

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

+ **Bail Application No.2179/2009**

% Reserved on : 17th December, 2009
Pronounced on: 21st December, 2009

MUKESH JAIN Petitioner
! Through Mr. R.N. Mittal, Sr. Adv.
with Mr. Puneet Mittal and Mr.
Manoj Kumar, Advs.

versus

\$ CBI Respondent
! Through Ms. Sonia Mathur with
Mr. Sumit Singh, Advs.
Insp. Sirup Sarkar, I.O., CBI.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

: **V.K. JAIN, J.**

1. This is a petition under Section 439 of the Code of Criminal Procedure for grant of bail in the case registered vide RC No.RC071/2009 (E) under Section 420/467/468/471/511 IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The petitioner was arrested by CBI on 8th April, 2009 and has been chargesheeted alongwith nine other co-accused persons, in a case of defrauding Punjab National Bank to the
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extent of Rs.1,46,71,000/- and attempt to defraud the bank of Rs.2,72,38,000/- using forged cheques for the purpose of cheating, in connivance with some bank officials.

2. As far as the petitioner is concerned, the allegations against him are that two forged cheques one of Rs.51.65 lakhs and the other of Rs.55.06 lakhs purporting to be issued by M/s Sahara India Finance Corporation Ltd. were deposited in the bank account of M/s Bahubali Marketing Pvt. Ltd. in which he and his wife Benu Jain were Directors. These cheques were forged after procuring a blank Multicity Cheque Book from the Daryaganj Branch of Punjab National Bank and printing the name of Lal Bagh, Lucknow Branch on the cheques. According to CBI, out of the aforesaid sum of Rs.106.71 lakhs, Rs.38 lakhs were withdrawn by the petitioner and his wife through self cheques and a sum of Rs.60.61 lakhs was transferred to the account of M/s Analytical Impex Ltd. This is also the case of the CBI that Mr. Pramod Kumar Pandey of M/s Analytical Impex Ltd. withdrew Rs.50 lakhs in cash and handed them over to the petitioner Mukesh Jain in the presence of his co-accused Shri S.K. Bhargav and Rs.10 lakhs were transferred to the account of M/s Saint Grandeur, which is owned by a relative of the petitioner.

3. While investigating this case, the CBI also found that using forged cheques, purporting to be issued by M/s Bajpai

Construction Co., a sum of Rs.40 lakhs was transferred to the account of M/s Bansal Trading Co., which belonged to Nipun Bansal, co-accused of the petitioner. The bail application of Nipun Bansal was dismissed, as withdrawn vide order dated July 29, 2009 with liberty to file a fresh application after order on charge is passed.

4. The defence taken by the petitioner, as disclosed in para 15 to 18 of the petition, is that his co-accused S.K. Bhargav, who is a Chartered Accountant, has requested him to supply fabric to M/s Sahara India Finance Corporation Ltd. and had given the above noted two cheques one of Rs. 51.65 lakhs and other of Rs.55.06 lakhs, drawn in favour of M/s Bahubali Marketing Pvt. Ltd., which were deposited in the account of the company. It is claimed by the petitioner that he had also delivered material worth Rs.10 lakhs in the office of his co-accused S.K. Bhargav, who subsequently requested to cancel the order and transfer the remaining funds to the account of M/s Analytical Impex Ltd. It has been further alleged that the amount of Rs.38 lakhs, withdrawn by the petitioner and his wife in cash, was also handed over to co-accused S.K. Bhargav.

5. It is not appropriate for this Court, while considering an application for grant of bail, to analyse and comment upon the defence taken by the petitioner. Suffice it to say that ordinarily, no purchaser, more so a company, would give such a huge

advance without even placing the purchase order with the seller. No such purchase order has been produced or even claimed by the petitioner. Assuming that the amount of Rs.106.71 lakhs was given to the petitioner, as advance, for supply of fabric and the order was later on cancelled by Shri S.K. Bhargav, in that case, the money would be refunded by way of cheque in the name of M/s Sahara India Finance Corporation Ltd. and would not be either paid in cash to Shri S.K. Bhargav or transferred to the account of M/s Analytical Impex Ltd. which had nothing to do with M/s Sahara India Finance Corporation Ltd. I, however, need not go into further into this aspect lest it should prejudice the petitioner at a later stage.

6. The petitioner is alleged to have cheated a public sector bank of more than Rs.1 crore. Admittedly, nothing has been refunded by the petitioner to the bank despite his coming to know that the cheques, whereby money was transferred to the account of his company were forged documents and a huge sum of money, belonging to the bank, had come to the account of his company. The petitioner, therefore, continues to enjoy the fruits of the crime, alleged to have been committed by him. In **State of Gujarat vs. Mohanlal Jitamalji Porwal and Anr.** AIR 1987 SC 1321, the Hon'ble Supreme Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-

“The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.”

The above referred observations were quoted with approval in **Ram Narain Popli vs. CBI**, 2003 (3) SCC 641. The Hon'ble Court also observed as under:

“Unfortunately in the last few years, the country has seen an alarming rise in white-collar crimes which has affected the fiber of the country's economic structure. These cases are nothing but private gain at the cost of the public, and lead to economic disaster.”

In **Champakbhai Amirbhai Vasava vs. State of Gujarat**, 2001 Cr.L.J. 4475, a judgment relied upon by the learned counsel for CBI, Gujarat High Court, while considering Bail Application in a case involving misappropriation of Rs.6 lakhs by a bank employee, inter alia, observed as under:-

“If the employee of the bank would commit such serious offence then, the customer whose amount has been lying in the bank will not be safe and the amount will not be secured. As per my view, such matters cannot be viewed lightly and, therefore, merely in view of the long detention or that there are no chance of his absconding or about tampering with the evidence are not the only criteria to be borne in mind while considering the bail application but there are other considerations while examining bail application to the effect that if the serious offence is committed by the petitioner which would be adversely affecting the public at large, society at large, discretion cannot be exercised. If such offences are viewed lightly, then, the confidence of the public in the Scheduled Banks will be shaken and, therefore, as per my view, this is not the fit case for exercising the powers under section 439 of the Code of Criminal Procedure and the bail application is therefore required to be rejected.”

7. In **Lalit Goel vs. Commissioner of Central Excise**, 2007 (3) JCC 2282, this Court, while dealing with bail application in a case of Customs Act, observed that the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Noticing ever growing materialistic outlook setting unscrupulous elements on a prowl to maximise material gains by unlawful means, this Court even suggested appropriate legislative measure and judicial intervention to safeguard the interest of the State and public at large.

8. In **Prem Kumar Parmar vs. State (CBI)**, 1989 RLR 131., this Court observed that the offences such as cheating and forgery bring imbalance in the economy of the country, which has the effect of making the life of majority of people, particularly those belonging to economically weaker sections of the society miserable and that such economic offences are worse than murders.

9. It is true that the petitioner has been in custody for more than eight months and the chargesheet has already been filed, but considering the huge amount of public money, being retained by him, his having been in custody for eight months by itself would, in the facts and circumstances of this case, not entitle him to grant of bail at this stage. The economic offences having deep rooted conspiracies and involving huge loss of public funds whether of nationalized banks or of the State and its instrumentalities need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of our country. Therefore, the persons involved in such offences, particularly those who continue to reap the benefit of the crime committed by them, do not deserve any indulgence and any sympathy to them would not only be entirely misplaced but also against the larger interest of the society. The Court cannot be oblivious to the fact that such offences are preceded by cool,

calculated and deliberate design, with an eye on personal gains, and in fact, not all such offences come to the surface. If a person knows that even after misappropriating huge public funds, he can come out on bail after spending a few months in jail, and thereafter, he can continue to enjoy the ill-gotten wealth, obtained by illegal means, that would only encourage many others to commit similar crimes in the belief that even if they have to spend a few months in jail, they can lead a lavish and comfortable life thereafter, utilizing the public funds acquired by them. In fact, not everyone would mind luxurious living for him and his family, even if it comes at the cost of spending a few months in jail. A strong message therefore needs to be sent to these white collared criminals and those who are waiting in the wings, that in the long run, it does not pay to be on the wrong side of law. Unless it is done, we will not be able to check the growing tendency to adopt dubious and illegal means, to get rich overnight so as to be able to enjoy all those luxuries of life, which now are available in abundance, courtesy liberation and globalization of our economy. I do not wish to suggest that the time already spent in jail is not a relevant consideration in the matter of grant of bail or that the economic offenders should not at all be enlarged on bail. Of course, we cannot keep anyone in prison for an unreasonably long period. But, how much period spent in jail would by itself entitle an under trial prisoner to bail, would depend upon the facts of each

case, including the amount of public funds involved, the quantum of public funds being retained by him, the circumstances in which the offence was committed and the nature of the defence, if any, taken by him. No hard and fast rule can be laid down in such matters and every case has to be examined in the light of its individual facts and circumstances.

10. The learned counsel for the petitioner has referred to the decision of the Hon'ble Supreme Court in **Ashok Dhingra vs. N.C.T. of Delhi** 2001 [1] JCC [SC] 178, where the Hon'ble Court noticing that the petitioner had been in custody for more than five months, enlarged him on bail in a case of cheating a Japanese national of more than of 65 lakhs. This judgment, in my view, does not apply to the present case involving public funds to the extent of more than one crore. Cheating, involving a private person, cannot be treated at par with a case of criminal conspiracy by forgery and cheating, in respect of huge public funds. The cases of cheating and forgery resulting in loss of public funds have to be treated differently from the cases of cheating private citizens as cheating, involving public funds, does not affect any individual, but affects the society at large.

11. The learned counsel for the petitioner has also referred to the decision of the Hon'ble Supreme Court in **M.M. Cooperative Bank Limited vs. J.P. Bhimani & Another** (2009) 8 SCC 727. In that case, the respondent, during the

hearing of his bail application, offered before the High Court to make payment of Rs.2384 lakhs to the petitioner-bank. He offered to deposit Rs.50 lakhs within a week from the date of his release, Rs.150 lakhs in five instalments, Rs.150 lakhs by selling his mortgaged property and by permitting the bank to deal with his immovable properties, with his cooperation. A sum of Rs.805 lakhs was to be paid in minimum monthly instalments of Rs.10 lakhs commencing after initial period of six months was over. On this statement, he was granted bail, subject to a number of conditions enumerated in the order. Grant of bail to the respondent was challenged before the Hon'ble Supreme Court. The Hon'ble Court noticed that a large number of civil litigations were pending. It was also noticed that he had tendered a list of properties held by third parties not being the borrowers of the bank, alongwith their consent and support and the bank was free to deal with those properties in the manner it liked for recovery of the amount. The Hon'ble Court was informed that he had sold his residential house as well as his office to deposit a sum of Rs.150 lakhs. In these circumstances, the Hon'ble Supreme Court declined the request of the appellant to direct the respondent to deposit at least a sum of Rs.41 crores.

12. What is important is that in the case of **M.M. Cooperative Bank Limited** (supra), the Hon'ble Supreme Court did not take an adverse view of the respondent being enlarged on bail, on the

basis of the offer made by him to pay a huge amount to the bank. The learned senior counsel contended that if bail is granted to the petitioner, he would deposit a sum of Rs.5 lakhs within two weeks from the date of his release. Considering the amount that was transferred to the account of the company of the petitioner, the offer to pay Rs.5 lakhs, after two weeks from the date of his release, cannot be considered as good enough to be treated at par with the other on the basis of which the respondent was released in the case of **M.M. Cooperative Bank Limited** (supra). In fact, it is nowhere near even the amount of Rs.38 lakhs, withdrawn in cash by the petitioner and his wife.

13. In **Suresh Chandra Ramanlal vs. State of Gujarat** 2008 (7) SCC 591, a case, involving cheating and forgery in respect of funds of a bank, the Hon'ble Supreme Court even while granting bail on verified medical grounds, imposed a condition that he would deposit a sum of Rs.40 lakhs with the bank in four monthly instalments. This was despite the fact that in the case before the Hon'ble Supreme Court, there were as many as 49 accused and each one of them had already been enlarged on bail and that included the Chairman, Vice-Chairman, Managing Director, 11 other Directors of the bank and the case of the appellant, Ex. Vice-Chairman of the bank, was that he had resigned in the year 1999, whereas the FIR was registered in the year 2002.

14. Nipun Bansal, co-accused of the appellant, in whose account, Rs.40 lakhs were transferred by committing forgery and cheating, is still in custody though during the course of arguments, I was informed that he had already made some payment to the bank before he was arrested. The petitioner does not deserve a treatment more favourable than what has been given to Nipun Bansal, who has retained an amount much less than the amount retained by the petitioner.

15. For the reasons given in the preceding paragraphs, I am of the considered view that the petitioner should not be enlarged on bail at this stage.

The Bail Application is hereby dismissed. The observations made in this order, having been necessitated solely for the purpose of dealing with the contentions raised by the petitioner and the plea taken by him, shall not prejudice the decision of the case at any stage of the trial.

(V.K.JAIN)
JUDGE

DECEMBER 21, 2009

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