



2026:DHC:2089



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

% **Date of decision: March, 09, 2026**

+ **BAIL APPLN. 5038/2025**

**SUBHAM SAXENA**

**.....Applicant**

Through: Mr. Vikas Pahwa, Sr. Adv. with  
Mr. Meenesh Dubey, Mr Jasmeet  
Singh Chadha, Mr. Sohraab Singh  
and Mr Muhammad Marroof, Adv.

Versus

**STATE NCT OF DELHI & ANR.**

**.....Respondents**

Through: Mr. Satish Kumar, APP with Ms.  
Upasna Bakshi, Adv.  
Ms. Sowjhanya Shankaran, Adv.  
for R-2 (VC)  
Insp. Harpal Madan with SI Sanjay  
Kumar, PS: EOW

**CORAM:**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**J U D G M E N T ( O R A L )**

1. By virtue of the present application under *Section 483* of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*BNSS*) read with *Section 439* of the Code of Criminal Procedure, 1973 (*Cr.P.C*), the applicant seeks grant of regular bail in proceedings arising out of FIR No.144/2021 dated 23.09.2021 registered at PS: Economic Offences Wing, District South-East, Delhi under *Sections 408/476/468/471/120-B* of the Indian Penal Code, 1860 (*IPC*).



2. *Succinctly put*, a complaint was received on 19.08.2021 on behalf of the complainant/ respondent no.2 herein, being a company engaged in the business of real estate development, against the applicant herein, one of its employee since the year 2009, the Assistant Manager (Accounts) then, to the effect that he had siphoned away major funds of the complainant company by creating sham accounts of fictitious vendors, and misappropriated huge sums of money in favour of himself, as well as his family members and close associates. The preliminary enquiry conducted by the Police led to registration of the present FIR. The applicant was then arrested on 07.11.2021 during the course of investigation.

3. After filing of charge-sheet, supplementary charge-sheet has also been filed. In fact, charges have also been framed against the applicant by the learned Chief Judicial Magistrate, South-East District, Saket Courts, New Delhi (*Trial Court*) on 17.02.2025.

4. Learned (senior) counsels for the applicant as well as the complainant company have handed over their respective written synopses, which are taken on record.

5. It is primarily the case of the applicant that he has already been in judicial custody for more than *four years and four months*, and till date, out of the *34 prosecution witnesses*, only *one* has partly been examined in-chief. Relying upon *Arvind Dham vs. Enforcement Directorate:2026 SCC OnLine SC 30*, learned senior counsel for the applicant submits that prolonged incarceration of the applicant without any reasonable progress in the trial is in gross violation of his fundamental rights under *Article 21* of the Constitution of India. Reliance in this regard is placed upon *Javed Gulam Nabi Shaikh vs. State of Maharashtra:(2024) 9 SCC 813*



highlighting the fundamental right of an accused to a speedy trial under *Article 21* of the Constitution of India even in the context of special Act(s).

6. Learned senior counsel further submits that the offence of forgery of valuable security under *Section 467* IPC is not made out against the applicant, since the only allegation *qua* the same is that the applicant gained access to the bank account of the complainant company at *IndusInd Bank* on the basis of a purported Board Resolution dated 14.02.2017, however, it is nowhere the case of the prosecution or opined in the CFSL Report that it was the applicant who forged the same. Relying upon *Sheila Sebastian vs. R. Jawaharaj:(2018) 7 SCC 581*, the learned senior counsel submits that other offences alleged against the applicant are less serious, carrying maximum punishment(s) of up to *seven years* of imprisonment.

7. Learned senior counsel further submits that there has been a major change in circumstances since dismissal of the previous bail application of the applicant before this Court, as the trial has commenced thereafter and is yet far from conclusion, making the applicant eligible to seek bail under *Section 437(6)* Cr.P.C. Reliance in this regard is placed upon *Subhelal @ Sushil Sahu vs. State of Chattisgarh:(2025) 5 SCC 140* as also order dated 17.08.2022 passed by the High Court of Punjab and Haryana in CRM-M-18492-2022 entitled '*Raman Kumar vs. State of Punjab*'. The learned senior counsel also relies upon the order dated 15.01.2025 passed in Bail Appln.4572/2024 entitled '*Sidharth Kumar vs. E.D.*', order dated 20.05.2024 passed in Bail Appln.2882/2023 entitled '*Vineet vs. State*' and order dated 27.10.2022 passed in Bail Appln.96/2022 entitled '*Dharamvir @ Kalu vs. State & Anr.*' by Coordinate Benches of this Court to submit



that every day in custody amounts to a change in circumstances; as also upon order dated 13.02.2025 passed in SLP (Crl.) No.17918/2024 entitled '*Vipin Kumar vs. State of U.P.*' and order dated 28.02.2025 passed in SLP (Crl.) No.808/2025 entitled '*Kamal @ Kamal Choudhary vs. State of Madhya Pradesh*' by the Hon'ble Supreme Court to submit that dismissal of bail application by the Hon'ble Supreme Court does not bar the applicant from filing a subsequent application.

8. Based on all the aforesaid, as also since the applicant has deep roots in society with no criminal antecedents and relying upon *P. Chidambaram vs. Directorate of Enforcement:(2020) 13 SCC 791*, learned senior counsel submits that the applicant ought to be released on bail.

9. *Per contra*, learned APP for the State submits that no case for grant of bail to the applicant is made out, since investigation has revealed the quantum of money involved in the crime to be almost *Rs.22 Crores*. Drawing attention of this Court to the mobile/ internet banking details and physical and *email* addresses involved, he submits that there is a strong *prima facie* case against the applicant, that too as the kingpin of the entire conspiracy.

10. Learned APP further submits that despite being provided an opportunity to join the enquiry by the Police, the applicant did not join and/ or participate, and in fact absconded alongwith his family, and had to then be traced and subsequently arrested. Hence, there will be every possibility of him evading the process of law, if granted bail.

11. Learned counsel for the complainant company, in support of the aforesaid contentions of the learned APP, submits that the applicant has been consistently denied bail by the learned Trial Court, the learned



Sessions Court, this Court, as well as the Hon'ble Supreme Court. Further, that the offence under *Section 467* IPC is clearly made out against the applicant, which is a serious offence punishable as to life imprisonment.

12. Learned counsel further submits that the applicant cannot seek bail on the ground of prolonged incarceration, especially when the Hon'ble Supreme has also held in *Gulfisha Fatima vs. State:2026 SCC OnLine SC 10* that *Article 21* of the Constitution of India ought not to be considered in isolation without keeping in mind the gravity of the offences and other relevant factors involved. Also, the delay in the present case is attributable to multiple revision petitions filed by seven accused persons across different Courts, alongwith the applicant's own arguments before the learned Trial Court that it ought to hold its hands till decision in the said petitions, and hence, the applicant cannot be allowed to take benefit of his own delays at this stage.

13. This Court has heard learned (senior) counsels for the parties as well as learned APP for the State and perused the documents and Status Report on record as also the judgments cited at the bar.

14. At the outset, though no doubt *Article 21* of the Constitution of India is a fundamental right guaranteed to the applicant, however, the same is to be evaluated holistically with the entire facts and circumstances involved, especially when they are relating to offences of the present nature containing a strong element of public economic welfare, and which is to be accorded due relevance. The applicant herein is allegedly the main brain behind the alleged economic fraud, that too, to the tune of nearly *Rs.22 Crores*, involving repeated sham transactions carried out through multiple bank accounts of the complainant company dealing in real estate



wherein, presumably, public monies of unsuspecting members are invested from time to time. Further the applicant was holding a position of relevance in the complainant company, and the nature of transactions revealed in the investigation, *prima facie* reflects his involvement.

15. Reliance on *Arvind Dham (supra)* by learned senior counsel for the applicant is misplaced, as the same was passed expressly considering that the offences therein were punishable with a maximum term of imprisonment for *seven years*, as well as that the appellant therein had joined the investigation prior to his arrest. In contrast thereto, *firstly*, under *Section 467 IPC*, the maximum punishment imposable is imprisonment for life. Any contentions thereto, especially *qua* the charges under *Section 467 IPC*, are a matter of trial and need not be dwelled into at this stage. *Secondly*, as per prosecution, upon being asked to join the enquiry, the applicant herein absconded alongwith his family members, who were also a part of the alleged conspiracy, hampering the investigation, to which there is no counter by the learned senior counsel for the applicant.

16. Similarly, reliance upon *Subhelal @ Sushil Sahu (supra)* as well as *Raman Kumar (supra)* by learned senior counsel for the applicant is also of no assistance, as the same nowhere lay down that *Section 437(6)* creates an absolute right to bail in favour of the applicant, and the Hon'ble Supreme Court in *Subhelal @ Sushil Sahu (supra)* has in fact emphasised on factors such as the proportion of sentence undergone out of the maximum sentence prescribed, chances of abscondence and evidence tampering and whether the delay in trial is attributable to the applicant.

17. Thus, the maximum sentence prescribed in the present case being imprisonment for life assumes relevance, alongwith the previous conduct



of the applicant when he evaded investigation and absconded with his family. Further, the widespread nature of transactions involving siphoning off funds to around *11 individuals/entities* and further redistribution amongst about *28 entities*, which are *prima facie* revolving around the applicant, give an impression that there is a risk of the applicant tampering with the evidence(s) involved and/ or unduly influencing the witnesses, who are yet to be examined. Moreover, it is also to be considered that whether the applicant has not attributed any delay in the trial. In fact, the multiple revision petitions filed by the accused persons and the applicant asking for a stay before the learned Trial Court is another fact to be taken into consideration. As such, delay, if any, and that too of this nature is *simplicitor* not sufficient for being considered as a ground for grant of bail to the applicant.

18. Therefore, although it is trite that the gravity of the offence is not the sole criteria for denial of bail, and though the applicant, who has the right to a speedy trial, has been in incarceration for over *four years and four months*, taking a holistic view of the entire facts and circumstances involved, the vital factors at play as enumerated hereinabove taken cumulatively, are clearly and overwhelmingly against grant of bail to the applicant. Therefore, it cannot be said that the applicant has crossed the triple-test laid down in *P. Chidambaram (supra)*.

19. Lastly, in light of the afore-going analysis and reasons, reliance upon *Siddharth Kumar (supra)*, *Vineet (supra)*, *Dharamvir @ Kalu (supra)*, *Vipin Kumar (supra)*, *Kamal @ Kamal Choudhary (supra)* by learned senior counsel for the applicant is of no avail.

20. Accordingly, the present application is dismissed.



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21. Needless to say, since the expressions of opinion, if any, are for the purpose of adjudication of the present application only, they shall have no bearing on the overall merits/ trial involved in the matter.

**MARCH 9, 2026/So/RS**

**SAURABH BANERJEE, J.**