

Naresh Kharab Vs. State

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SooperKanoon Citation : sooperkanoon.com/1170248

Court : Delhi

Decided On : Nov-13-2014

Judge : Sunita Gupta

Appellant : Naresh Kharab

Respondent : State

Advocate for Pet/Ap. : Ms. Geeta Luthra, Mr. Sanjeev Sahay, Mr. Narendra Goyal, Mr. Priyesh Mishra, Mr. Pramod Kumar Dubey, Mr. S.K. Jha Investigating Officer, Mr. Pulkit Misra, Mr. Sunil K. Mittal, Mr. Vipin K. Mittal

Judgement :

\$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

13. h November, 2014 BAIL APPLN. 1660/2014 NARESH KHARAB Through: Petitioner Ms. Geeta Luthra, Senior Advocate and Mr. Sanjeev Sahay, Mr. Narendra Goyal and Mr. Priyesh Mishra, Advocates versus STATE Through: Respondent Mr. Pramod Kumar Dubey, Special Public Prosecutor for the State with Mr. S.K. Jha Investigating Officer and Mr. Pulkit Misra, Advocate. + BAIL APPLN. 1922/2014 NITIN SINHA @ NITIN SINGH @ NITIN BIHARI Petitioner Through: Mr. Sunil K. Mittal and Mr. Vipin K. Mittal, Advocates. versus STATE Respondent Through: Mr. Pramod Kumar Dubey, Special Public Prosecutor for the State along with SI SK Jha, PS EOW/Crime Branch + BAIL APPLN. 1923/2014 NITIN SINHA @ NITIN SINGH @ NITIN BIHARI Petitioner Through: Mr. Sunil

K. Mittal and Mr. Vipin K. Mittal, Advocates. versus STATERespondent
Through: Mr. Pramod Kumar Dubey, Special Public Prosecutor for the State along
with SI SK Jha, PS EOW/Crime Branch CORAM: HON'BLE MS. JUSTICE
SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. By these bail applications, the petitioners/applicants seek bail in case FIRNo.152/2011, P.S.Moti Nagar u/s 406 /409/420 /467/468/471 /120B and 34 IPC and Section 3, 4 & 5 of Prize Chits & Money Circulation Schemes (Banning) Act, 1978. Petitioner - Nitin Sinha also seeks bail in FIR No.84/2011, Police Station Moti Nagar under Sections 406/420 of Indian Penal Code.

2. Ms. Geeta Luthra, learned senior counsel for the petitioner Naresh Kharab submitted that the charge sheet has been submitted on 16th August, 2013. A bare perusal of the charge sheet filed by the prosecution reflects that the money siphoned by the petitioner herein is not more than Rs.1,10,21,816/-. There is no allegation of the prosecution that the aforesaid amount has been transferred to the account of the petitioner or has been misappropriated by him. The two directors, namely, Lokeshwar Dev @ Ullas Prabhakar Khare and Raksha J Urs @ Priyanka Saraswat Dev incorporated and started a company under the name and style of M/s. Stock Guru India. The said company was a non-banking financial company. These two main accused floated various active plans to dupe innocent investors. The petitioner himself is a victim and his family members are bonafide investors. He has been duped of his hard earned money. Pursuant thereto he had filed a complaint under Section 200 Cr. P.C. and sent a legal notice.

3. The petitioner was arrested on 6th May, 2013. His police remand was taken till 13th May, 2013, however, police presented him before the learned Trial Court on 12th May, 2013 with a request that he be sent to judicial custody. During the remand, the police could not find any incriminating document or evidence against the petitioner. In the remand application, prosecution has alleged that the petitioner has purchased properties at Indore and Haridwar from the alleged gotten money. From the investigation and charge sheet filed, it is evident that

these lands were purchased much prior to 2009 and incorporation of the SGI. However, no document was found by the police to substantiate their allegation. The petitioner has cooperated with the prosecution in the investigation of the said FIR. Statements of all the witnesses under Section 161 Cr.P.C., if perused, make specific allegations against SGI and its two directors, namely, Lokeshwar Dev and Priyanka Saraswat. Against the petitioner it is a vague, generic and omnibus allegation. On the complaint of Sunil Kumar, present FIR has been registered. Perusal of the complaint reflects that the money was paid by Sunil Kumar to the said two directors. The said directors issued several documents in favour of Sunil Kumar to falsely assure him that his money is safe and secure with the SGI. None of the documents like cheques, promissory note, undertakings, agreements and invoices etc. have been signed or executed by the petitioner. This fact holds truth for all the complaints which have been lodged by investors against SGI and the said two directors. The case of prosecution is also that money has been siphoned by the said two directors. Money and assets to the tune of more than Rs.100 crores have already been recovered from the said two directors, namely, Lokeshwar Dev and Priyanka Saraswat Dev.

4. The prosecution has filed the alleged bank statement of the petitioner and that of his brother which establishes that the entire allegations made by the prosecution with respect to money siphoning are false. Present is a classical example where everyone including the petitioner has been duped by the said two directors. Petitioner himself was induced by the said two directors to invest his and his family's hard earned money with SGI. Petitioner fell prey to the stratagem adopted by the said two directors. Several people were induced by the said two directors to not only invest but they in turn brought several other investors. In fact, the complainant Sunil Kumar himself was introduced by a person, namely, Vinod who had himself invested with SGI. Sunil Kumar himself introduced several other people to invest in SGI. The list of investors which has been filed along with the charge sheet will reflect that every investor has introduced other people to invest their money. The guiding greed behind these investors was that they were going to receive unprecedented return of 20% per month. When the entire criminal conspiracy hatched by the said two directors came to the knowledge of the petitioner, he lodged several complaints against the SGI and two directors. In fact,

many investors have lodged complaint against Sunil Kumar wherein it was alleged that Sunil Kumar was one of the persons who introduced them to invest money with SGI. Petitioner along with 25 other investors filed a complaint under Section 200 Cr.P.C. r/w Section 156 (3) Cr.P.C. for registration of FIR against Sunil Kumar and others including two directors. In the said complaint, the complainant Sunil Kumar filed an application under Section 340 Cr.P.C. which was dismissed being not maintainable. However, the Court held that since the petitioner is one of the accused in the complaint lodged by Sunil Kumar, hence no direction was given in the complaint filed by him. It was further submitted that prosecution has made allegations that the petitioner has two PAN Cards. No investigation has been done by the prosecution in this respect. There was no criminal motive behind taking the second PAN Card. It was inadvertent act of third person which led to the issuance of the PAN Cards. Moreover, at best, it is an offence under the Income Tax Act for which the penalty is fine only. The petitioner did not earn any financial benefit. complainant/investors are also responsible for the crime. invested money in SGI without due diligence. The They The petitioner, who had been supporting the prosecution case throughout by lodging complaints; by moving to the Court seeking appropriate direction, has been made an accused in the present case because of faulty investigation conducted by the police. The petitioner and other persons did not receive cash or money in the form of demand draft, pay orders etc. for their alleged commission. The said two directors had crafted the concept of e-wallet. Under e-wallet scheme, the money was to be deposited in the e-account allegedly maintained in the name of these investors because they brought investment but these e wallets were never encashed and converted into actual money. The net result is that the said two directors siphoned most of the funds. It was further submitted that the charge sheet is running into more than 25000 pages with more than 2300 witnesses. The charge has yet not been framed. Hence, after framing of the charge, the trial is going to take long time. Almost a year has elapsed since the filing of the charge sheet. It will take several years to complete the trial. The petitioner is in custody since 13th May, 2013. The incarceration of the petitioner in jail is like a pre-conviction punishment with sole intention to punish the petitioner before actually being convicted. The petitioner has not tampered with evidence. He has never tried to flee from trial. He has roots in the society and is

living with his family which constitutes daughter, wife and parents. The petitioner is suffering from medical problems like enlargement of liver, spinal cord pain, extremely hyper thyroid and is suffering from psychiatric disorder and has also been advised conservative treatment of his medical condition. The jail hospital is not equipped to provide proper medical care to the applicant.

5. Reliance was placed on Sanjay Chandra v. CBI, AIR 2012 SC830 H.B. Chaturvedi v. CBI, 2010 (3) JCC2109 Suresh Kalmadi v. CBI, 187 (2012) DLT575& Nanjappa v. UOI, (2007) 4 SCC350 for submitting that right to bail is not to be denied merely because of the sentiments of the community against the accused. Keeping in view the period of incarceration in jail, his continuous detention during pre-trial stage is not in the interest of justice. Since the investigation is already complete, therefore, bail is not to be denied.

6. The submissions made by Sh. Sunil K. Mittal, Advocate for the petitioner-Nitin Sinha were also substantially the same. It was submitted that the petitioner himself was one of the investors in the scheme floated by the two directors and he has nothing to do with the management of the same. The Investigating Officer has adopted the policy of pick and chose. Not a single investor introduced by the petitioner made any complaint against him. Exact role of the petitioner is not specified by the police and very conveniently the respondent is using the term they in order to involve the petitioner in the crime. The petitioner was also arrested in FIR No.156/2008 in which he has already been ordered to be released on bail vide order dated 7th October, 2013 passed by learned CMM. The charge sheet is running into voluminous pages with more than 2100 witnesses and, therefore, trial is not likely to conclude within a reasonable time. Trial is at threshold. Even the charge has not been framed. Referring to the order of the learned Trial Court, it was submitted that the application was dismissed on the ground that the petitioner has earned Rs.5 crores which is against the status report submitted by the State according to which the petitioner has received 1,02,67,189/-. The figure has been exaggerated in order to prejudice the Court. It was also alleged that the petitioner is having two PAN Cards but that is not a criminal offence. The same attracts the provisions of Income Tax Act. The petitioner is in custody since 30th September, 2013. The petitioner has roots in society and is not likely to flee. He is a chronic

diabetic patient who has been medically advised to take regulated insulin injections as his sugar levels shoot up to 400 at times. Further detention of the petitioner would amount to punishing him without affording a fair chance to defend himself against the false and fictitious allegations. As such, he be released on bail.

7. Countering the submissions made by the learned counsels for the petitioners, Sh. Pramod Kumar Dubey, Special PP for the respondent/State submitted that accused Nitin Sinha has been continuously misleading the Court. He was not joining the investigation. Hence non-bailable warrants were issued against him. He was arrested on 30th September, 2013 in case FIR No.152/2011 Police Station Moti Nagar and thereafter in this case on 4th October, 2013. Seeing the past conduct of the applicant and his influence, there is a great apprehension and reasonable belief that applicant shall not be available during the course of further proceedings and he shall flee from justice. It was further submitted that the accused was actively involved in the scheme of Stock Guru India as a promoter and agent and was introducing more and more people to invest in the firm. The complainant-Sunil Kumar and most of the investors in their statements named accused Nitin Sinha also who introduced them in the scheme. Prima facie, it is established that accused Nitin was an active participant in the inducement of investors into Stock Guru India and he was hand in glove with other accused. He got issued two PAN Cards by giving two different date of births, one in the name of Nitin Sinha and other in the name of Nitin Behari on the basis of forged documents. During the period of police custody remand of accused Nitin Sinha, incriminating documents and a bunch of papers pertaining to Stock Guru India, i.e., Registration Certificate (ISO Certificate), Certificate of Incorporation were recovered at his instance. It was also found that he was an initial member of Stock Guru India and has taken SGI ID Nos. 115 to 130 in his name and the name of his family members. IDs in Stock Guru India started from serial number 111 and SGI ID Nos. 111 to 114 belonged to accused Ulhas Prabhakar Khaire @ Lokeshar Dev, Raksha J.

Urs @ Priyanka Saraswat Dev and their daughters. Accused Nitin earned crores of rupees by inducing general public to invest money in M/s. Stock Guru India. He got invested Rs.489 crores of innocent investors through SGI ID115to 130 down

the line and the accused received Rs.1,02,67,189/- as commission. On 18th January, 2011, Income Tax Department conducted raid and Rs.2.93 crores were recovered from the residence of accused Nitin Sinha. Investigation revealed that there are 2,05,062 investors all over the country who have invested money in Stock Guru India and joined as member of Stock Guru India. Total amount involved in the matter is more than Rs.494 crores. More than 13,500 complaints have been received in Delhi only. As regards the delay in trial is concerned, it was submitted that the delay is not attributable to prosecution. One of the co-accused Ulhas Prabhakar Khaire @ Lokeshar Dev is delaying the trial. Till date even the scrutiny of the documents is not complete. Moreover, prosecution will be dropping certain witnesses. It was further submitted that the order passed in the bail application of Suresh Kalmadi or Sanjay Chanra are not applicable to the present case inasmuch as those cases pertain to the Government exchequer and to the policy decisions whereas present is a case where public at large has been defrauded.

8. Reliance was placed on Sunil Grover v. State, Bail Application No.104/2012; Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC439 9. Substantially similar pleas were taken while opposing the bail application of Naresh Kharab and it was submitted that the accused was not available for investigation as he deliberately absconded, ultimately he was arrested. Seeing his past conduct as absconder and his influence, there is grave apprehension and reasonable belief that he will not be available during the course of further proceedings and shall flee from justice. He had stated before the Income Tax Authorities that he had been working with Stock Guru India as Relationship Manager and was an agent of the firm. During the raid of Income Tax Department at his residential premises, Rs.4.88 crore have been found in cash and the same was seized from him. He got issued two PAN Cards by providing two different dates of birth, one in the name of Naresh Kumar Kharab and another in the name of Naresh Kharab. He used the forged PAN Card No.BGLPK5180R to open an account with Axis Bank and this amount was used to receive the money/commission related to the accused company-Stock Guru India. Rs.1,25,82,348/- have been credited in this account which was opened on the basis of fake PAN Card. Seven video tapes were recovered at his instance from his residential premise captioned SGI Conference which clearly reveals his

involvement in the scam. It was further revealed that SGI ID354 actually belonged to Naresh Kharab although it was in the name of his brother. Through this ID, there are 95,714 investors. The total money invested under this ID was about 248.35 crores. Accused earned crores of rupees as commission. It is an economic offence involving the huge loss of public funds and has to be viewed seriously and, therefore, the petitioner is not entitled to the indulgence of the Court.

10. Rebutting the submissions of learned Special Public Prosecutor for the State, it was submitted by the learned counsel for the petitioners that the case of Sunil Grover (*supra*) is not applicable in the instant case, inasmuch as, he was the main accused. Moreover, interim bail was granted to him to settle the matter, however, he misused the concession of bail and did not take any step for settling the matter. As such, his bail application was dismissed whereas the petitioners themselves are victims and not the main accused. Moreover, there are no allegations of coercing or threatening any witness. Y.S. Jagan Mohan Reddy (*supra*) is also not applicable, inasmuch as, in that case bail application was dismissed as the charge sheet was yet not submitted and the investigation was still in progress.

11. I have heard learned counsel for parties and perused the record.

12. Before proceeding to consider the rival submissions of the learned counsel for the parties, it will be relevant to extract the proposition of law laid down by Honble Supreme Court in Sanjay Chandra(*supra*) wherein it was held:

14. 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 can be 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. 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 un-convicted 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. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

15. In the instant case, as we have already noticed that the "pointing finger of accusation" against the Appellants is 'the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the Appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice."

The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would

jeopardize the personal liberty of an individual. This Court, in *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2005) 2 SCC42 observed that "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of non-bailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so.

16. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. In the case of *State of Rajasthan v. Balchand*, (1977) 4 SCC308 this Court opined:

2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the Petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the Petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the Petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the Petitioner being granted bail at this stage.

At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the Petitioner will report himself before the police station at Baren once every fortnight.

13. Thus the requirements that have to be balanced at this stage are the seriousness of the accusations, whether the witnesses are likely to be influenced by the petitioners being enlarged on bail during trial and whether the accused are likely to flee from justice if released on bail.

14. The thrust of the arguments of learned Special Public Prosecutor for the State opposing the bail application is that the offence committed by the petitioner is the result of deep rooted conspiracy involving huge loss of public funds and affecting the public at large. Sunil Grover (*supra*) relied upon by the learned Special Public Prosecutor is, however, distinguishable as in that case the petitioner floated advertisement and invited the offers from the members of the public to invest money in their scheme by promising them lucrative returns at regular intervals. He was able to gain their confidence and cheated them of their hard earned money which ranged from Rs.1 lac to Rs. 10 lacs. Moreover, he obtained interim bail from the Court by saying that he had the intention of selling his property erected from ill gotten money and that he would deposit the sale proceeds with the Court. However, that was only a ploy to come out on bail. He did not take any step to sell the property or deposit the sale proceeds with the Court. As such, keeping in view the gravity of the offence coupled with his conduct before the Court, the application was dismissed. In the instant case, as per the case of prosecution itself, the scheme of Stock Guru India was floated by its two directors, namely, Lokeshwar Dev @ Ullas Prabhakar Khare and Raksha J Urs @ Priyanka Saraswat Dev. As per the scheme, 20% return per month was to be given to the investors up to 6 months on the principal amount and the principal amount was to be refunded in 7 months by generation of money from share market. It is the case of the petitioner that like the complainant and other investors, they had also invested their money and did not receive any financial gain. Likewise, Y.S. Jagan Mohan Reddy (*supra*) is also distinguishable, inasmuch as, in that case, the application for bail was moved when the investigation was still in progress. However, things are different in the instant case. The investigation is already

complete. Charge sheet has already been filed. As per the charge sheet, the statement of witnesses runs to several hundred pages and the documents on which the prosecution relies are voluminous. The case is at its threshold as even scrutiny of the documents is yet not completed. The trial may take considerable time. In Sanjay Chandra (supra), this was one of the factors which was considered by their Lordships while granting bail by observing that it is not in the interest of justice that accused should be in jail for any indefinite period. It was also observed that no doubt, the offence alleged against the appellant is a serious one in terms of alleged huge loss to the State Exchequer, that, by itself, should not deter from enlarging the appellants on bail when there is no serious contention that the accused, if released on bail, would interfere with the trial or tamper with evidence. There is no good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge sheet.

16. In the instant case, the petitioners are in custody for over more than 1 year. There is no evidence of the petitioners threatening the witnesses or interfering with the evidence during investigation. As regards the petitioners having two PAN Cards, it is alleged that it attracts the provisions of Income Tax Act and the Income Tax Authorities have not initiated any proceedings against the petitioners regarding two PAN Cards. The question whether the PAN Cards were obtained deliberately or it was by inadvertence is still required to be gone into during the course of trial.

17. Having regard to the entire facts and circumstances of the case, the bail applications are allowed and the petitioners are ordered to be released on bail on furnishing personal bond in the sum of Rs.5,00,000/- each with two sureties in the like amount to the satisfaction of the learned Trial Court, subject to the condition that: a) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority. b) They will not dispute their identity as the accused in the case. c) They shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered, that fact should also be supported by an affidavit. d) They shall not leave the country

without the prior permission of the Trial Court. e) Liberty is reserved to the State to make an appropriate application for modification/recalling the order passed, if for any reason, the appellants violate any of the conditions imposed by this court. With the above directions, the bail applications are disposed of. However, nothing stated herein shall tantamount to an expression of opinion on merits of the case. Order dasti under the signature of the Court Master. (SUNITA GUPTA) JUDGE
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