

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

+ **Bail Appl. No. 825/2009**

Reserved on : 17.7.2009
Date of Decision : 12.8.2009

Sachin Kumar Saraf **.....Petitioner**

Through: Mr. Anil Soni, Advocate

Versus

State & Ors.

..... Respondents

Through: Mr. Manoj D. Taneja, Advocate,
for the complainant with
complainant in person.
Mr. S.K. Sharma with Mr.
Anoop Sharma, Advocates for
the applicant.
Mr. Pawan Behl, APP for the
State with IO Insp. Shankar
Banerjee.

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

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| 1. | Whether 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. SHALI, J.

Crl. M.A. No.7531/2009

1. This order shall dispose of an application bearing Crl. M.A. No. 7531/2009 filed by Mr. Pramod Bihani for and on behalf of M/s Laurel Wood Private Ltd. for permission to be impleaded as an intervener/respondent in the Bail Application No. 825/2009 filed by the petitioner.
2. Briefly stated the facts leading to filing of the present application are that an FIR No. 14 under Sections 406/420/120B IPC was registered on 21.1.2008 by Economic Offences Wing. The

allegations in brief as contained in the FIR were that Pramod Bihani and Sachin Saraf of Laurel Wood Private Ltd., 503, Vaishono Chamber, 6, Braboune Road, Kolkata had cheated, to the tune of Rs. 3.90 crores, the complainant, one Satish Kumar S/o Sh. Durga Prasad, Director/Proprietor of M/s D.J. shah & Co. Private Ltd. and Swastik Healthcare Service and M/s Durga Trading Company having its office at Delhi. It is not necessary to go into the other finer details recorded in the FIR as to how this offence of cheating was committed.

3. Sachin Saraf, the present petitioner who is one of the accused in the said FIR had filed an application for grant of anticipatory bail before the learned Additional Sessions Judge which was dismissed on 21st May, 2008. Sachin Saraf (petitioner herein) filed another application for grant of anticipatory bail which came to be listed before the High Court on 21st October, 2008 and he was given an interim protection but ultimately the said anticipatory bail application was also dismissed on 7th January, 2009.
4. Sachin Saraf filed a third anticipatory bail application on 24th April, 2009, contending that the dispute has been settled by him with the complainant on 24th April, 2009, and therefore, he may be enlarged on anticipatory bail. A copy of the Compromise Agreement between Sachin Saraf and M/s Durga Trading Company and M/s Swastik Healthcare Service Private Ltd. through its Director Satish Kumar s/o Sh. Durga Prasad was placed on record. In this compromise a part of the amount of cheating was being recovered by the complainant from Sachin Saraf and the complainant, on its part, was promising that be

will not oppose the bail of the petitioner. It was also recorded in the compromise that in fact, it was Pramod Bihani who was fully holding the rein of M/s Laurel Wood Company which is alleged to have cheated the complainant.

5. While this application for grant of anticipatory bail is pending, Pramod Bihani for and on behalf of M/s Laurel Wood Private Ltd. has chosen to file the aforesaid application for being impleaded as intervener/applicant so that the correct facts are brought on record. The contention of the applicant/intervener is that it was, in fact, M/s Laurel Wood Company of which Pramod Bihani is the Director which has been the victim of cheating by Sachin Saraf in collusion with M/s D.J. Shah and Company and others. Therefore, it was urged that it is necessary to permit the intervener/applicant to be impleaded as necessary party in the bail application so that the correct facts are brought on record.
6. I have heard the learned counsel for the petitioner, learned APP and learned counsel for the intervener/applicant.
7. The main contention of the learned counsel is that the intervener/applicant in the aforesaid compromise dated 23rd April, 2009 which was arrived at between Sachin Saraf and the complainant company is a sham document by virtue of which the complainant is giving a safe passage to the petitioner-Sachin Saraf so that the entire money is sought to be recovered from the intervener/applicant-Pramod Bihani and his company as he is a man of means. It is contended that as a matter of fact the respondent Pramod Bihani and his company M/s Laurel Wood Company have been the victims of cheating by Sachin Saraf in

active collusion with the complainant company. It has been stated that Sachin Saraf is the son-in-law of one of the Directors of the complainant company and therefore, this was only a ploy to give a safe passage to Sachin Saraf so as to implicate the intervener/applicant Pramod Bihani and M/s Laurel Wood Private Ltd. With regard to the locus of the co-accused Pramod Bihani and M/s Laurel Wood Company to be impleaded as party, strong reliance was sought to be placed on **J.K. International Vs. State, Govt. of NCT of Delhi and Ors.** AIR 2001 SC 1142, to contend that the intervener/applicant has a locus-standi to be heard, pray and oppose the bail application of the petitioner.

8. As against this the petitioner vehemently opposed the impleadment of the intervener/applicant as a party on the ground contending that in a bail application the intervener/applicant have no locus-standi to be impleaded as a party. Reliance in this regard was placed on cases titled as **Praveen Malhotra vs. State** 1990 (41) DLT 418 and **Indu Bala Vs. State**, 1991 Cr.L.J. (Del) 1774.
9. I have carefully considered the respective submissions of the learned counsel. No doubt the Supreme Court has over the years relaxed the concept the locus-standi even in criminal cases but that does not give a carte blanche to complainant or any other person to come and join any or every proceeding at will. Relaxation of this doctrine of locus-standi can be found in the fact that when the cancellation report is filed by the police in a State case the said cancellation report cannot be accepted unless and until a notice is issued to the complainant who is

given the liberty to file a protest petition (See **Sanjay Bansal & Anr. Vs. Jawahar Lal Vats** AIR 2008 SC 2007 and **Har Prasad & Anr. Vs. Ranveer Singh** AIR 2008 SC 1265).

10. Secondly, in a State case or what is known as police case though an appeal can be filed only by the State under Section 374 (1) read with Sub-clause 3 Cr.P.C but in appropriate cases the High Court has invoked that power on the instance of complainant if it has felt, non-filing of the appeal by the State is resulting in grave miscarriage of justice.
11. More recently in J.K. International's case where the High Court had quashed the FIR against the accused without hearing the complainant, the Supreme Court set aside the said judgment of the High Court and remanded the matter back to the High Court to decide the matter afresh after giving a opportunity of being heard to the complainant.
12. The judgment which has been referred by the learned counsel for the intervener/applicant in J.K. International's case (supra) is thus, giving the right of hearing to the "complainant" and in a State case. This case is not applicable to the present case on account of number of reasons. This was a case where the locus of complainant is in issue and not that of a third party or a co-accused. Secondly, distinction has to be drawn between a case where prayer for quashing the FIR is made, as against the opposition to the bail by a co-accused who is in the capacity of an accomplice and hence himself is a discredited man. Not even a single case which has been cited by the learned counsel for the intervener/applicant wherein the High Court or for that matter

the Supreme Court has permitted a co-accused to become an intervener/applicant to oppose the bail application of another co-accused. On the contrary there are judgments of our own High Court wherein it has been held that a stranger or the third party does not have the locus-standi to oppose the bail application.

13. Reliance in this regard is placed on **Praveen Malhotra vs. State** 1990 (41) DLT 418, **Indu Bala Vs. State** 1991 Cr.L.J. (Del) 1774. Therefore, I am of the considered opinion that a co-accused or even a third party cannot be permitted to oppose the bail application of any other co-accused. If this is permitted to be done, it will result in multiplicity of litigation and such applications would also result in side tracking the focus of the Court from the main issue which will be the question of grant of bail to the accused, be that anticipatory or custodial and take the Court into the field of apportionment of blame and trading of charges and counter charges between the co-accused as is sought to be done in the instant case.
14. For the reasons mentioned above I feel that the application bearing Crl. M.A. No. 7531/2009 filed by the intervener/applicant to be impleaded as a party is not maintainable and the same is totally misconceived, vexatious and is therefore dismissed.

V.K. SHALI, J.

August 12, 2009
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