

via Video-conferencing

\$~15

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

Date of decision: 28th August 2020

+ BAIL APPL. 2265/2020

JAYANT KUMAR JAIN

...Petitioner/Applicant

Through: Mr. Vikas Pahwa, Sr. Advocate
with Mr, Sunil Mittal, Mr. Vikas
Sethi and Mr. Anshul Mittal,
Advocates.

versus

THE STATE

...Respondent

Through: Ms. Neelam Sharma, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

The applicant, who is an accused in case FIR No. 53/2019 dated 28.03.2019 registered under sections 409/467/468/471/120B IPC at P.S.: Economic Offences Wing, New Delhi ('Delhi FIR', for short), seeks regular bail.

2. Mr. Vikas Pahwa, learned senior counsel instructed by Mr. Sunil Mittal, learned counsel for the applicant, submits that the complainant is the real brother of the applicant, who has filed the FIR in relation to a property bearing No. 9, Hanuman Road, New Delhi ('subject property'). Mr. Pahwa submits that the essence of the allegation is that the accused persons, including the applicant, have illegally usurped the subject property by transferring its ownership to the applicant's wife Mrs. Ekta Jain, who is also an accused in the matter. Senior counsel submits that, other thing apart, substantially the same allegation was investigated in an earlier complaint filed by the same complainant before P.S. : Hare Street, Kolkata, which led to the registration of FIR No. 329/2018 dated 25.11.2018 ('Kolkata FIR', for short). While several allegations were investigated as part of the Kolkata FIR, one of the allegations was *inter alia* that the applicant had transferred the subject property in favour of his wife on the basis of forged documents including board resolutions etc. and by opening bank accounts. Mr. Pahwa states that after completing investigation however, a final report dated 13.04.2019 has been filed in the Kolkata FIR, in which the Investigating Officer has concluded that the dispute arose long ago and subsequently several civil litigations are pending between the parties before different courts in relation to the dispute; and that accordingly the investigation has been closed, declaring it to be a dispute of civil nature.

3. Mr. Pahwa places reliance upon a decision of the Supreme Court in *T.T. Antony vs. State of Kerala & Others*¹ and draws attention to para 20 of the judgment, to submit that apart from the fact that there cannot be two FIRs in relation to the same offence, there also cannot be any fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.
4. Learned senior counsel submits that in any case, all allegations in the Delhi FIR relate to documentary transactions and therefore no custodial interrogation of the applicant is required, which is why the applicant's police custody was never sought and he was remanded straightaway to judicial custody upon his arrest on 02.07.2020.
5. Mr. Pahwa also points-out that disputes in relation to properties and businesses of the family were referred to arbitration, which process culminated in the passing of an arbitral award dated 03.01.2013. In the context of the arbitral proceedings a custodian was appointed, who had custody of original documents and papers, including the original title deeds of the subject property; and who subsequently handed-over such documents to the Registrar of the

¹ (2001) 6 SCC 181

Original Side of the Calcutta High Court in appeal proceedings under the directions contained in order dated 30.07.2018, which order was upheld by review order dated 08.11.2019 made by that court. Senior counsel submits that in fact the aforesaid orders of the Calcutta High Court have since also been upheld by the Supreme Court by order dated 08.06.2020, whereby an SLP preferred against those orders has been disposed of. Mr. Pahwa further submits that other documents, which were with the applicant, have already been handed-over to the Investigating Officer.

6. An application seeking regular bail in this case has been rejected by the learned Sessions Court *vidé* order dated 13.08.2020.
7. Notice in this application was issued on 21.08.2020. Consequent thereupon status report dated 25.08.2020 has been filed.
8. Nominal roll dated 24.08.2020 has also been received from the Jail Superintendent.
9. Relying upon the status report, Ms. Neelam Sharma, learned APP for the State opposes the grant of bail, essentially contesting the submission that the subject matter of investigation in the Delhi FIR is the same as that in the Kolkata FIR, in which closure report has been filed. She submits that in the Kolkata FIR it was alleged that the accused persons had hatched a criminal conspiracy to cheat the complainant by inducing him to comply with an arbitral award and

to part with various documents, conveyance deeds, share-scripts etc.; and by taking possession of such documents 'theft' of the originals was committed, to use them to change the beneficiaries/nominees. Ms. Sharma further points-out that as recorded in the closure report, though in the course of the investigation in Kolkata, the complainant had submitted a letter dated 15.12.2018 making allegations in relation to the subject property, those allegations were different from the ones made in the Delhi FIR. The learned APP argues that the allegations made in the Kolkata FIR related only to theft of documents; whereas the allegations in the Delhi FIR relate to illegal usurpation and transfer of the subject property in favour of the applicant's wife, which is alleged to have been done in 2012, well before the arbitration proceedings.

10. Mr. Sanjeev Sahay, learned counsel for the complainant has also joined the video-conference hearing on behalf of the complainant, seeking to be heard. However he was advised to assist Ms. Neelam Sharma, learned APP for the State in making submissions.
11. A brief overview and comparison of the Kolkata FIR and the Delhi FIR is telling :
 - a. The Kolkata FIR was filed by the applicant's brother Suresh Kumar Jain as the sole complainant; and the applicant, his brothers along with one Kamlesh Sogani, who is a Chartered

Accountant appointed by the Arbitral Tribunal as a 'custodian' of certain documents etc. for the effective implementation of arbitral award dated 03.01.2013, were implicated as accused;

- b. The essence of the allegation in the Kolkata FIR, as originally filed, was that as part of a criminal conspiracy to cheat the complainant, the accused persons induced the complainant to part with various documents, conveyance deeds, share-scrips, life-insurance policies etc. under the guise of implementing and complying with the arbitral award; but after taking possession of such documents, the accused committed 'theft' of the originals and used the same fraudulently, alongwith with some forged documents, to change the beneficiaries/nominees of various assets ;
- c. In the course of investigation in Kolkata, the complainant submitted to the Investigating Officer a letter dated 15.12.2018 making allegations to the effect that the accused persons were holding onto the subject property, illegally and contrary to the settlement arrived at in arbitration proceedings, whereas it was the complainant who was entitled to it. It was further alleged in the letter that the accused persons had mortgaged the subject property to various banks and financial institutions, which could not

have been done without the custodian handing-over the original documents to the accused persons. It is noteworthy that letter dated 15.12.2018 begins by saying :

“ * * * * *

Ref: Case No. 329 dated 25 Nov 2018

In reference with the case herein abovementioned, we are submitting some documents which will prove the connivance of the Custodian and the other offenders mentioned in the complaint letter of 17 Nov 2017.

The property of 9 Hanuman Road, situated at Connaught Place devolved upon us as per the settlement detailed in the excel sheet dated 01 Jan 2013 (Annexure A) signed by all the parties and also reflected in clause 12 of the arbitral award dated 3 Jan 2013.

* * * * *

(emphasis supplied)

whereby it is evident that the complainant himself brought the subject property within the scope of investigation in FIR No. 329/18, namely the Kolkata FIR.

- d. In the closure report filed in the Kolkata FIR, the Investigating Officer *inter alia* says that upon making enquiries from the accused persons and after seeking clarification :

“.... it was ascertained that the subject matter is pending before the Hon’ble High of Calcutta (sic) and both the parties have filed affidavits in support of their contentions. It was also informed by them that the suit filed in Patiala in Patiala House Court (sic) by the complainant seeks reliefs with regard to the said 9, Hanuman Road Property has also been dismissed on

the basis of the ground of pre-existing litigations before High Court at Calcutta in respect of that property....”

(emphasis supplied)

- e. In this backdrop, the Investigating Officer in Kolkata concludes in his case closure report that :

“...the investigation made so far revealed that the dispute in question arose between both the parties since long and subsequently enormous civil litigations are pending and sub-judice before different courts and as such the entire fact in issue is already within the knowledge of the Hon'ble Court. Accordingly, the investigation of the case was closed declaring the case as Civil in Nature under order of superiors...”

(emphasis supplied)

- f. Now, there are two complainants in the Delhi FIR, namely one M/s Veerprabhu Projects Pvt. Ltd. (erstwhile LMJ Projects Pvt. Ltd.) and Suresh Kumar Jain, i.e. the complainant in the Kolkata FIR;
- g. As far as the subject property is concerned, the essence of the allegation in the Delhi FIR is that the subject property was owned by M/s. LMJ Projects Pvt. Ltd. and that the accused persons conspired to usurp the subject property by illegally transferring the ownership of the same in favour of the applicant's wife. This, it is alleged, was done on the basis of a conspiracy hatched around 2012, by opening new bank accounts in the name of that company and of the

applicant's wife; by transferring money from the company's bank account as loan to the applicant's wife; which money the applicant's wife utilized to purchase the subject property from the same company;

- h. What is important is that in the Delhi FIR also, the complainant says that Kamlesh Sogani, the custodian appointed for implementation of the arbitral award, handed-over the original sale deed and other original documents pertaining to the subject property alongwith actual physical possession thereof to the applicant's wife, thereby facilitating the offences committed;
 - i. Accordingly, it is seen, that unnecessary nuance apart, it is clear that both in the Kolkata FIR and in the Delhi FIR, the complainant alleges illegal usurpation of the subject property by the applicant. It is for this reason that the complainant himself submitted letter dated 15.12.2018 to the Investigating Officer in Kolkata, to which clarification was sought by the Investigating Officer from the accused persons and observations have been made in relation to that in the closure report filed in the Kolkata FIR.
12. The nominal roll records that the applicant has been in judicial custody since 02.07.2020, which is the date of his arrest. Accordingly, no police remand of the applicant was ever sought.

13. This court is informed however that notice under section 41A Cr.P.C. was issued to the applicant, in response to which the applicant joined investigation as and when called.
14. The nominal roll also shows that there is another FIR, bearing No.128/2019 registered under sections 409/420/467/468/471 IPC at P.S.: EOW, Delhi, that is pending against the applicant.
15. Charge-sheet in the matter has not yet been filed, though some 17 months have passed since the registration of the Delhi FIR.
16. A brief conspectus of the fundamental principles of bail would not be out of place at this point. Extracts from some judicial precedents in this behalf are set-out below.
17. Outlining the considerations for grant or refusal of bail, in *Ash Mohammad vs. Shiv Raj Singh & Anr.*² the Supreme Court has expressed itself as follows :

“8. In Ram Govind Upadhyay v. Sudarshan Singh³, it has been opined that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependent on the factual matrix of the matter. In the said case the learned Judges referred to the decision in Prahlad Singh Bhati v. NCT, Delhi and stated as follows: (Ram Govind case, SCC p. 602, para 4)

² (2012) 9 SCC 446

³ (2002) 3 SCC 598

“(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a **threat for the complainant** should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a **prima facie satisfaction of the court in support of the charge.**

(d) **Frivolity in prosecution should always be considered** and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the **genuineness of the prosecution,** in the normal course of events, the accused is entitled to an order of bail.”

“9. In *Chaman Lal v. State of U.P.*⁴ this Court while dealing with an application for bail has stated that certain factors are to be considered for grant of bail, they are: (SCC p. 525)

“... (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and (iii) prima facie satisfaction of the court in support of the charge.”

“10. In *Masroor v. State of U.P.*⁵, while giving emphasis to ascribing reasons for granting of bail, however, brief it may be, a two-Judge Bench observed that: (SCC p. 290, para 15)

“15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts.

⁴ (2004) 7 SCC 525

⁵ (2009) 14 SCC 286

Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case.”

“11. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*⁶ it has been observed that (SCC p. 499, para 9) normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail of the accused, however, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point.

“9. ... among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

(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.”

* * * * *

“20. Having said about the sanctity of liberty and the restrictions imposed by law and the necessity of collective security, we may proceed

⁶ (2010) 14 SCC 496

to state as to what is the connotative concept of bail. In Halsbury's Laws of England it has been stated thus:

“166. Effect of bail.—The effect of granting bail is not to set the defendant (accused) at liberty, but to release him from the custody of the law and to entrust him to the custody of his sureties, who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law, and he will then be imprisoned....”

“21. In Sunil Fulchand Shah v. Union of India⁷ Dr A.S. Anand, learned Chief Justice, in his concurring opinion, observed: (SCC pp. 429-30, para 24)

“24. ... Bail is well understood in criminal jurisprudence and Chapter 33 of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word ‘bail’ is surety.”

(emphasis supplied)

18. In *Ashok Sagar vs. State*⁸ the Delhi High Court has said this :

“35. Authorities on bail, and the jurisprudence relating thereto, are in overabundance, and it is hardly necessary to multiply references thereto. The principles governing exercise of judicial discretion in such cases, appear, however, to be well-settled. The following principles may immediately be discerned, from the aforementioned authorities:

⁷ (2000) 3 SCC 409

⁸ 2018 SCC OnLine Del 9548

* * * * *

“(ii) While examining the issue, courts are not to presume that the accused would flee justice, were he to be released, and search for evidence indicating to the contrary. Logistically, every accused, who is released during trial, has the potentiality of fleeing. Were this potentiality to be allowed to influence the mind of the court, no accused would be entitled to bail.”

* * * * *

“(iv) Given this legal position, the nature of the offence committed necessarily has a limited role to play, while examining the merits of an application for bail. This is for a simple reason that the application being examined by the court is not for suspension of sentence, but for release during trial. If the court were to allow itself to be unduly influenced by the nature of the charges against the accused, and the seriousness of the crime alleged to have been committed by him, it would result in obliterating the distinction between grant of bail and suspension of sentence. Inasmuch as the applicant, in a bail application, has yet to be found guilty of the offence with which he is charged, the significance of the nature of the offence stand substantially reduced, while examining the application for bail. Courts have to be alive to the legal position – underscored in the very first paragraph of Dataram Singh (supra) - that every accused is presumed to be innocent until proved guilty.”

(emphasis supplied)

19. In a recent decision in *Sanjay Chandra vs. CBI*⁹ the Supreme Court has held that :

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be

⁹ (2012) 1 SCC 40

considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that **punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.**

“22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, **“necessity” is the operative test.** In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

“23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and **it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.**

“24. In the instant case, we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, **they have not placed any material in support of the allegation.** In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but **that is not the only test or the factor:** the other factor that also requires to be taken

note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating the scales of justice”.

* * * * *

“46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI.”

(emphasis supplied)

20. Most recently, in ***P. Chidambaram vs. CBI***¹⁰ the Supreme Court has held :

*“22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the **nature of accusation** and the **severity of the punishment** in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) **reasonable apprehension of tampering with the witnesses** or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the **likelihood of his abscondence**; (iv) **character behaviour and standing** of the accused and the circumstances which are peculiar to the accused;*

¹⁰ 2019 SCC OnLine SC 1380

(v) **larger interest of the public or the State** and similar other considerations (vide *Prahlad Singh Bhati v. NCT, Delhi*). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner.”

* * * * *

“33. The appellant is not a “flight risk” and in view of the conditions imposed, there is no possibility of his abscondence from the trial. Statement of the prosecution that the appellant has influenced the witnesses and there is likelihood of his further influencing the witnesses cannot be the ground to deny bail to the appellant particularly, when there is no such whisper in the six remand applications filed by the prosecution.”

(emphasis supplied)

21. Furthermore in *P. Chidambaram vs. Directorate of Enforcement*¹¹, the Supreme Court has explained the concept and application of ‘gravity’ of an offence in the following way :

“12. The gravity can only beget the length of sentence provided in law and by asserting that the offence is grave, the grant of bail cannot be thwarted. The respondent cannot contend as if the appellant should remain in custody till the trial is over.”

(emphasis supplied)

22. It is also extremely important to consider that pre-trial detention has very serious, deleterious consequences on the ability of an accused to brief and consult his lawyers, and to prepare his

¹¹ 2019 SCC OnLine SC 1549

defence, so that he can meaningfully avail his constitutionally guaranteed right to a fair trial under Article 21 of the Constitution.

23. Commenting on the consequences of pre-trial detention, in ***Moti Ram vs. State of M.P.***¹² the Supreme Court said :

“14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.”

(emphasis supplied)

24. In ***Babu Singh vs. State of U.P.***¹³ the Supreme Court observed :

“18. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.”

(emphasis supplied)

¹² (1978) 4 SCC 47

¹³ (1978) 1 SCC 579

25. Another legal question that arises in this case concerns the interrelation between the Kolkata FIR and the Delhi FIR.
26. While discussing the maintainability of a second FIR on receipt of subsequent information in relation to the same cognizable offence, the Supreme Court in *T.T. Antony* (supra) has opined as under:

“20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.”

(emphasis supplied)

27. From the above discussion, the following conclusions present themselves :
- (a) The fact is that two FIRs have been filed by the complainant *inter alia* against the applicant, a perusal of which FIRs *ex facie* shows overlap and commonality, if not identity, of allegations insofar as the subject property is concerned. A

bare reading of the Kolkata FIR, complaint letter dated 15.12.2018 and the closure report filed, shows that the allegation of usurpation of the subject property was put before the Investigating Officer; and, one must take it was investigated, as part of the Kolkata FIR, upon the complaint and at the instance of the complainant;

- (b) While it is true that closure report dated 13.04.2019 is yet to be accepted by the court in Kolkata, that does not detract from the position that the allegation against the applicant in relation to the subject property has already been looked into; and investigation in that behalf has been closed, at least in the hands of the Investigating Officer in Kolkata. If the complainant is not satisfied with the investigation conducted in the Kolkata FIR; or into the allegations relating to the subject property pursuant to the Kolkata FIR, it would certainly be available to the complainant to petition the Kolkata court for *further investigation or re-investigation or fresh investigation*. Or, if the court in Kolkata were to otherwise not accept the closure report, it may order such investigation. *Yet, all this must happen only in, and pursuant to, the Kolkata FIR*. A simultaneous or parallel investigation in Delhi under the Delhi FIR would not be permissible;

- (c) To be sure, the complaint in Delhi was dated 27.08.2018 which lead to registration of the Delhi FIR dated 28.03.2019; whereas the complaint in Kolkata was dated 17.11.2017 which lead to registration of Kolkata FIR dated 25.11.2018, whereby both the complaint and the FIR in Kolkata were *prior* in point of time to those in Delhi;
- (d) What the law contemplates as “first information” under section 154 Cr.P.C. is that which is reduced into writing *first*; and this, in the opinion of this court, is the purport of para 20 of the *T.T. Antony* (supra). Accordingly, even as per the mandate of *T.T. Antony*, since the Kolkata FIR dated 25.11.2018 was earlier in point of time than the Delhi FIR dated 28.03.2019, there cannot be any investigation in Delhi on receipt of every subsequent piece of information if it relates to the same cognizable offence as recorded earlier in Kolkata;
- (e) To put it differently, as per *T.T. Antony* (supra), if there cannot be a second FIR in respect of the same occurrence or incident or cognizable offence, there certainly cannot be any investigation or further investigation or re-investigation or fresh investigation, pursuant to a second FIR;
- (f) This court is persuaded to consider these aspects even though this application is only for bail, in the context of the

observations of the Supreme Court in *Ash Mohammad* (cf. extract, supra) where the Supreme Court has said :

*“ ... **Frivolity** in prosecution **should always be considered** and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

(emphasis supplied)

28. It is made clear however that the present discussion is only in the context of the present bail application; and it is not the scope or purport of this decision to quash the FIR or the investigation being carried-on pursuant to it.
29. It is also noticed that in order dated 20.07.2020 made in the applicant's Bail Appl. No. 851/2020, the learned Sessions Court has recorded a submission made on behalf of the Investigating Officer to say that “... *the investigation on almost all the aspects except the purported forged bank account opened pursuant to Board Resolution dated 26.06.2012, are complete*” and that “... *he shall send the purported forged documents pertaining to the said account to FSL for expert opinion ...*”. It would appear therefore that investigation in the Delhi FIR is also complete, except for forensic examination of some allegedly forged documents.

30. Upon a conspectus of the foregoing facts and circumstances, the considerations that weigh with this court are :

- i. *firstly*, that the offences alleged against the applicant in the Delhi FIR *insofar as they relate to the subject property* are, in essence and substance, the same as those alleged in the Kolkata FIR filed *inter-alia* by the same complainant. These allegations were placed before the Investigating Officer in Kolkata by the complainant *vidé* letter dated 15.12.2018; and must therefore be taken to have been inquired into and investigated;
- ii. *secondly*, in the Kolkata FIR a closure report has already been filed on 13.04.2019 and though the closure report is yet to be considered by the concerned court, at least investigation has been concluded ;
- iii. *thirdly*, in view of the verdict of the Supreme Court in *T.T. Antony (supra)*, in any case, *every* subsequent information in respect of the same cognizable offence, or the same occurrence, or incident giving rise to one or more cognizable offences, cannot become subject matter of a separate FIR and the Investigating Officer is under obligation to investigate not merely the cognizable offence reported in an FIR but also other connected offences found to have been committed in the course of the same

transaction or in the same occurrence, before filing his final report under section 173 Cr.P.C. This stands eminently to reason since otherwise, every separate facet or nugget of an allegation or information would form subject matter of a separate FIR, which would only be a source of endless harassment to an accused person ;

- iv. *fourthly*, even if the complainant is not satisfied with the investigation conducted in the Kolkata FIR in relation to the allegations concerning the subject property, the complainant may petition the Kolkata court for *further investigation* or *re-investigation* or *fresh investigation*; but the complainant cannot expect that to be done in, or by way of, the Delhi FIR;
- v. *fifthly*, there is no denying the fact that several civil proceedings, including before the Calcutta High Court, are pending *inter se* the parties, including disputes, allegations and counter-allegations relating to the subject property; which implies that the genesis of the Delhi FIR is essentially a civil dispute ;
- vi. *sixthly*, not even a single day's police remand was sought in respect of the applicant in Delhi, which shows that the Investigating Officer did not find it necessary even to question the applicant, forget requiring his custodial interrogation. It cannot escape the attention of the court

that from the date of registration of the FIR on 28.03.2019 till 02.07.2020, that is for about 15 months, no effort was made to arrest the applicant and the need to arrest was felt only after the closure report was filed in Kolkata; and at the peak of the prevalent coronavirus pandemic in Delhi, when the effort of the judicial administration is to decongest prisons ; and

vii. *lastly*, the applicant is evidently a family man living in Delhi, with a large extended family, and therefore with deep roots in society; and is hardly likely to be at flight risk. He is therefore unlikely to become unavailable for investigation or trial. Also, there is no allegation that while he was not in custody, the applicant tampered with any evidence or threatened witnesses.

31. In the circumstances, this court is persuaded to admit the applicant to *regular bail*, subject to the following conditions :

a. The applicant shall furnish a personal bond in the sum of Rs. 25,00,000/- (Rs. Twenty-five Lacs Only) with 02 sureties in the sum of Rs.10,00,000/- each, at least one being from a family member, to the satisfaction of the Investigating Officer;

- b. The applicant shall surrender his passport to the Investigating Officer ;
- c. The applicant shall not leave the country without permission of this Court and shall *ordinarily* reside in his place of residence as per police records;
- d. The applicant shall furnish to the Investigating Officer a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- e. The applicant shall cooperate in any investigation in the matter, as and when required;
- f. The applicant shall not, whether directly or indirectly, contact nor visit nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the matter.

32. Nothing in this order shall be construed as an expression on the merits of the allegations contained in the FIR; nor on the maintainability and validity of the FIR nor on the merits of the matter in any manner whatsoever.

33. The bail application stands disposed of. The applicant be released on bail subject to the conditions imposed above, if not required in any other case.
34. Copy of this order be sent to the concerned Jail Superintendent.
35. Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J

28th August, 2020/Ne/uj