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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 21.07.2023
Pronounced on: 31.07.2023*

+ **BAIL APPLN. 1064/2023 & CRL.M.A. 13096/2023**

KASHISH JAIN Petitioner

Through: Mr. Tanveer Ahmed Mir, Mr. Saud Khan, Ms. Ekjot Bhasin and Mr. Shashwat Sarin, Advocates

versus

STATE NCT OF DELHI Respondent

Through: Mr. Manoj Pant, APP for the State with SI Virender Kumar, P.S. Model Town and SI Pradeep Kumar, Special Branch.

Mr. Gaga Bhatnagara and Ms. Mansi Jain, Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present application filed under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the applicant seeks regular bail in case FIR bearing no. 341/2018 registered at Police Station Model Town under Sections 420/467/468/471/120B/34 of Indian Penal Code, 1860 ('IPC').



2. Brief facts of the case are that the co-accused i.e. Naresh Jain and Simmi Jain i.e. parents of the present applicant, had taken the property of complainant Mr. Sanjay Garg, situated at Z-10, First Floor, Model Town II, Delhi on rent *vide* agreement dated 24.01.2013. Subsequently, the accused persons had approached the complainant to buy the said floor of the property, and the deal for the same was finalised for Rs.2.75 crores. It was agreed that co-accused Naresh Jain would pay Rs.90 lakhs to the complainant on or before 30.05.2015 and remaining amount in next 12 months. Thereafter, the sale deed was executed on 30.05.2023 and the co-accused persons i.e. Naresh Jain and Simmi Jain had paid Rs.2.11 crores to the complainant till 22.09.2016. The complainant had then requested co-accused persons to pay the remaining amount and after persuasion, co-accused Naresh Jain had issued two cheques of Rs.13 lakhs and Rs.6 lakhs to the complainant, which had later got dishonored. Despite the failure to pay the balance amount, co-accused Naresh Jain had further sold the property to some other persons in March, 2018. Subsequently, the complainant had received legal notice dated 01.05.2018, in which co-accused Simmi Jain had now claimed to be the owner of the second floor of the property in question *vide* a sale deed dated 30.03.2015. Pursuant to this, in July, 2018, the complainant had also received summons in a suit filed by the co-accused Simmi Jain seeking possession and recovery of rent in respect of second floor of the property. As per the complainant, he had then realised that co-accused Simmi Jain had got the floor registered in her name on the basis of forged and fabricated



documents. The complainant had further realised that the accused persons had used the forged sale deed as collateral to mortgage the second floor of the property to Cholamandalam Investment and Finance Company Ltd., Karol Bagh, Delhi, and since the accused persons had failed to pay the loan amount, the property had been seized by Cholamandalam Finance. On these allegations, the present FIR was registered. During the course of investigation, the details in respect of alleged sale deed of the second floor of the property were analysed and several discrepancies were found. It was revealed that false cheques had been used at the time of execution of sale deed, and complainant Mr. Sanjay Garg was not present at the time of registration of the property at the office of concerned Sub-Registrar. It was further revealed that all three accused persons had obtained a loan of about Rs.3 crores by mortgaging the second floor of the property and the loan amount disbursed by Cholamandalam Investment had gone into the account of M/s. Shreya International on the written request of accused persons namely Naresh Jain, Simmi Jain and the present applicant i.e. Kashish Jain. The proprietor of M/s. Shreya International i.e. co-accused Simmi Jain had transferred Rs.95 lakhs on 11.05.2015 to the accounts of Kashish International (owned by applicant Kashish Jain) and NH International (owned by co-accused Naresh Jain and applicant Kashish Jain). During the investigation, the partnership deed dated 06.08.2012 of NH International was also found to be forged and fabricated and the said deed contained the address of the complainant although the accused persons had started living there only in the year 2013. Thereafter,



Section 120B of IPC was added in the present case and the applicant was arrested on 24.11.2018.

3. Learned counsel for the present accused/applicant states that the applicant has been in judicial custody for about four years and eight months in a case which is being tried by a Magistrate, and where the maximum punishment for majority of the offences alleged can be of seven years. It is stated that the accused has remained in custody for a substantial period, and bail should be granted on this ground alone, keeping in mind several judicial precedents of the Hon'ble Apex Court.

4. *Per contra*, learned APP for the state argues that allegations against the applicant are serious. Learned counsel for the complainant, duly assisting the learned APP, also submits that the conduct of the applicant should also be taken on record. It is stated by learned counsel for the complainant that the applicant had earlier moved several bail applications which were either withdrawn or dismissed and there is no fresh ground for seeking bail, and that releasing the applicant on bail can pose a threat to the complainant.

5. The arguments addressed by both sides have been heard and material placed on record has been perused.

6. In the present case, the case against the present applicant in a nutshell, as per the prosecution, is that he is a co-applicant in the loan which had been taken from Cholamandalam Investment & Finance Company Ltd. on the basis of a forged and fabricated sale deed, he had played an active role throughout the loan process including putting his signatures of the undertakings, and that he is a beneficiary



of about Rs. 2.2 crores. The case set out by the applicant, on the other hand, is that he was not named in the FIR and no role was attributed to him by the complainant, and it was only later during the investigation that he was implicated in the present case on charges of conspiring with his parents i.e. co-accused Naresh Jain and Simmi Jain in forging documents and obtaining loans.

7. In this background, this Court takes note of the fact that the applicant has been in judicial custody since 24.11.2018. The chargesheet in the case filed on 30.01.2019, first supplementary chargesheet on 15.01.2021 and second supplementary chargesheet on 10.04.2022. Charges against the applicant were framed by the learned Trial Court *vide* order on charge dated 17.11.2022, and the complainant was examined in chief on 06.01.2023.

8. It can also be observed that the applicant has been charged with offences punishable under Sections 420/467/468/471 of IPC, for which the maximum punishment which can be awarded to the applicant is seven years, except in case of Section 468. However, as rightly pointed out by the learned counsel for the applicant, the trial in the present case is being conducted by the learned Metropolitan Magistrate, who as per Section 29 Cr.P.C. is empowered to pass a sentence for a maximum period of three years and under Section 31(2)(b) Cr.P.C., of a maximum period of six years. The applicant has already remained in judicial custody for about four years and eight months.

9. The Hon'ble Apex Court in case of *Mohd. Muslim v. State (NCT of Delhi)* 2023 SCC OnLine SC 352, while emphasizing the



importance of speedy trial and the need to consider the duration of custody of the accused while deciding bail applications, had observed as under:

“2. Long back, in *Hussainara Khatoon v. Home Secy., State of Bihar* this court had declared that the right to speedy trial of offenders facing criminal charges is “implicit in the broad sweep and content of Article 21 as interpreted by this Court”. Remarking that a valid procedure under Article 21 is one which contains a procedure that is “reasonable, fair and just” it was held that:

“Now obviously procedure prescribed by law for depriving a person of liberty cannot be “reasonable, fair or just” unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as “reasonable, fair or just” and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.”

3. These observations have resonated, time and again, in several judgments, such as *Kadra Pahadiya v. State of Bihar* and *Abdul Rehman Antulay v. R.S. Nayak*; in the latter the court re-emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

“The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to



speedy trial on the ground that he did not ask for or insist upon a speedy trial.”

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling...”

10. Considering the overall facts and circumstances of the case, duration of the custody, and the fact that charges have already been framed and the complainant has already been examined, this Court is of the opinion that the trial will take some time to conclude and prolonged incarceration of the applicant will serve no purpose. Therefore, this Court is inclined to grant regular bail to the applicant/accused on his furnishing personal bond in the sum of Rs.1,00,000/- with one surety of the like amount to the satisfaction of the Trial Court/Successor Court/Link Court/Duty Judge concerned on the following terms and conditions:

- i) The applicant shall remain available on mobile phone numbers, shared by him with the Police.
- ii) The applicant shall surrender his passport, and shall not leave the country during this period without permission of the learned Trial Court.
- iii) The applicant shall not directly or indirectly make any attempt to influence the witnesses.
- iv) In case of change of residential address/contact details, the applicant shall promptly inform the same to the concerned Court.



v) The applicant shall regularly appear before the learned Trial Court and attend the proceedings.

11. Accordingly, the bail application stands disposed of along with pending application.

12. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

13. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 31, 2023/zp



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