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

+ BAIL APPLN. 3754/2023, CRL.M.A. 1574/2023

SANKET BHADRESH MODI Applicant

Through: Mr. Dayan Krishnan, Sr. Advocate
with Mr. Jay Kumar Bhardwaj, Ms.
Surabhi Mahajan and Mr.
Shreedhar Kale, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION & ANR.

..... Respondents

Through: Mr. Anupam S. Sharma, SPP
alongwith Mr. Prakash Airan, Ms.
Harpreet Kalsi, Mr. Ripudaman
Sharma, Mr. Abhishek Batra, Mr.
Syamantak Modgill and Mr.
Kashitiz Rao, Advocates

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

18.12.2023

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1. The applicant, vide the present application under Section 439 of the Code of Criminal Procedure, 1973 [CrPC] seeks regular bail in FIR No.RC2212022E0031/2022 dated 07.07.2022 registered under Section(s) 120B/170/384/420/503 of the Indian Penal Code, 1860 [IPC] and under Section(s) 66C/66D/75/85 of the Information Technology Act, 2000 [IT Act] at PS.: CBI/CCID/EO-III, New Delhi.

2. The present FIR came to be registered on the basis of source information, wherein it was alleged that a company *namely* E-Sampark Softech Pvt. Ltd. alongwith its Directors had made millions of scam phone

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calls to the USA from fraud call centres located in India and as such, had defrauded and cheated US Citizens to the tune of about 20 million USD. It was alleged that callers from the said fraud call centres would impersonate as various government officials of the USA, such as Internal Revenue Service (IRS), Customs Officials, Immigration Officers, Federal Grant Department of Housing and Urban Development (HUD) or Social Security Administration (SSA) and would threaten the people in the USA with arrest, initiation of criminal case, penalty, fine or seizure of property and coerce the victims to pay through various means like wire transfers, bank or cash transfers, payment through I-tune cards, various other gift cards and vouchers etc. and as such, victims in the USA had been defrauded and cheated to the tune of about 20 million USD. On the basis of the aforesaid source information, the applicant and at least 12 other persons were named as accused in the present FIR.

3. Learned counsel for the applicant submits that the father and the brother of the applicant (*being co-accused persons in the present FIR*) already stand chargesheeted without arrest; and that the applicant was under protection with regards to arrest for about 203 days and he had never misused the said liberty granted to him; and that except for only one occasion, the applicant has always joined and participated in the investigation; and that the applicant satisfies the *triple test* for grant of bail; and that the CBI in its reply has averred that the applicant is not providing them with password(s)/ details with regards to his email/ crypto wallet accounts etc., however, it is no longer *res integra* that bail cannot be denied simply because of *non-cooperation*, since an accused (*applicant herein*) cannot be forced to incriminate himself by cooperating with the



Investigating Agency (*CBI herein*) and to this effect, reliance is placed upon the decisions of the Hon'ble Supreme Court of India in *Santosh Fafat v. State of Maharashtra* (2017) 9 SCC 714 and *Pankaj Bansal v. Enforcement Directorate* 2023 INSC 866; and that the applicant is only one of at least 12 other co-accused persons in the present FIR and barring him, no one else has been arrested; and that the investigation qua the applicant in the present FIR is complete, chargesheet stands filed and since the trial is likely to take a considerable amount of time to conclude, therefore, no fruitful purpose would be served by keeping the applicant languishing behind bars and *lastly* relying upon the decision of the Hon'ble Supreme Court of India in *Sanjay Chandra v. CBI* (2012) 1 SCC 40, he submits that since the offence(s) involved in the present FIR are punishable with a maximum sentence of 7 years, therefore, unless there are exceptional circumstances, bail should not be rejected.

4. This Court, vide its order dated 08.11.2023, issued Notice and called for the Status Report.

5. Learned SPP appearing for the CBI, while opposing the grant of bail in the present application, submits that the applicant is the real *king-pin* behind the entire racquet since he is the Director of the company alleged to be involved in the present FIR; and that despite being served with the requisite notice(s) under Section 41A of the CrPC to participate in the investigation at different points in time, the applicant has failed to cooperate with the Investigating Agency and even when he has joined investigation, he has failed to participate and cooperate therein since he has failed to provide the Investigating Agency with the requisite password(s) as regards the digital evidence that has been recovered; and



that the act of the applicant and the other co-accused persons in defrauding and cheating foreign nationals has affected the international image of India and as such, he ought to be dealt with stringent measures as per law and *lastly* that the investigation in the present FIR is only in the initial stages and if the applicant is released on bail, there is every likelihood that he might threaten the witnesses or tamper with the evidence; and that the

6. As per facts, the applicant has been in custody since 19.07.2023. Further, the chargesheet in the present FIR has been filed on 16.09.2023.

7. This Court has heard the learned counsel for the parties and has also perused the documents on record.

8. At the outset, without advertent to the merits of the matter, it has to be borne in mind that under the prevailing facts and circumstances, the requisite, if not necessary, recoveries involved in the present FIR have since already been made. Moreover, the investigation qua the applicant stands completed. In fact, chargesheet qua few co-accused persons, including the father and brother of the applicant herein, has also been filed without their arrest and it is only the applicant, who has been arrested.

9. Further, the proceedings primarily revolve around electronic evidences including laptops, mobile phones and such other sophisticated gadgets, which have already been seized and are very much in the possession of the Investigating Agency. As such, if granted bail, there are hardly any chances of the applicant tampering with the same. In fact, though it is of little relevance, however, this Court notes that there is no allegation of the same kind against the father and brother, who are also co-accused alongwith the applicant and who have not been arrested at all.

10. In any event, what was argued by the learned SPP appearing for the



CBI in the course of his arguments is that the CBI is awaiting for the applicant to share the password(s) to unlock the gadgets/ digital devices during investigation and the applicant is not co-operating qua that at his end. In the opinion of this Court, any accused like the applicant herein, is always very much expected to not only join investigation, but also to participate therein, so as not to cause any hindrance to the ongoing investigation. Thus, any accused like the applicant is expected to show high sensitivity, diligence and understanding during such an investigation.

11. At the same time, the concerned Investigating Agency cannot expect anyone who is an accused, like the applicant herein, to sing in a tune which is music to their ears, more so, whence such an accused, like the applicant herein is well and truly protected under Article 20(3) of The Constitution of India. Also, in the present case, as the trial is ongoing, the applicant cannot be coerced to reveal/ disclose the password(s) or any other like details in view of the aforesaid protection guaranteed to him under The Constitution of India. Reliance is placed upon *Santosh s/o Dwarkadas Fafat vs. State of Maharashtra* (2017) 9 SCC 714, wherein the Hon'ble Supreme Court of India while relying upon one of its earlier pronouncements in *Selvi vs. State of Karnataka* (2010) 7 SCC 263 has held as under:-

“The right against self-incrimination is provided for in Article 20(3) of the Constitution. It is a well-settled position in view of the Constitution Bench decision in Selvi vs. State of Karnataka (2010) 7 SCC 263, that Article 20(3) enjoys an “exalted status”. This provision is an essential safeguard in criminal procedure and is also meant to be a vital safeguard against torture and other coercive methods used by investigating



authorities. Therefore, merely because the appellant did not confess, it cannot be said that the appellant was not cooperating with the investigation. However, in case, there is no cooperation on the part of the appellant for the completion of the investigation, it will certainly be open to the respondent to seek for cancellation of bail.”

12. As the facts involved herein are such that the complainant(s) and those who have been allegedly cheated and/ or defrauded are, *admittedly*, overseas and are far beyond the reach of the applicant, there are miniscule chances of the applicant influencing the witnesses.

13. Furthermore, it is not the case of the CBI that while the applicant was out on interim bail for the period of 203 days, he has misused the liberty or has actually (tried to) indulge in any such kind of activities. In view thereof, this Court does not find the applicant to be a flight risk or a case wherein he would shun away from participating in the investigation, as and when called for.

14. Lastly and most specifically, this Court cannot forget that though the applicant has been named in the FIR as an accused, however, till the final outcome of the proceedings emanating therefrom, the status of the applicant is merely that of a suspect. The applicant is innocent till proven guilty. In view thereof, keeping the applicant behind bars will lead to violation of Article 21 of The Constitution of India [*Re.: Hussainara Khatoon & Ors vs Home Secretary, State of Bihar* (1980) 1 SCC 81; *Satender Kumar Antil vs. Central Bureau of Investigation* (2022) 10 SCC 51].

15. In view of the aforesaid circumstances taken holistically, in the considered opinion of this Court, keeping the applicant languishing behind



bars during such time would serve no fruitful purpose. Thus, considering the aforesaid factual scenario coupled with the legal position at hand, it would be in the interest of justice, if the applicant is released on bail.

16. It is noteworthy that co-ordinate benches this Court in ***Bail Appln. 3577/2022*** (dated 11.01.2023) titled ***Kapil Taneja (In JC) vs. State (Govt. of NCT of Delhi) Bail Appln.*** and in ***2803/2023*** (dated 20.10.2023) titled ***Sahil Pal vs. CBI***, have from time to time under almost similar circumstances, granted bail to the accused therein.

17. Accordingly, the applicant is released on bail in FIR No.RC2212022E0031/2022 registered under Section(s) 120B/170/384/420/503 of the Indian Penal Code, 1860 and under Section(s) 66C/66D/75/85 of the Information Technology Act, 2000 at PS.: CBI/CCID/EO-III, New Delhi on him furnishing a personal bond in the sum of Rs.2,00,000/- (*Rupees Two Lakhs Only*) along with one surety of the like amount by a family member/ friend having no criminal case pending against them, subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. Applicant shall not leave the National Capital Territory of Delhi without prior permission of the learned Trial Court and shall ordinarily reside at the address as per prison records. If he wishes to change his residential address he shall immediately intimate about the same to the concerned Jail Superintendent by way of an affidavit.
- ii. Applicant shall surrender his passport to the Investigating Officer, within three days. If he does not possess the same, he shall file an affidavit before the Investigating Officer to that effect



within the stipulated time.

iii. Applicant shall appear before the Court as and when the matter is taken up for hearing.

iv. Applicant shall join investigation as and when called by the Investigating Officer concerned. He shall not obstruct or hamper with the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.

v. Applicant shall provide all his mobile numbers to the Investigating Officer concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating Officer concerned. The mobile location be kept on at all times.

vi. Applicant shall report to the Investigating Officer at PS.: CBI/CCID/EO-III, New Delhi, once in the first week of every month unless leave of every such absence is obtained from the learned Trial Court.

vii. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the victim or any member of the victim's family or tamper with the evidence of the case or try to dissuade them from disclosing such facts to the Court or to any police officials.

18. Copy of this order be forwarded to the concerned Jail Superintendent for information and compliance forthwith.

19. Accordingly, the present application is allowed and disposed of with the pending applications, if any.

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20. Needless to say, the observations made on the merits of the matter, if any, are purely for the purposes of adjudication of the present application and shall not be construed as expressions on the merits of the matter.

DECEMBER 18, 2023/akr

SAURABH BANERJEE, J