

(2022) 05 DEL CK 0187

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2428 Of 2020

Rakesh Kumar Singh

APPELLANT

Vs

State (Govt Of Nct Of Delhi)

RESPONDENT

Date of Decision : 25-05-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 420, 440, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 438, 438(1), 438(2), 482

Citation : (2022) 05 DEL CK 0187

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : R.P.S. Bhatti, G.M. Farooqui

Final Decision : Allowed

Judgement

Asha Menon, J

1. This petition has been filed by one of the accused facing trial in FIR No.185/2018 registered under Sections 420/467/468/471/120-B/34 IPC, P.S. Crime Branch under Section 482 Cr.P.C. read with Section 440, for setting aside the impugned order dated 11th November, 2020 passed by the learned Additional Sessions Judge (ASJ), Patiala House Courts and for the modification of the order dated 13th October, 2020 whereby the learned Chief Metropolitan Magistrate (CMM), Patiala House Courts, directed the release of the petitioner on bail subject to the condition of his depositing Rs.5,00,000 in the court.

2. Mr. R.P.S. Bhatti, learned counsel for the petitioners has submitted that the petitioner has been subjected to a harsh condition, whereby the benefit of the bail order has been negated, inasmuch as an onerous condition has been placed on the petitioner to deposit Rs.5,00,000/- in the name of the court. On the other hand, a co-accused with far more serious allegations against him has been granted bail without any such condition. Copy of the said order has been placed on the record as Annexure-A (page 90 of the e-file).

3. The learned counsel for the petitioner had submitted that the allegation against the petitioner was that he had furnished a format of an appointment order used by the Pradhan Mantri Jan Dhan Yojna whereas, the co-accused Ashish had allegedly opened and operated bank accounts in fake names and appropriated Rs.45,00,000/- through five forged bank accounts. Yet, he has been granted bail on furnishing a personal bond and a surety bond in the sum of Rs.50,000/- with no deposit.

4. The learned counsel has relied on the judgment of the Supreme Court in *Sumit Mehta v. State (NCT of Delhi)*, (2013) 15 SCC 570 to contend that directing deposit was unjustified when it became an onerous condition for the accused to meet. Reliance has also been placed on the judgment of the Supreme Court in *Dilip Singh v. State of M.P.*, (2021) 2 SCC 779, where the Supreme Court has held that a criminal court, while exercising jurisdiction to grant bail or anticipatory bail, was not expected to act as a recovery agent.

5. Mr. G.M. Farooqui, learned APP for the State on the other hand submitted that this was not a case in which this Court ought to exercise its powers under Section 482 Cr.P.C., since each judge had the freedom to exercise discretion and the imposition of the condition in question was appropriate, as without the copy of the appointment order the other accused could not have swindled innocent people, promising them jobs. Hence, it was prayed that the petition be dismissed.

6. From the charge-sheet, it is clear that the petitioner has also acted in furtherance of a conspiracy by providing the format of the fake appointment letter of Pradhan Mantri Jan Dhan Yojna. At the same time, it cannot be overlooked that the co-accused Ashish, who as per the charge-sheet, had actually opened fake accounts into which Rs.45,00,000/- were deposited and had actually operated the bank accounts and removed money, has been admitted to bail without a condition of deposit.

7. The Supreme Court in the case of *Sumit Mehta* (supra) noted that:

“11. While exercising power under Section 438 of the Code, the court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. For the same, while granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. The object of putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the court while imposing conditions must be exercised with utmost restraint.”

A similar view was held by a two-Judge Bench of Supreme Court in the case of *Dilip Singh* (supra), where the court opined:

“4. It is well settled by a plethora of decisions of this Court that criminal

proceedings are not for realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realize the dues of the complainant, and that too, without any trial.”

8. When the learned Trial Court found it appropriate to grant the petitioner bail, it ought not to have taken away what it had given, by imposing an onerous condition of deposit of Rs.5,00,000/-, only because a total sum of Rs. 45,00,000/- stood swindled. None of the other co-accused have been imposed a similar condition. Further, in the light of the observations made by the Supreme Court in Dilip Singh’s case (supra) and also in Sumit Mehta’s case (supra), it is considered appropriate to modify the impugned order dated 11th November, 2020, in so far as the condition of deposit of Rs.5,00,000/- in the court, is concerned.

9. The petition is thus allowed. The petitioner is admitted to bail on his furnishing a personal bond and a surety bond in the sum of Rs.25,000/- each, to the satisfaction of the learned Trial Court. The bail bonds be presented before the learned Trial Court on the next date of hearing before the Trial Court. Till such time, the bail bonds submitted in pursuance of the order of this Court dated 2nd February, 2021 granting interim bail, shall continue to be in force.

10. The petition is accordingly allowed.

11. The judgment be uploaded on the website forthwith.