

State Vs. Ulhas Prabhakar Khaire @ Lokeshwar Dev & Ors.
FIR No. 84/2011
Case No. SC/1/22
P.S. Moti Nagar (EOW)
U/s 406/409/419/420/467/468/471/120B IPC &
3, 4 & 5 PCMC Act

10.06.2022

Present : Sh. Manoj Garg, Ld. PP for State.
A-1 & A-2 both produced from J.C.
A-3 & A-5 on bail.
A-4 is absent.
Sh. Archit Kaushik, Ld. Counsel for A-2 & A-4.

An application seeking exemption from personal appearance has been moved on behalf of A-4. Heard. Perused. In view of the reasons stated therein, A-4 is exempted from his personal appearance only for today.

The case is today fixed for arguments on an application filed on behalf of accused Raksha J. URS @ Priyanka Saraswat Dev seeking bail.

However, today again it is being submitted by Ld. PP Sh. Manoj Garg that till date he has not been assigned this case by the Ld. Chief Prosecutor and yet again prays that the application be adjourned. The said request is declined taking into consideration that a similar submission was made on 30.05.2022 and this court had granted the State almost 11 days to present its arguments with respect to the bail application filed on behalf of accused Raksha J. URS @ Priyanka Saraswat Dev. Ld. PP Sh. Manoj Garg submits that he duly communicated to the concerned authorities the order of this court dated 30.05.2022 and the order of Ld. DJ dated 21.05.2022 vide which the Director of Prosecution, NCT had been directed to ensure that the present case is also assigned to Ld. PP Sh. Manoj Garg.



Though this court appreciates the difficulty of Sh. Manoj Garg in not wanting to advance arguments on the bail application, this court cannot adjourn the bail application filed on behalf of accused Raksha J. URS @ Priyanka Saraswat Dev any longer for she has a right to be heard on her bail application and her right to liberty cannot be curtailed by the lackadaisical attitude of the prosecution. This court has itself perused the entire record. A reply on behalf of the prosecution to the present bail application is on record. The same has been duly considered.

Arguments on behalf of Ld. Defence Counsel Sh. Archit Kaushik have also been heard.

1. The main grounds on which the bail is being sought are namely that the allegations in the present charge-sheet are identical to the allegations made against this accused in the charge-sheet filed with respect to FIR No. 152/11 and that since bail has already been granted in the said case to this accused, she should be granted bail in this case also. It has also been argued vehemently that the accused has spent about nine years and four months in custody without any trial and that the record would show that the delay in the case has not been due to any fault of the accused and that therefore this court may take into consideration the provisions of Section 436 (2) Cr.P.C and grant bail to the accused. It has also been contended that the accused is a woman and as such she is entitled to benefit of proviso to Section 437 Cr.P.C which inter-alia lays down that the courts may use its discretion to grant bail to a woman accused of a non bailable offence.

2. In reply filed by the prosecution to the present application, the bail being sought has been strongly opposed. It is inter-alia mentioned in the reply that as per the allegations made in the charge-sheet the accused and her husband Ulhas Prabhakar Khaire @ Lokeshwar Dev forged a partnership deed, using false identities. It has also been



narrated in the said reply that accused Ulhas Prabhakar Khaire, husband of the present accused, used the identity of one Lokeshwar Dev of Dehradun and the present applicant / accused Raksha J. URS used the false identity of Priyanka Saraswat Dev and forged a partnership deed which recorded that both of them had formed a partnership firm in the name of M/s STOCK GURU.INDIA. It is further the case of the prosecution that based on this forged partnership deed both accused and her husband got accounts opened in various banks including ICICI Bank, Vyasya Bank and YES Bank and further also used the false identities of Lokeshwar Dev and Priyanka Saraswat Dev to open personal current and saving accounts with the said banks. It is also alleged that both of them along-with their co-accused persons thereafter induced the general public to invest their money in M/s STOCK GURU.INDIA and fraudulently assured the public persons that their investments would earn a return of 220% within seven months. On the basis of the inducement given by the accused and her spouse and the other co-accused persons, huge amounts were assertedly received from the public in the bank accounts of M/s STOCK GURU.INDIA and also in the personal accounts of the accused and her spouse. It was allegedly represented to the public persons that the accused and her spouse are the sole partners in M/s STOCK GURU.INDIA and that therefore the amounts can be also deposited in their personal accounts. Thereafter the entire amount of the money so collected was siphoned off by the accused and her spouse to purchase various immovable properties, thus cheating the public persons of their hard earned money. According to the reply filed, more than two thousand persons became victims of the cheating committed by the accused and her spouse and the accused and her spouse are facing prosecution in almost 35 cases all over India and the investigation in some of these cases revealed that the accused persons collected fake identities to escape prosecution and were even declared proclaimed offenders in some cases. In such circumstances, it is stated in the reply that the accused cannot at all be granted bail for the narration of the facts in the charge-sheet reveals that the accused has allegedly committed offences punishable U/s 467/468/471/409 IPC. It has also been contended in the reply filed that the accused cannot be granted bail merely because she is a



woman for there are various judgments which lay down that there is no absolute and unconditional rule that bail should be granted to an accused who is a woman and that the overriding consideration in grant of bail is the nature and gravity of the circumstances in which the offence has been committed. In this respect, the observations made by the Hon'ble Delhi High Court pronounced in the case titled and reported as *Meenu Diwan Vs State, 2010 Cr.L.J 2911* have been reproduced in the reply. Similarly, the observations made by the Hon'ble Supreme Court pronounced in the case titled and reported as *Y.S. Jagmohan Reddy Vs CBI, AIR 2013 SC 1933* have been reproduced to contend that in economic offences the strictal view is necessary to be taken and the public interest at large should be kept in mind.

3. It also appears from record that a similar application filed by the accused was dismissed by Ld. ASJ-02/West/Delhi (where the case was earlier pending) vide order dated 20.11.2021.

4. In rebuttal to these contentions made in the reply, Ld. Counsel for the accused has pointed out that the present FIR was registered on the basis of a complaint made by one Sh. Sunil Kumar, son of Sh. Janti Kalam, who alleged that he had invested a total amount of Rs. 15 lakhs with the firm of the accused persons on their inducement. According to Ld. Defence Counsel, all the other allegations mentioned in the reply are identical to the charge-sheet filed in respect of FIR No. 152/11 and the contention is that in the present case the accused can be made to face charges only U/s 420 IPC and not U/s 467/468/471 IPC for charges in this respect have already been framed against the accused in the charge-sheet filed with respect to FIR No. 152/11 which can be taken to be the main case with respect to the various complaints filed by public persons who have been allegedly cheated by the accused and her spouse. It is, thus, the contention that once the Ld. Predecessor of this court has granted bail to the accused in the case pertaining to FIR No. 152/11 after considering the amount of time the accused has already spent in custody

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and the fact that she is a woman, this court must also grant bail to the accused. Ld. Defence Counsel has also pointed out that out of the said 35 cases filed against this accused, the accused stands acquitted in 17 of the said cases and she is on bail in the remaining cases except 3 including the present case.

5. In support of his contentions, Ld. Defence Counsel has relied upon the following judgments :

- *Order dated 15.09.2015 pronounced by the Delhi High Court in the case of Wilson Mathew Vs The State of Delhi & Anr in Crl. Rev. P.No.188/2015.*
- *Order dated 10.07.2020 of the Hon'ble Supreme Court in the case of Sharad T. Kabra Vs UOI in Criminal Appeal No.1420 of 2017.*
- *Order pronounced by the Hon'ble Supreme Court in the case of Vijay Aggarwal Vs UOI in Writ Petition (Criminal) No. 32/201.*
- *Babba Vs State of Maharashtra, (2005) 11 SCC 569.*
- *Vivek Kumar Vs State of U.P, (2000) 9 SCC 443.*
- *Mahesh Kumar Bhawsinghka Vs State of Delhi, (2000) 9 SCC 383.*
- *State of Rajasthan Vs Balchand (1977) 4 SCC 308.*
- *State of Kerala Vs RANEEF (2011) 1 SCC 784.*
- *Order pronounced by the Hon'ble Delhi High Court in the case titled and reported as CBI Vs Suresh Kalmadi 2012 (1) JCC (Del) 734.*
- *Order pronounced by the Hon'ble Supreme Court in the case titled and reported as CBI Vs Sanjay Chandra, Criminal Appeal No. 2178/2011 & 2011 13 SCALE 107.*
- *State of Madhya Pradesh Vs Moti Ram (1978) 4 SCC 47.*



- *Shailendra Kumar Vs State of Delhi, AIR 2000 SC 3404.*
- *Pal Singh Vs CBI (2001) 1 SCC 247.*

6. After carefully considering the entire record, this court completely agrees with Ld. Defence Counsel that the allegations in the charge-sheet with respect to FIR No. 152/11 (which is also pending before this court) are identical to the one made in the present case, except for the fact that the complaints on the basis of which the two FIRs have been lodged are different. In FIR No. 152/11, the complainant is Sunil Kumar, son of Sh. Chandan Singh while in the FIR No. 84/11 the complainant is Sunil Kumar, son of Sh. Janti Kalam.

7. Admittedly, the charges in the case pertaining to FIR No. 152/11 have been framed against this accused of having committed the offences punishable U/s 467/468/471/419/120B & Section 3, 4 & 5 of Price Chits & Money Circulation Schemes (Banning) Act 1978 on the basis of the allegations that the accused and her spouse forged a partnership deed and opened bank accounts on the basis of the said deed. Once the aforementioned charges have been framed in the case pertaining to FIR No. 152/11, on the basis of such allegations, this court is of the opinion that in the present case prime facie no charges can be framed again against the accused for having forged a partnership deed or for having used the same to open the bank accounts, for the applicant / accused cannot be made to face two trials in respect of the same offences. Clearly, in view of the order framing charge against the accused and her spouse and other co-accused persons in the charge-sheet pertaining to FIR No. 152/11, in the present case prime facie the charges will have to be framed only with respect to the offences of cheating allegedly committed by the accused persons by inducing the complainant and other public persons to part with their hard earned money and invest in M/s STOCK GURU.INDIA. As such, the stand of the



prosecution that the accused is to face trial in the present case for having committed offences punishable U/s 467/471 IPC with life imprisonment does not appear to be correct. The accused having spent about nine years and 4 months in custody (as per record she is in custody in this case since 02.02.2013) in this case which is more than the maximum punishment provided in Section 420 IPC or Section 3, 4 & 5 of Price Chits & Money Circulation Schemes (Banning) Act 1978 is clearly entitled to bail in the present case. Accordingly, taking into consideration the said fact the accused is hereby admitted to bail only on the furnishing of a personal bond of Rs. 5 lakhs. It is made clear that nothing in this order tantamounts to a final expression of opinion on the merits of this case. Ld. Defence Counsel seeks a pass over to tender the personal bond. Allowed.

(Anu Grover Baliga)
Spl. Judge (PC Act) CBI-21
Rouse Avenue Courts Complex
New Delhi/10.06.2022

At 12:15 p.m.

Present : Sh. Archit Kaushik, Ld Counsel for A-2 & A-4.

Personal bond has been tendered and it is submitted by Ld. Defence Counsel that the address of this accused already stands verified in FIR No. 50/2017 P.S EOW and in this respect files the status report of one SI Amit Pratap.

In view of the said submission and report filed, the personal bond tendered stands accepted. Accused Raksha J. URS @ Priyanka Saraswat Dev will now be recorded as 'on bail in the present case'.

This case now stands fixed for arguments on framing of charges on 06.07.2022.

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Copy of this order be sent to the concerned Jail Superintendent.

Copy of this order be also given dasti to Ld. Defence Counsel, as prayed.



— Sd —

(Anu Grover Baliga)
Spl. Judge (PC Act) CBI-21
Rouse Avenue Courts Complex

New Delhi/10.06.2021
Special Judge (PC Act) CBI-21
Rouse Avenue Court Complex
New Delhi