account and also the ROC records have revealed that the Applicant was one of the directors at the relevant time.

9. She further states that during the course of investigation a reply pertaining to the investigation was received from SEBI in which it was revealed that the KSBL company was not authorized to accept the money for arbitrage trading. The SEBI circular do not permit broker to transfer client's securities to brokers own account. It was also revealed that that 112 complaints were received by SEBI with regards to the KSBL company and KSBL securities has been declared as defaulter by and expelled by NSE and BSE.

10. She further submits that when accused was non-cooperative during interrogation and did not gave satisfactory answers, but admitted being a signatory and the director of the company thereby

showing that he had knowledge about the day-to-day affairs of the company.

Reasoning

11. The charge sheet has already been filed in the present case.

12. It is seen that there are five accused and the applicant is Accused No. 2. Accused No. 3 has been assigned similar role as the Accused No. 2.

13. The charge sheet, however, was filed without the arrest of the said Accused No. 3. Accused No. 4 is also shown to be the Director in the Accused No. 5 company and the charge sheet was filed without the State finding any need for his arrest.

14. Accused No. 1, who is stated to be the Managing Director and Promoter of the Accused No. 5 company is stated to be on an interim bail.

15. It is not in dispute that the money, which is alleged to have been cheated has gone into the account of Accused No. 5 company and there is no allegation that any amount has gone into the applicant's account or that the money was taken out from the company's account for the benefit of the applicant.

16. The allegations made against the applicant is that, being the Director of the company, he was aware of the day-to-day functioning of the Accused No. 5 company. The applicant is 70 years old and it is not alleged that there is any likelihood of him, absconding during the trial or that he will tamper with the evidence.

17. The evidence, in the present case, is documentary in nature. The investigation is already complete and charge sheet has already

been filed.

18. It cannot be alleged that further incarceration of the applicant is required to carry out further investigation and that the applicant will hamper the investigation in case he is released on bail.

19. The other cos-accused persons, including the main accused are already on bail.

20. The applicant has a medical-ailments such as the compromised lungs because of the history of Tuberculosis and his liver is also damaged. The said medical condition has not been denied by the State.

21. It is not in dispute that the payments were made by the complainant, for commercial purposes and to earn interest which is more than the normal market norms. The complaint was made when the complainant did not receive the return as agreed in terms of the agreement. It is claimed by the applicant that a sum of ₹ 5.5 crores has already been paid to the complainants during the disputed period.

22. Whether the transactions were purely commercial or was there any element of cheating, would be tested at the time of trial and cannot be presumed at this stage.

23. Considering the above and the fact that the applicant is in judicial custody since 14.06.2022 and that the trial is likely to take a considerable amount of time, this Court feels that no useful purpose would be served by keeping the applicant in further incarceration.

24. In view of the above, the applicant is directed to be released on bail in FIR No. 119/2021, on furnishing a bail bond of ₹50,000/- with one surety of the like amount, to the satisfaction of the learned Trial

Court/ duty Metropolitan Magistrate, on the following conditions:

- a. He shall not leave the city without informing the concerned IO/SHO;
 - b. He shall under no circumstance leave the country without the permission of the learned Trial Court;
 - c. He shall appear before the learned Trial Court as and when directed;
 - d. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
25. In the event of there being any FIR/DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by way of seeking cancellation of bail.
26. The bail application is allowed in the aforementioned terms.
27. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the present bail application and should not influence the outcome of the trial

न्यायमेव जयते

AMIT MAHAJAN, J

DECEMBER 30, 2022

"SS"