

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 30.12.2022

+ BAIL APPLN. 3344/2022

TIKA RAM KHARE

..... Applicant

versus

STATE OF NCT DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant :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

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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. 4/2021, dated 11.01.2021 registered at Police Station Economic Offences Wing, under Sections 406/420/120-B of the Indian Penal Code, 1860 (IPC).

2. The FIR was registered on a joint complaint given by Mr Gopal Krishna Handa, Smt. Neetu Handa, Sh. Pragati Kumar, Sh. Parth Kumar and Sh. Kritin Kumar who alleged that a company named M/s

Kumar Sharebrokers Ltd. (KSBL) [herein after referred as “Company”] lured and induced the complainants that they would get promised / guaranteed returns if they place a basket of securities including bonds and shares with the company for margin funding as well as to meet working capital requirements of the company.

3. It is also alleged that the Complainants were fully assured that the securities would be completely safe with the company and the same were fully backed by legal agreements and cheques of equivalent amounts as security. As per the terms of agreement, fixed guaranteed interest was to be paid to the complainants and the assurance with respect to the same was given.

4. The Complainants were further promised that the loaned securities can be withdrawn at any time by giving seven days’ notice to the company. The first agreement was executed on 06.06.2011 and thereafter 10 more agreements were executed, last agreement being executed on 17.02.2018.

5. 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.

6. 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.

7. He submits that in the present case the investigation is complete and the charge-sheet has already been filed. He states that the perusal of the chargesheet clearly shows that the alleged dispute is vis-à-vis breach of contract and the same is purely civil in nature and the company had regularly been paying the interest for the year 2011 to 2018. He further disputes the allegation of luring the complainants and has placed reliance on the Emails and What's app chats between the company and the complainants which are annexed as *Annexure E & Annexure F*.

8. He further submits that the complainant has not disclosed the fact that they have received an amount of more than Rs.10 Crores as interests from the years 2010 to 2018.

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

10. She submits that the complainants had executed agreements and loaned their shares and bonds which had a value of Rs. 16,74,76,043/- and it was mentioned in the agreements, that the loaned securities would be used as margin by the company in its trading activities and must remain intact/ secure.

11. She submits that the accused company had issued security cheques of Rs. 27 Crores approx. which is equivalent to the amount against loaned securities and these cheques were issued by the alleged directors namely Tika Ram Khare (present applicant) and Ramesh Chand Arora (co-accused). Accused stopped paying the guaranteed interest since July 2018 despite repeated requests. Complainants then served 7 days' notice for returning the securities as per the agreement

but the same has not been done till date.

12. She further submits that during the detailed investigation it was revealed that securities of the complainants were transferred into Demat account of the company through various transactions, thereafter the loaned securities were transferred to different Demat accounts of their own and were finally disposed of. It was further revealed that the company had disposed of most of the securities in the very beginning and no shares/bonds were available in the holding statement of the company.

13. She lastly submits that the company had no intention of ever paying back the loaned securities and the interest given was only to gain the trust of the Complainants in order to further obtain their remaining securities and under no circumstance it can be stated that the present applicant being the Director and Signatory of the company had no knowledge of alleged fraud being committed.

Reasoning

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

15. It is seen that there are three accused and the applicant is Accused No. 2. Accused No. 1 is the Managing Director and Promoter of the Accused No. 3 company.

16. The charge sheet, was filed in which accused namely Ajit Sinha and Ajit Mishra who are also shown to be the Directors in the Accused No. 3 company were kept in column 12 since the State did not find any incriminating evidence against them.

17. Accused No. 1 is stated to be on an interim bail.

18. It is not in dispute that the money, which is alleged to have been

cheated has gone into the account of Accused No. 3 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.

19. 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. 3 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.

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

21. 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.

22. The other co-accused persons, including the main accused are already on bail.

23. 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.

24. It is not in dispute that pursuant to the agreements, payments in terms thereof were made for a considerable period of time. The complaint was made after the complainant stopped receiving the return as agreed in terms of the agreement. It is claimed by the applicant that a sum of Rs. 10 crore has already been paid to

complainants.

25. 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.

26. 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.

27. In view of the above, the applicant is directed to be released on bail in FIR No. 4/2021, 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;

28. 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.

29. The bail application is allowed in the aforementioned terms.

30. 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.

AMIT MAHAJAN, J

DECEMBER 30, 2022

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