

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

+ **Bail Application No.414 /2008**

% Reserved on : 10.02.2009
Date of decision: 18.02.2009

RITESH JAIN ...Petitioner

Versus

STATE ...Respondent

WITH

+ **Bail Application No. 415/2008**

GARIMA JAIN ...Petitioner

Versus

STATE ...Respondent

Advocates who appeared for the parties

For Petitioners : Mr.Sidharth Luthra, Sr.Advocate with
Mr.Saket Sikri, Advocate

For State : Mr.Navin Sharma, APP for State

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? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

1. By this order I shall dispose of the aforesaid two bail applications filed by the petitioners related to each other as husband and wife for the grant of anticipatory bail in FIR No. 355/2007 under Sections 420/468/471 IPC registered at Police Station Prasad Nagar, Delhi registered on the complaint of the owner of 8200 UTI bonds bearing ID No. 99602741 for value of Rs. 8,20,000/- which it is alleged have been fraudulently transferred in the name of the petitioners who claims to have purchased the same from one Yogesh Tyagi by making payments through demand drafts of Rs.8,12,500/- stated to have been encashed by Yogesh Tyagi, which according to the prosecution is not correct and that the transfer has taken place on the basis of fabricated documents and forged transfer deed. The bank Account opened at Ghaziabad has also been found opened on the basis of the false identity.

2. Apprehending their arrest, the petitioners filed applications for anticipatory bail before the Additional Sessions Judge which application was dismissed vide order dated 20.02.2008. It is important to take note of the observations made by the learned Additional Sessions Judge which reveals the modus operandi adopted in committing the offence;

“The facts of the case are that the bonds worth Rs. 8,20,000/- belonging to the complainant were transferred in the name of the present applicants through forged transfer deed executed on 25.01.2005. The investigation till date had revealed that seven days prior to the receipt of this forged transfer deed at UTI office i.e. on 17.01.2005, the applicants, in order to give the colour of bonafide

transaction, had transferred a sum of Rs. 8,12,500/- through two demand drafts of HDFC Bank Ltd., in fictitious account bearing No. 8766 opened in the name of the complainant at Mahamedha Cooperative Bank, Ghaziabad. However, the money was withdrawn from this account on 20.01.2005 and 22.01.2005 i.e. two days prior to execution of this forged transfer deed. The holder of this account and the introducer thereof were found to be fictitious persons. The account was opened on the basis of a forged rent agreement and by misusing the photographs of some unknown lady. One more fictitious account was opened at HDFC Bank, Raj Nagar, Ghaziabad and the same was mentioned in the transfer deed for verifying the signature of the transferor. Due to this transfer, the interest voucher for the period from 01.06.2004 to 30.11.2004 and the duplicate certificate were sent on the address F-285, Sector 12, Vijay Vihar, Ghaziabad despite there being specific instructions by the complainant to the UTI Technological Ltd their address for all interests and purposes is CD-8, Pitam Pura, New Delhi

During the course of investigation, it is also revealed that UTI was requested at the behest of the complainant vide letter dated 27.12.2004 requesting for a change of address but the said letter was never sent by the complainant. It is important to note that the said bonds were fraudulently transferred in the name of the complainant after de-mated on the same day and sold thereafter.

As per the applicants, they had purchased these bonds from one Yogesh Tyagi who as per the IO is only a peon in the UTI Mutual Funds Office at Gulab Bhawan, Delhi and the investigation is still progress. It is stated by the IO that the present applicants are the beneficiary of these fraudulent transaction and hence, custodial interrogation is required to unearth the conspiracy."

3. The petitioners thereafter filed the present bail applications before this Court. It is submitted that under the orders of this Court, the petitioner has already deposited a sum of Rs.4,10,000/- with the Registry which amount as per order dated 24th April, 2008 has been kept in an FDR initially for a period of one year, to be kept renewed till further orders of this Court. It is also submitted that the petitioner has already joined the investigation & that they have purchased the bonds in the normal course of business from one Yogesh Tyagi who had represented to the petitioners as a genuine dealer and who is also an employee of UTI. The petitioners have not committed any offence. They are neither previous convict nor implicated in any other case.

4. Before this Court the learned APP has strongly opposed both the bail applications. One important fact which has been mentioned by the learned APP in his status report is that the account which was opened with Mahamedha Co-operative Bank, Ghaziabad, was opened on the basis of a forged rent agreement and by misusing the photographs of some unknown lady. One more fictitious account was opened at HDFC Bank, Raj Nagar, Ghaziabad (UP) by using forged PAN Card and the same was mentioned in the transfer deed for verifying the signature of the transferor. It is also stated that the present petitioners were the only beneficiary of this transaction. When they were contacted in this regard they stated that they had purchased these bonds from one Yogesh Tyagi. Although Yogesh Tyagi was neither authorized nor he had any right to sell/transfer the Bonds certificates. The present petitioners were well aware of this fact being a professional dealer in mutual funds and shares. It is also submitted that during the course of investigation the petitioners have also not cooperated inasmuch as they have avoided questions about the fraudulent transfers. It is thus submitted that the transactions relied upon by the petitioners was a sham transaction and that the whole of money which supposedly formed the consideration for the transfer was deposited in a fictitious account opened in the name of the complainant at Maha Medha Bank, Ghaziabad and was withdrawn from there, two to three days prior to presentation of the forged transfer deed at UTI

Office. The transfer deed was presented on 25.1.2005 in Delhi office of UTI and reached Head Office of UTI in Mumbai on 29.1.2005. In normal course of things when bonds are presented to UTI for transfer a 21 days notice is given to transferor/seller to verify the authenticity of transaction. The bonds were de-mated immediately though the average time taken for de-mating is 10 to 15 days. Petitioner, Ritesh Jain, declined to answer as to how these bonds were transferred and de-mated in Garima Jain's name within a span of 16 days whereas in normal course the same takes about two months. Thus, it is difficult to believe that the applicants are innocent.

5. Be that as it may, the investigation by the Police is also not proceeding in the correct way inasmuch as the Police has not been able to investigate as to how the Bank account was opened in Ghaziabad and on whose instructions the same was opened. As a matter of rule no bank account can be opened without a proper identification. In case such a account has been opened on the bogus identification it prima facie means that it was a fictitious account then the prosecution ought to have booked the Manager of the said Bank but it has not been done. The prosecution has also not explained as to why they have not registered any case against Yogesh Tyagi, who according to the petitioners sold the bonds to them. If the allegations of the petitioners are to be believed, then Yogesh Tyagi is a conspirator with the petitioners.

6. In these circumstances, the petitioners in the event of their arrest in connection with FIR No. 355/2007 under Sections 420/468/471 IPC registered at Police Station Prasad Nagar, Delhi, shall be released on bail on their furnishing a personal bond in the sum of Rs.50,000/-(rupees fifty thousand) each with one surety each in the like amount to the satisfaction of the Arresting Officer for one week for enabling them to apply for regular bail subject to their joining investigation as and when called for by the Investigating Officer including to undergo for Polygraphic test and Narco analysis test, if the same are needed and shall not in any manner cause any impediment in the investigation, shall not leave the limits of Delhi without permission of the Court and would surrender their passports, if any, with the trial court. This is in addition that the FDR of Rs. 4,10,000/- deposited with Registry is kept alive subject to further orders of the Court.

MOOL CHAND GARG, J.

February 18, 2009
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