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

Date of decision: 02nd September, 2024

+ **BAIL APPLN. 1830/2023**

RAJENDRA KUMAR TRIPATHI

.....Petitioner

Through: Mr. M. N. Dudeja with Mr. Aditya
Mishra and Mr. Abhishek Bhudiraja,
Advocates.

versus

STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Ms. Rupali Bandhopadhy, ASC
(CrI.) for the State with Mr. Abhijeet
Kumar, Advocate.
SI K. Birgit Singh and SI Nishant,
P.S.: Darya Ganj.
Mr. Nitin Mittal, Advocate for the
complainant.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No.198/2017 dated 24.08.2017 registered under sections 420/406 of the Indian Penal Code, 1860 ('IPC') at P.S.: Darya Ganj, Delhi. Consequent upon completion of investigation, offences under sections 419/120-B of the



IPC and sections 3/5 of the Emblems and Names (Prevention of Improper Use) Act 1950 ('Emblems and Names Act') have also been added *vide* charge-sheet dated 09.03.2019.

2. Notice on this petition was issued on 29.05.2023. Status report dated 03.07.2023 has been filed in the matter.
3. The court has heard Mr. M. N. Dudeja, learned counsel appearing for the petitioner as well as Ms. Rupali Bandhopadhyaya, learned ASC (Criminal) appearing on behalf of the State. Mr. Nitin Mittal, learned counsel for the complainant has also made his submissions.
4. Briefly, the allegation against the petitioner in the FIR is that he represented himself to be the Chairman of an organization under the name and style of 'National Housing Development Organization', which entity used to float fake tenders for government contracts and would later illegally appropriate the Earnest Money Deposits made by the parties, without awarding any contracts to them whatsoever.
5. The FIR was registered at the instance of one Mukesh Gupta, who claims that he was cheated to the tune of about Rs.37 lacs.
6. It is further the allegation against the petitioner that his organization represented itself as an outfit of the Government of India, by posting on its own website and on other internet platforms, photographs of the Prime Minister and of the Urban Development Minister of the Central Government, with the aim and intent of alluring people into believing that his organization was a Government of India undertaking or public sector undertaking or other similar entity, which was in a position to award high-value government contracts.



7. Mr. Dudeja submits, that the offences alleged in the FIR as well as in the charge-sheet are all triable by a Magistrate, and yet, as will be seen from Nominal Roll dated 29.04.2024 received from the Jail Superintendent, the petitioner has already spent more than 03 years in judicial custody for such offences. It is contended by Mr. Dudeja that the maximum punishment that the petitioner can be awarded under section 420 IPC is of upto 7 years; and accordingly, the petitioner is in any case entitled to be enlarged on bail in view of section 436-A of the Cr.P.C.
8. Mr. Dudeja points-out that *vide* order dated 21.06.2019 (as referred to in the bail cancellation order) the petitioner was granted regular bail, based upon a certain settlement that had been reached between the petitioner and the complainant; but that, despite best efforts on the petitioner's part, he could not pay to the complainant the amount agreed upon as part of the settlement since petitioner's bank accounts were frozen by the authorities in a different case.
9. Mr. Dudeja emphasizes however, that the petitioner had every intention of honoring the settlement made with the complainant in the present case; however, he was unable to do so only because his bank accounts had been frozen, whereupon *vide* order dated 20.09.2021 made by the learned Magistrate, the petitioner's bail was cancelled and he was arrested in the court itself.
10. It is argued that by reason of the aforesaid default on the petitioner's part, and without appreciating the reason why the petitioner could not honor the settlement reached with the complainant, subsequent bail applications moved by the petitioner before the learned Sessions



Court were also dismissed *vide* orders dated 19.01.2022 and 16.03.2023, in view of what was perceived as the past conduct of the petitioner.

11. Mr. Dudeja also argues, that since it was always the petitioner's intention to clear all dues owed by him; and that the disputes were essentially of a civil nature, he has also been granted regular bail in *another case* bearing FIR No.99/2017 dated 24.06.2017 registered under sections 3/5 of the Emblems and Names Act and sections 406/420/120-B of the IPC at P.S.: Crime Branch, Delhi, based on a settlement arrived at through mediation.
12. Mr. Dudeja accordingly prays, that the petitioner be granted regular bail.
13. On the other hand, Ms. Bandhopadhyia appearing for the State has opposed the grant of bail, submitting that the petitioner is a deceptive individual, who is habitual of defrauding people of money and also has at least 02 other cases bearing FIR No.99/2017 dated 24.06.2017 registered under sections 3/5 of the Emblems and Names Act and sections 406/420/120-B of the IPC registered at P.S.: Crime Branch, Delhi; and FIR No.1361/2015 registered under section 420 of the IPC registered at P.S.: Janak Puri, New Delhi pending against him.
14. She submits that, on point of fact, the petitioner is accused of having cheated various persons and entities, not limited only to Rs.37 lacs which is the subject matter of the present case, but to the tune of about Rs.5 crores; and an FIR bearing No.99/2017 dated 24.06.2017 has even been registered at P.S.: Crime Branch, Delhi on a complaint made by Government of India against the National Housing



Development Organization, which is the organization run by the petitioner.

15. Ms. Bandhopadhyaya argues, that as the record would show, based on a settlement arrived at with the complainant in the present case, the petitioner was in fact granted regular bail *vide* order dated 21.06.2019 made by the learned Magistrate, but subsequently he did not honor that settlement, leaving the court no option but to cancel the bail *vide* order dated 20.09.2021 observing as follows :

“Despite the above, settlement agreement remains non-complied with till date. So much so, that the accused, after having been enlarged on bail, did not appear regularly in court and ultimately NBWs and proceedings u/s 82 Cr.P.C. were issued against him.”

(emphasis supplied)

16. Ms. Bandhopadhyaya also draws attention to the observations made by the learned Sessions Court *vide* order dated 19.01.2022 while dismissing the second bail application moved by the petitioner :

“Though it is very much clear that the present bail application is not in the form of an appeal against the order dt. 20.09.2021 and hence, has to be considered on its own merits but at the same a perusal of the order dt. 20.09.2021 of the ld. Trial Court makes it very much clear that the present accused who was earlier granted liberty of bail has failed to appreciate its importance and sanctity by violating the condition of bail as well as by not appearing before the Court regularly leading to the issuance of NBW and the initiation of proceedings under Section 832 CrPC (sic, section 82 Cr.P.C.) Under in these circumstances, keeping in view the past conduct of the applicant, he is not entitled to be bestowed with the liberty of bail again. Bail application stands dismissed.”

(emphasis supplied)



17. To address the submission made on behalf of the petitioner, namely that he has already served more than 03 years of judicial custody in a matter which attracts a maximum imprisonment of 07 years for the offence under section 420 IPC, Ms. Bandhopadhya submits, that section 436-A of Cr.P.C. does not engraft an invariable rule or right in favour of an under-trial to be enlarged on bail merely because he has served more than one-half of the maximum period of imprisonment specified for an offence. She submits that the *first proviso* to section 436-A Cr.P.C. in fact grants to the court discretion to order the continued detention of a person for a period longer than one-half of the maximum imprisonment, after hearing the Public Prosecutor and for reasons to be recorded in writing.
18. Ms. Bandhopadhya also argues, that section 436-A Cr.P.C. also contains an *Explanation* which clarifies that the period of detention for purpose of section 436-A Cr.P.C. would exclude any delay in the proceedings caused by the accused. In the present case, it is argued, that the petitioner is also at least partly responsible for the delay in conclusion of the trial proceedings since he had absconded. She points-out that the record shows the petitioner was absconding pre-arrest and was declared proclaimed offender; and that he failed to appear regularly in court after grant of bail and proceedings under section 82 Cr.P.C. were accordingly initiated against him.
19. Learned ASC argues, that other things apart, the petitioner's previous conduct of not having honored a settlement based on which he was granted regular bail; of having absconded during trial which led to issuance of process under section 82 Cr.P.C.; and the very fact that he



has adopted deceptive methods by misrepresenting that his organization was a governmental entity, itself disentitles him to grant of regular bail.

20. Though both sides have cited judicial precedents in support of their respective contentions, in the opinion of this court, within the limited scope of the present proceedings, it is not considered necessary to either delve into those judicial precedents nor into the details of the allegations against the petitioner.
21. It may be observed however, that the petitioner's SCRB Record dated 03.07.2023 shows that there are 02 other FIRs registered against him at P.S.: Hauz Khas, New Delhi and P.S.: Malviya Nagar, New Delhi.
22. For purposes of the reliefs sought by way of the present petition, what weighs with the court *at this stage* are the following considerations :
 - 22.1. Admittedly, the regular bail granted to the petitioner by the learned Magistrate *vide* order dated 21.06.2019 was cancelled *vide* order dated 20.09.2021 since the petitioner did not honor the settlement entered into by him, whereby he was required to pay to the complainant a certain sum of money pursuant to the grant of bail.
 - 22.2. Furthermore, upon being enlarged on bail *vide* order dated 21.06.2019, the petitioner failed to appear before the learned Magistrate regularly, so much so that non-bailable warrants had to be issued against him and proceedings under section 82 of Cr.P.C. were also initiated.



- 22.3. In the above circumstances, all subsequent bail applications moved by the petitioner before the learned Sessions Court were also dismissed *vide* orders dated 19.01.2022 and 16.03.2023.
- 22.4. Though it is true that the petitioner has been charged with offences that are triable by a Magistrate, with the maximum punishment for the offence under section 420 IPC being of upto 07 years of imprisonment, it is the settled position of law that section 436-A of Cr.P.C. *does not* confer upon an under-trial an absolute right to be enlarged on bail regardless of any other circumstance obtaining in a matter.
23. Upon an overall conspectus of the facts and circumstances of the case, and especially keeping in view the petitioner's past conduct whereby he not only failed to abide by a settlement on the basis of which he was granted regular bail, but he also failed to appear regularly before the learned Magistrate leading to issuance of non-bailable warrants and initiation of proceedings against him under section 82 Cr.P.C., this court is not persuaded to grant to the petitioner the benefit of regular bail even under section 436-A of the Cr.P.C *at this stage*.
24. In view of the above, the present bail petition is dismissed.
25. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 02, 2024

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