

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

Date of decision: 08th FEBRUARY, 2022

IN THE MATTER OF:

+ **BAIL APPLN. 2557/2018**

NANCY GILL

..... Petitioner

Through Mr. R K Wadhwa, Advocate with
Mr. Sidheswar Rai, Mr. Binod Kumar
Gautam, Mr. Gaurav Takar,
Advocates

versus

STATE

..... Respondent

Through Ms. Neelam Sharma, APP for the
State with Insp. Pawan Yadav, Police
Station Karol Bagh
Mr. Kuldeep Gola, Advocate for the
complainant

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This application under Section 439 Cr.P.C. has been filed seeking grant of bail in FIR No. 576/2015 dated 22.07.2015 registered at Police Station Karol Bagh under Section 420 of the Indian Penal Code, 1860 (*hereinafter*, "IPC").

2. The facts, in brief, leading up to this petition are as follows:

- a) It is stated that the Complainant is a jeweler by profession and has a jewelry showroom in Karol Bagh by the name of M/s. Mahalaxmi Jewellers which he runs with his two brothers. The Petitioner herein and her family are the customers of the complainant, and they have a relationship with the Complainant

which goes back thirty years, with the Petitioner and her family regularly purchasing jewellery from the Complainant.

- b) It is stated that in March 2015, the Petitioner informed the Complainant about a big project which she wanted to discuss in private. It is stated that the Petitioner dishonestly represented that the Prime Minister of India had started a programme wherein the King of Brunei wanted to start 14 Super Specialty Hospitals in different parts of India, with the first opening in Ahmedabad, Gujrat. The Petitioner had stated that she had met Dr. Ajja Binti Kifli, cousin sister of the King of Brunei in U.S.A., who wanted to visit political leaders in India and gift them jewellery. It is stated that the Complainant was induced into accepting the order worth more than one crore rupees without taking any advance and agreed to give 5% commission to the Petitioner and her family.
- c) It is stated that all communication between the Complainant and Dr. Kifli took place through the Petitioner and the Petitioner thereafter informed the Complainant that the total order comprised of: 1) 10 gold bangles + 2 diamond bangles worth 75 lacs rupees, 2) 2 broad gents bracelets worth 12 lacs rupees, 3) 1 gents bracelet worth 4 lacs rupees, 4) 51 coins of the Prime Minister worth 54 lacs rupees, 5) 31 coins of the Home Minister worth 33 lacs rupees, and 6) a long necklace for the king worth 22 lacs rupees. When the Complainant sought for 50% advance money yet again, the Petitioner and her family reassured the Complainant that the money would be given to him at the time

of delivery.

- d) It is stated that the Complainant accordingly purchased the gold and diamonds required for the jewellery, and handed over the same on 01.06.2015 to the Petitioner and her family at 6:20 A.M. at their home. The Petitioner informed the Complainant that he would get the money by 3rd June, 2015. Thereafter, on 2nd June, 2015, the Petitioner informed the Complainant that she was flying to Amritsar for the blessings of Guru Nanak Devji. When the Complainant later tried to contact the Petitioner on her phone, it was switched off. The Complainant then visited the house of the Petitioner where the family of the Petitioner allegedly fraudulently told him that the Petitioner had ran away with the jewellery.
- e) It is stated that Petitioner's family also threatened the Complainant and his family. At this juncture, the Complainant realized that the story involving the King of Brunei had been concocted by the Petitioner and her family to cheat the Complainant of jewellery worth more than Rs. 2 crores. On the basis of this, the instant FIR was registered.
- f) Chargesheet was filed on 03.07.2018. The Petitioner has previously moved this Court for regular bail, however, the application was withdrawn as chargesheet had been filed. Bail application before the Ld. M.M. was rejected. The Petitioner has now approached this Court for regular bail.

3. Mr. R.K. Wadhwa, learned Counsel for the Petitioner, has submitted that the Petitioner has been falsely implicated in the instant case and has

been in judicial custody since 07.05.2018. He has argued that the Complainant, with active connivance of the local police, has instituted this case against the Petitioner and that other accused persons, i.e. the Petitioner's husband, two daughters and son, have been given a clean chit.

4. Mr. Wadhwa has contended that the family of the Petitioner and the Complainant were known to each other and that the Complainant was aware of the disputes that had arisen between the Petitioner and her husband, and therefore, the Complainant in collusion with the husband of the Petitioner has concocted the story of cheating and fraud. He has further informed this Court that four days prior to the instant FIR being registered, the Petitioner had written a complaint to SHO, P.S. Naraina as she had allegedly sold her jewellery worth Rs. 50 lacs to the Complainant and one of the cheques that the Complainant had given to her had bounced on account of insufficient funds. Mr. Wadhwa has, therefore, argued that the instant FIR is merely a counterblast.

5. The learned Counsel for the Petitioner submitted that no recovery has been made from the Petitioner and that the chargesheet has already been filed. He has argued that despite the FIR naming the Petitioner's husband, son and daughters multiple times, the prosecution has exonerated them and this is indicative of the conspiracy that has been launched by the Petitioner's husband and the Complainant to falsely implicate the Petitioner. Mr. Wadhwa has finally sought for bail for the Petitioner as the Petitioner has been behind the bars since May, 2018, i.e. more than two years, and that even if the Petitioner is convicted, at best she will be sentenced to undergo maximum imprisonment for a period of seven years.

6. *Per contra*, Ms. Neelam Sharma, learned APP for the State, has

vehemently opposed the instant bail application on the grounds that the Petitioner has played a crucial role in the commission of the offences alleged in the instant FIR. She has submitted that the investigation is not complete yet and the Petitioner is not cooperating with the investigating officers. Ms. Sharma has stated that the money that has been fraudulently procured has been deposited in bank accounts situated in Dubai and that the details of the same are yet to be revealed. The learned APP has argued that the Petitioner was also impersonating the sister of the King of Brunei and that the mobile phone/SIM card used by the Petitioner for impersonation are yet to be recovered.

7. Mr. Kuldeep Gola, learned Counsel for the Complainant, has also made his submissions and stated that the Complainant has lost a substantial amount of money, i.e. more than 2 crores rupees. He has submitted that the probability of the Petitioner absconding and threatening witnesses as well as tampering with evidence is high, given the fact that the jewellery has not been recovered. Mr. Gola has brought to the notice of the Court that when the Petitioner was out on interim bail, she had filed a false complaint against the Complainant that had eventually been quashed by this Court. He, therefore, has stated that there is a propensity of the Petitioner to exert pressure on the Complainant to withdraw the case.

8. Heard Mr. R.K. Wadhwa, learned Counsel for the Petitioner, Ms. Neelam Sharma, learned APP for the State, and Mr. Kuldeep Gola, learned Counsel for the Complainant, and perused the material on record.

9. A perusal of the chargesheet on record reveals that the Petitioner has not been cooperative in the investigation. A voice recording of the Petitioner was handed over by the husband and son of the Petitioner wherein the

Petitioner was heard talking to one Preetpal Kalsi, asking for the opening of a new bank account and confirming the money transferred to a foreign bank account. Further voice recordings have revealed that the Petitioner was knee-deep in the conspiracy to cheat the Complainant and misappropriate the jewellery to keep the money all for themselves. It also states that the mother of the Petitioner had also registered a case against the Petitioner in which she had stated that the Petitioner had shown her the jewellery grabbed by cheating and had sought her help for selling it. The chargesheet further notes that there is no material to proceed against the husband, son and daughters of the Petitioner as no proof/evidence had been found against them.

10. The status reports filed by the State showcase that voice recordings (which were subsequently proved by way of an FSL report which is a part of the supplementary chargesheet) had led to the conclusion that the Petitioner was planning to settle in Dubai or Brunei with the help of a Pakistani national namely, Shahzeb, and this plan had induced her to cheat the Complainant as she required money. Furthermore, the Petitioner had travelled to Dubai on 02.06.2015 without informing her husband or the Complainant, and had sold some of the jewellery and the gold coins. Additionally, she had visited Dubai several times, but no plausible reasons had been provided for the said visits. It is stated that interrogation of Preetpal Kalsi had also revealed that the Petitioner had been known to him for 2-3 years and they had hatched the plan together. It has also been revealed that no recovery has been effected till now and the Petitioner has resorted to filing of false and frivolous complaints to counter the case registered against her.

11. The Supreme Court has time and again laid down the parameters that

must be taken into account by a Court while considering an application seeking grant of bail. The factors can be summarised as under:-

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii. nature and gravity of the accusation;*
- iii. severity of the punishment in the event of conviction;*
- iv. danger of the accused absconding or fleeing, if released on bail;*
- v. character, behaviour, means, position and standing of the accused;*
- vi. likelihood of the offence being repeated;*
- vii. reasonable apprehension of the witnesses being influenced; and*
- viii. danger, of course, of justice being thwarted by grant of bail.*

(Refer Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598).

12. The material on record in the instant case does disclose that the Petitioner played a crucial role in the commission of the alleged offence and had masterminded the plan to cheat the Complainant out of more than two crores of rupees. Furthermore, the plan hatched by the Petitioner and other co-accused reveals that it involved methodical and intricate planning as can be discerned from the fact that the Petitioner purchased another SIM to impersonate the cousin sister of the King of Brunei. The Petitioner has also been uncooperative during the investigation, and has also resorted to levelling allegations against the Complainant and her family members, including her husband and her mother.

13. However, it is also pertinent to note that the Petitioner has been in custody since 07.05.2018, with the exception of her being out on interim bail from 14.05.2020 to 23.11.2021 on the ground of the HPC guidelines formulated by this Court in wake of the COVID-19 pandemic. There is weight in the submission of the learned Counsel of the Petitioner that even if she is convicted, the Petitioner would be subjected to imprisonment for a maximum of seven years, out of which she has already spent two years in custody. Even after four years, investigation has not been completed. This Court is of the opinion that the Petitioner cannot be kept endlessly behind bars. When right to speedy trial is a concomitant of Article 21 of the Constitution of India, it can be presumed that one the facets would also be that the accused cannot be kept in custody indefinitely. The Petitioner has already spent more than one-fourth of the maximum period of imprisonment in custody. There is no allegation that the petitioner has cheated anybody else. The apprehension that the Petitioner will flee from justice can be dissipated by ensuring that appropriate conditions are imposed. Furthermore, the possibility of the Petitioner threatening the Complainant, her own family members and other witnesses can also be done away with by way of imposing conditions.

14. *Vide* Order dated 20.01.2022, this Court had granted custody parole for two days, i.e. 27.01.2022 and 28.01.2022, to accompany the Investigating Officer so as to satisfy him about the address where the Petitioner intends to reside in case she is granted bail. Pursuant to this Order, the status report has been filed which indicates that the Petitioner resides at B-75, Naraina Vihar, Delhi, where her family also resides. It is stated that the husband and the children of the Petitioner are disinclined to let the

Petitioner stay at the aforementioned address, however, Order dated 01.08.2016 of the Ld. Trial Court states that the Petitioner cannot be dispossessed/thrown out of the said house and cannot be stopped from entering the same. Accordingly, a separate portion on the ground floor has been accorded to the Petitioner for living purposes where she previously stayed while she was out on interim bail.

15. In light of the above, this Court deems it fit to grant regular bail to the Petitioner herein, subject to the following conditions:

- a. The Petitioner shall furnish a personal bond in the sum of ₹1,00,000/- with two sureties of the like amount to the satisfaction of the Trial Court/Duty Magistrate.
- b. The Petitioner is directed to surrender her passport before the Trial Court, if not already surrendered.
- c. The Petitioner shall not leave NCT of Delhi without prior permission of this Court.
- d. The Petitioner shall report to the concerned Police Station every day at 10:30 AM and should be released after completing the formalities within an hour.
- e. The Petitioner is directed to drop a pin location on Google Maps so that the location of the Petitioner is available to the Investigating Officer at all times.
- f. The Petitioner is directed to give all her mobile numbers to the Investigating Officer and keep them operational at all times.
- g. The Petitioner has given her address as House No. B-75, Naraina Vihar, Delhi. The Petitioner is directed to continue to reside at the same address. In case there is any change in the

address, the Petitioner is directed to intimate the same to the Investigating Officer.

- h. The Petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.
- i. Violation of any of these conditions will result in the cancellation of the bail given to the petitioner.

16. This Court deems it necessary to note that if any instance of the Petitioner threatening her family members or the Complainant comes to light or if false cases are filed against the complainant or his family members by the petitioner or at her instance, bail granted to the Petitioner by this Court would stand cancelled forthwith.

17. With the above observations, the instant bail application is disposed of, along with pending application(s), if any.

18. Let a copy of this Order be communicated to the concerned Jail Superintendent.

SUBRAMONIUM PRASAD, J.

FEBRUARY 08, 2022

Rahul