

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

+ Bail Application No.185/2009

% Reserved on : 30.01.2009
Date of decision: 05.02.2009

DEEPAK KUMAR ...PETITIONER
Through: Mr.M.K.Sharma, Adv.

Versus
STATE ...RESPONDENT
*Through: Mr.Navin Sharma, APP for State
SI Rajeev Bhardwaj, EOW/Crime*

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

1. This order shall dispose of the bail application filed under Section 439 Cr.P.C. in case FIR No. 118/2006 under Sections 406/419/420/467/468/471 r/w Section 120-B IPC registered at Police Station Rohini, Delhi. The petitioner has been in custody since 29th May, 2007.
2. Briefly stated the facts of the case are that Sh.Siva Raman, Branch Manager of the South Indian Bank Ltd. lodged a complaint that one Sanjay Kapoor Proprietor M/s Sanjay Kapoor and Co., 18-C, Janyug Apartment, Sector -14, Rohini, Delhi was maintaining a current account with the bank. On 23.09.00 he applied for credit facility/overdraft limit of Rs. 40 lacs in the bank by creating charge over the stock and book debts of M/s Sanjay Kapoor and Co. in favour of the bank. Sanjay Kapoor also offered a collateral security

by mortgaging the property No. 53, Road No. 77, Punjabi Bagh, New Delhi shown to have been registered in the name of one Balkishan Monga. On 03.11.00, Sanjay Kapoor along with his father in law Shri K.C. Chaudhary and one person came to the bank and introduced him as Balkishan Monga r/o C-30, Gulmohar Park purported to be owner of the above property No.53, Road No. 77, Punjabi Bagh, New Delhi. The alleged Balkishan Monga also offered the creation of mortgage on the above property against the credit facility of Sanjay Kapoor whereas K.C. Chaudhary stood as guarantor of Sanjay Kapoor to obtain the credit facility. The alleged Balkishan Monga also submitted copy of sale deed No. 5138 dated 25.04.63 in his favour executed by Refugee Cooperative Housing Society Ltd. in respect of above mentioned property. Later on in the month of July 2001, Sanjay Kapoor applied for enhancement of credit limit to Rs. 65 lacs and as such on 06.09.01, the complainant Bank sanctioned a credit limit upto Rs. 50 lacs to Sanjay Kapoor. The necessary documents in this regard were once again executed by Sanjay Kapoor, his father in law KC Choudhary and the alleged Balkishan Monga. During the normal course of business, Sanjay Kapoor availed the cash credit overdraft limit (CCOL) of Rs. 46 lac (aprox.), credit on local discount cheque (LDC) of Rs. 11 lacs (approx.). In the month of March, 2004 the complainant Bank sent notice to Sanjay Kapoor to repay the above outstanding amount but inspite of repeated demand, he did not settle the accounts. It is alleged against the present petitioner that the forgery of the documents took place in connivance with him.

3. The petitioner earlier filed an application for bail before the Additional Sessions Judge, who dismissed the same vide order

dated 12.12.2007. Thereafter, the petitioner filed the second bail application before the Additional Sessions Judge, who dismissed the same vide order dated 18.3.2008 observing that the petitioner is a habitual fabricator of fake document. It is only because of his services that main accused could commit the cheating. His interest in the crime may be just a few thousand rupees, but the consequences of his crime are of very high magnitude, especially, considering the fact that he is involved in eight other cases of similar nature. CFSL report cannot be ignored at this stage.

4. The first application filed by the petitioner for bail before the High Court was dismissed for non-prosecution on 7th July, 2008 and the second application filed by the petitioner for bail before this Court was also dismissed for non-prosecution on 19.11.08. This is the third time the petitioner has moved this Court for bail.
5. It is submitted by counsel for the petitioner that the evidence against the petitioner is in the form of disclosure statement of co-accused Ashok Singhal and Radhey Kishan which is inadmissible being hit under Section 25 of the Evidence Act as it has lead to no discovery so as to make it admissible under Section 27 of the Evidence Act. It is also submitted that the CFSL Report is not conclusive evidence. It is also submitted that Supreme Court in *State Vs. Navjot Sandhu 2005 SCC (Cri.) 1715* while dealing with Section 10 of the Evidence Act held as under:-

“The law is thus well settled that the statements made by conspirators after they are arrested cannot be brought within the ambit of Section 10 of the Evidence Act, because of that time the conspiracy would have ended.....”
6. It is also stated that Section 30 of the Evidence Act is not attracted since there is no confession of co-accused during trial.
7. It is also submitted that the petitioner is on bail in all other cases

except in the present case and that co-accused Ashok Singhal, Mange Ram and Radhey Kishan Vats have already been granted bail.

8. It is also stated that the petitioner's family consists of sick wife and three small children. There is also no one to do the pairvi of his cases in different courts on different dates.
9. The learned APP has opposed the application and has stated that during the course of investigation it has been revealed that the present petitioner was working as Munshi in the office of Sub Registrar, Seelampur, Delhi and probably from there he gathered the expertise in preparing the forged documents. During the course of investigation, he disclosed that he prepared the forged documents in respect of property bearing No. 53, Road No. 77, Punjabi Bagh, New Delhi in his own handwriting and provided the same to co-accused persons for availing finance facility from the bank. He also received Rs.20,000/- as fee for creating forged documents in the present case. This fact has been verified by CFSL report. Thus, prima facie, the involvement of the petitioner in this case, whereby a nationalized bank has been cheated for more than Rs. 70 lakhs, stands established. It may be that the evidence of prosecution is yet to be recorded, but at this stage granting indulgence to the persons like the petitioner by releasing them on bail would be putting a premium on their conduct and may also harm the smooth progress of the trial. There is also possibility of the petitioner likely to indulge in similar crime again. It is submitted that the role of the present accused cannot be treated as similar to that of Ashok Singhal, who only acted as a conduit whereas the present petitioner is himself a forger and is also involved in seven

other cases.

10. Taking into consideration the aforesaid facts and circumstances which enabled accused Sanjay Kapoor to cheat the Bank and permitted him to avail enhanced limits on the basis of forged documents which is the handi work of the petitioner and the report of CFSL which pin points the role of the petitioner as a forger and likelihood of the petitioner in indulging in similar crimes, I do not think it appropriate to release the petitioner on bail for the time being.
11. Bail Application No. 185/2009 is accordingly dismissed.

MOOL CHAND GARG, J.

FEBRUARY 05, 2009
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