

IN THE HIGH COURT OF DELHI AT NEW DELHI

Bail Application No.1158/2009

Judgment reserved on: 10th July, 2009

Judgment delivered on: 20.07,2009

Sharad Kumar Agrawal Petitioner
Through: Mr. Sunil K. Mittal with Ms. Sangeeta
Agrawal and Mr. Kshitij Mittal,
Advocates.

versus

The State Respondent

Through: Mr. Sanjay Lao, APP for the State.
Mr. Rajiv Bahl, Advocate for Official
Liquidator.
Mr.Vijay Aggarwal and Rakesh Mukhija,
Advocates for Respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J.:

1. By way of this application moved under section 439 Cr. P.C., r/w

Section 482 Cr.P.C., the petitioner seeks grant of regular bail.

2. The case of the prosecution, in brief, is that in company petition no. 238/2005, filed by one Ms. Manjit Kaur, against M/s. Durga Builders Pvt. Ltd., directions were given by Justice Gita Mittal vide order dated 3.10.2008 to Crime Branch to conduct investigation into the existence/address/whereabouts of Ms. Manjit Kaur daughter of Shri Gyan Singh, R/o E-208, Kavi Nagar Industrial Area, Ghaziabad (U.P). The court also directed investigation from the aspect of conspiracy between Ms. Manjit Kaur and Durga Builders Pvt. Ltd., as well as its Ex-directors Mr. R.K. Nanda and Smt. Promila Nanda. Pursuant to the said directions, the Crime Branch, Delhi Police carried out the investigation and found that Ms. Manjit Kaur does not reside at the given address and M/s. Kumar security Syndicate of which Ms. Manjit Kaur claimed to be the sole proprietor was also found to be non-existent firm. It was also found by the Crime Branch that all entries regarding supply of security guards to M/s. Durga Builders Pvt. Ltd. seem to be merely paper entries, so much so even the advocate namely Mr. Vishesh Jain on whose letter head and signatures the said statutory notice under section 434 of Company Act to M/s. Durga Builders Pvt. Ltd. was sent prior to filing of the company petition was also found to be incorrect. The Crime Branch

thus found that the papers submitted by the parties, before the High court in the company petition bearing no. 238/2005 do not seem to be genuine and there appears to be a clear nexus between advocates and Directors of M/s. Durga Builders Pvt. Ltd. Based on this facts, the Crime Branch registered the said FIR against the present petitioner and against Mr. R.K. Nanda, Ex-director of M/s. Durga Builders Pvt. Ltd.

3. Mr. Sunil Mittal submits that the petitioner is in custody for almost two months. Mr. Mittal further submits that the petitioner is not required for any further investigation as the entire documents are either on the Court record or already seized, therefore, any further detention of the petitioner would tantamount to punishing the petitioner without any opportunity of fair trial.

4. On facts counsel submits that at the most the present petitioner is the beneficiary of Rs. 1.25 lakhs only, which amount was paid to Ms. Manjit Kaur in the company petition No. 238/2005 filed by her against M/s Durga Builders. Counsel further submits that the worse allegation against the petitioner could be that he was illegally and unauthorisedly running the firm under the name of M/s Kumar Security Syndicate in violation of the professional ethics for which the action is contemplated under the Advocates Act. Counsel also submits

that the petitioner had no control over the actions of M/s Durga Builders or its management as he was merely representing M/s Durga Builders in the said case and in some other cases. Counsel also submits that in any event the petitioner was not the beneficiary of seeking winding up of the said company. Counsel also contends that the petitioner himself had issued public notice so as to find and ascertain the whereabouts of Manjeet Kaur vide public notice dated 10th December, 2008 in various newspapers. Ms. Manjeet Kaur was being represented by two different counsels in relation to the said company proceedings, which led the Court to make certain observations on 3rd October. Counsel further submits that the petitioner shall abide by any of the terms imposed by this Court. The petitioner has also unblemished record since the time of the joining of the legal profession.

5. Opposing the said bail application Mr. Sanjay Lao APP for the State strongly contended that Mr. Sharad Aggarwal and Mr. R.K. Nanda both have abused and misused the process of the court by filing a frivolous and collusive petition based on forged documents, therefore, the petitioner does not deserve grant of bail. Mr. Lao further submitted that there is no lady with the name of Ms. Manjit Kaur who could file the said company petition against M/s. Durga

Builders Pvt. Ltd. The address of Ms. Manjit Kaur given in the company petition is also incorrect as on the said address Mr. Pravin Kumar Aggarwal, real uncle of Mr. Sharad Aggarwal is residing. M/s. Kumar Security Syndicate of which Ms. Manjit Kaur has been shown as a proprietor belongs to Sharad Kumar Aggarwal and he has been operating account of the said firm i.e. A/c no. 87773071140, syndicate Bank, Malibada Branch, Ghaziabad, U.P. The said account of M/s. Kumar Security Syndicate also stands closed on the request of Mr. Sharad Kumar Aggarwal on 2.3.2009 i.e. after the said investigation was directed by the Company Court. The address of Mr. Vishesh Jain, Advocate as given in the statutory notice sent by him is also incorrect as at the said address one Atul Gupta advocate an associate of the present petitioner has been residing. The two cheques for sum of Rs. 25,000/- and Rs. 1,00,000/- vide cheque bearing nos. 559296 and 562479 towards part settlement of alleged outstanding dues of Ms. Manjit Kaur were presented in the joint account of Ms. Manjit Kaur and Mr. Sharad Aggarwal at the UCO Bank Branch of Delhi High Court, New Delhi and subsequently the said money was withdrawn by the present petitioner through ATM card and through three cheques. Counsel thus submitted that it is the petitioner who has ultimately been found to be the beneficiary of the

said amount of Rs.1.25 lacs.

6. Counsel also submitted that in another such similar case investigation has been directed by the court of Justice S.N. Dhingra and pursuant to the said directions FIR No. 246/08 was registered under section 420/467/468/471/120B and the investigation against the petitioner and other accused persons are still in progress by SOS/Crime Branch, Delhi. In the said suit the present petitioner had accepted notice on behalf of M/s. Durga Builders Pvt. Ltd. on the very first date in the court itself, which fact would show that the present petitioner was involved in getting the said suit filed in active conspiracy with Mr. R.K. Nanda, Ex-Director of M/s. Durga Builders Pvt. Ltd. and Mr. Vishesh Jain to secure a decree against Mr. Arun Mehra and Ms. Seema Mehra. It is only when the court gave directions for the personal presence of Mr. Vishesh Jain the said suit was dismissed by the court with a cost of Rs.10,000/- due to the non-appearance of Mr. Vishesh Jain and to expose the conspiracy between Mr. Vishesh Jain and the Directors of M/s. Durga Builders Pvt. Ltd., Crime Branch of Delhi Police was directed to investigate the matter. Counsel further submitted that during the investigation some of the documents were either forged or there were scanned signatures of Mr. R.K. Nanda, Director of M/s Durga Builders Pvt. Ltd. Mr. Lao,

APP for the State thus submitted that the petitioner and Mr. R.K. Nanda in connivance and in collusion with each other have played serious fraud on this court through their various fraudulent and criminal acts.

7. I have heard learned counsel for the parties at considerable length.

8. The FIR in the present case was registered against the petitioner and Mr. R.K. Nanda, Ex-Director of M/s. Durga Builders Pvt. Ltd., pursuant to the directions given by the Company Court directing the Crime Branch to conduct investigation into the role of Ms. Manjit Kaur and Ex-Director of M/s. Durga Builders Pvt. Ltd., who are alleged to have connived to file a company petition based on the alleged forged documents so as to defeat the rights of the creditors and that of Mr. Arun Mehra, alleged purchaser of share holding of said company.

9. Without expressing any opinion on the merits of the above submission and taking a prima facie view of the matter, it appears to me quite shocking that the petitioner has blatantly abused and misused his position of an Advocate by seriously interfering with the course of judicial proceedings. The investigation against the petitioner is in progress in two other cases i.e. FIR. NO. 246/2008 and

as per the counsel for the State many more skeletons are likely to come out from various shady deals of the petitioner.

10. Mr. Sunil Mittal counsel for the petitioner submits that the petitioner has already been in judicial custody for the past about two months and he is no more required for any further interrogation and all the records being judicial, there can be no threat of petitioner's tempering with the same or influencing any witnesses. Counsel also submitted that if the petitioner has committed any act of indiscipline or in violation of Advocates' Act, then necessary action will be taken by Delhi Bar Council and he will have to face criminal prosecution as well as other consequences. The main emphasis of the counsel for the petitioner was that the case of the petitioner should not be treated differently only because he is a legal practitioner and as already he has immensely suffered after he was put behind the bar by the police.

11. The allegation of filing of fictitious case with fictitious names, fictitious addresses, forged documents, misusing and abusing the process of the court, no doubt constitutes very serious acts and deserve strongest condemnation especially when they are allegedly committed by none else but by those on whose shoulders the edifice of administration of justice rest. This court would have certainly

appreciated had the Bar Council of Delhi by now would have taken some decision either to bail out the petitioner from the said serious charges or had thrown out the petitioner from the rolls of the counsel, if such allegations are proved correct. It is a high time that Bar Council of Delhi must rise to the occasion to deal with such cases very strenuously and effectively without siding for unscrupulous lawyers. Stream of justice has to be kept clean and pure and any one spoiling its purity must not be spared howsoever well connected he or she may be, so that the message goes down to one and all that no one can be permitted or spared to undermine the dignity of the court or to interfere with the administration of justice.

12. Reverting back to the facts of the case, I am of the view that since the wife of the petitioner who is also a practicing advocate has undertaken on behalf of the petitioner that he will not appear before any court of law, judicial or quasi-judicial till he is cleared from the contempt proceedings and also from the disciplinary proceedings to be initiated against him by the Bar Council of Delhi and also on account of the fact that he has been in judicial custody for the last about two months and is not required for any further interrogation so far the present case is concerned, the petitioner is granted bail subject to his furnishing personal bond in the sum of Rs.

One lakh with one surety in the like amount to the satisfaction of the trial court.

13. It is made clear that the petitioner from the date of his release shall not appear in any court of law, any Tribunal, judicial or quasi-judicial authority to represent any client either as an advocate or as an attorney till the time he is finally cleared from the contempt proceedings initiated against him by the order dated 13.4.2009 and also after he is finally cleared from the disciplinary proceedings to be initiated by the Bar Council of Delhi. It is also made clear that the above observations shall not come in the way of the police to carry out any further investigation in the other cases already under investigation or likely to be registered against the petitioner.

JULY 20, 2009
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KAILASH GAMBHIR,J