

IN THE HIGH COURT OF DELHI

Bail Application No. 1329/2009

Date of decision: 24th July, 2009

Vikas Srivastava ... Petitioner
through: Mr. K.K. Manan, Mr. Sangram S. Saron and
Mr.Nipun Bhardwaj and Mr. Mustafa Arif,
Adv.

VERSUS

State Respondents
through: Mr. Manoj Ohri, APP for the state

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

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

GITA MITTAL, J

1. By this petition, Vikas Srivastava who has been implicated in a case registered as FIR No. 62/08 by the police station Economic Offences Wing, Malviya Nagar, u/s 406/420/120B of the Indian Penal Code seeks bail. The allegations against the complainant briefly noticed are that he has induced the complainant Sh. Sanjay Kohli, a resident of Lucknow to part with a sum of Rs.43 lakhs by holding out that he was a proprietor of one M/s Format International and was involved in the business of procurement of colour printing machines. The complainant has given a graphic description of a meeting which allegedly took place in the last week of July,

2007 whereby Mr. Vikas Srivastava represented himself to be having a large client base in India as well as in Nepal in this trade for the last more than nine years; that Mr. Vikas Srivastava took the complainant to his residence cum office at A-164 Surajmal Vihar-110092 and introduced his father and brother; that these three persons represented that they had a strong base in Czechoslovakia where one Sh. Ashok Srivastava, an uncle of the applicant resides and between them, they had good contacts for procuring new and second-hand off set machines therefrom; that other representations with regard to the manner in which transactions are undertaken by them and the manner in which the complainant would require to make payment were also disclosed by them. It is further alleged that Mr. Vikas Srivastava alongwith his father went Lukcnw on 13th August, 2007 where he showed some models of machines out of which the complainant selected one; on negotiations, a deal was finalised for Rs.50 lakhs and the transaction details were reduced to writing by Mr. Vikas Srivastava on the letterhead of his firm. An amount of Rs.3 lakhs was paid by the complainant on 13th August, 2007 and a receipt of this amount was given by the applicant on the transaction sheet. The complainant was required to pay an amount of Rs.43 lakhs by 1st January, 2008 and it was assured that the machine would be imported by the end of January, 2008. On the asking of the applicant, the complainant

applied for the importer and exporter code on 17th August, 2007 which was allotted to him on 21st August, 2007 for the import of such machine.

2. The complainant claims to have obtained a bank loan of Rs.25 lakhs for which Sh. Vikas Srivastava is alleged to have issued an invoice to facilitate the loan. The specifications of the machine and quotation etc were given by the applicant to the complainant.

3. On the insistence of the applicant, Sh. Sanjay Kohli claims to have made the following payments towards procurement of the machines:-

(i) On 13 th August, 2007	Rs.3 lakhs in cash paid against written receipt
(ii) On 19 th October, 2007	Rs.15 lakhs in cash paid against written receipt
(iii) On 31 st December, 2007	Rs.18 lakhs paid by cheque from the bank loan against receipt
(iv) On 12 th January, 2008	Rs.7 lakhs paid by cheque from the bank loan against receipt.

4. Details of the representations made by the applicant resulting in the aforestated payments have been listed in the complaint as also the several excuses propounded by the petitioner as reasons for the delay in the procurement of the machines. Several other mis-representations with regard to the manner in which the procurement of the machines and its loading was being arranged are also alleged. The complainant states that finally in first week of March, 2008, Vikas Srivastava called and told him that the machine had arrived in

Mumbai and that he should arrange for the remaining amount of Rs.78 lakhs and send the same to him. To this the complainant had responded to say that he would send the balance once the machine reached Lucknow.

5. On calls which were made thereafter, the complainant was told that Vikas Srivastava and his brother had gone to Mumbai for clearing of the shipment. Finally on 31st March, 2008, Vikas Srivastava told the complainant to send the money to his bank with the Form 31 as the machine had arrived at Delhi and he would organise its discharge once he receive the complete payment. The complainant applied for Form 31 and received the same on 5th April, 2008 with which he reached Delhi on 6th April, 2008. No response could be obtained from Vikas Srivastava. He thereafter went to office cum residence to inspect the machine and make the balance payment when he was told by the brother of the Vikas Srivastava that he should deposit the money and then he could see the machine in the afternoon. At this the complainant told him that he would pay the remaining money only after seeing the machine.

6. The complainant has alleged that while he was making these efforts to contact Vikas Srivastava, he received a call from one Sh. Vijay Jain who had also paid Vikas Srivastava a sizeable amount of money for import of machines and that Vikas Srivastava had not imported any machines for him as

well. Mr. Vijay Jain is stated to have told the complainant that Vikas Srivastava had run away with the money of various parties. All efforts to reach Vikas Srivastava were fruitless. However, finally at about 9.35 p.m. on 16th April, 2008, the complainant submits that he had received an SMS on his mobile no. 9818224843 sent by Vikas Srivastava wherein he had stated that he was in a big problem and would be in touch very soon. It was further stated that the complainant's money was totally safe. Vikas Srivastava was absconding and his father and brother were giving false stories. In a second SMS, Vikas Srivastava asked the complainant to wait for his next reply. Enquiries made from various sources and the bankers of Format International revealed that no moneys had been sent to Czechoslovakia for import of any machine nor any machine had been imported from there. According to the complainant the amounts have been misappropriated by Vikas Srivastava and his relatives and they had cheated the complainant and other persons in a conspiracy.

On these allegations, Sanjay Kohli lodged the complaint on 11th April, 2008 on which the present FIR was registered.

7. During the course of investigation, the investigating officer has recorded a statement of Sh. Vijay Jain who has also made similar allegations against Vikas Srivastava and alleged that he was fraudulently persuaded to make payments to the tune of over Rs.60 lakhs between 18th June, 2007 and 18th July,

2007. He alleges bank transfers at the instance of Vikas Srivastava even to his uncle Sh. Ashok Srivastava in Czechoslovakia towards procurement of the printing machine. To instill confidence, Sh. Vikas Srivastava is alleged to have taken Sh. Vijay Jain to Czechoslovakia where the pretense of procurement of the machine was made. On 5th April, 2008, Sh. Vikas Srivastava is alleged to have fraudulently executed a promissory note acknowledging all the payments were made by Sh. Vijay Jain and promising to pay the same on payment.

8. Mr. K.K. Manan, learned counsel for the petitioner has primarily one argument in support of this petition. It is contended that the prosecution has filed a chargesheet on 31st July, 2008 and there is, therefore, no justification for keeping the petitioner in custody. It is further urged that merely because an economic offence is disclosed, continued incarceration of the petitioner is not tenable. (Ref. 2000 Cr.L.J. 2094 Anil Mahajan vs. Commissioner of Customs). Learned counsel has also vehemently urged that the tendency of businessmen to convert civil cases into criminal prosecution has to be deprecated and urges that the present case is such an attempt. (Ref : 2006 (3) JCC 1447 K. Jayram & Anr. v. State). It is further urged that merely because the money involved in the complaint is large, would be no justification to keep the accused in custody. (Ref : 2007 (2) JCC 1070 Sanjay Dua v. The State of NCT of Delhi).

Reliance has also been placed on the pronouncement at 2001 (1) JCC (SC) 178 Ashok Dhingra v. NCT of Delhi; 130 (2006) DLT 203 Lalit Mishra v. State Through Govt. of NCT of Delhi; 129 (2006) DLT 498 Anurag Singh v. State (Through NCT of Delhi) and 64 (1996) DLT 633 Sukh Ram v. State Through CBI to urge that the applicant has been in custody for a long time and that he would not flee from justice and consequently there is no warrant for keeping him in jail.

It is noteworthy that in each of these cases the entire facts and circumstances leading up to the registration of the case have been examined. No single circumstance by itself can be urged as an entitlement to bail.

9. Learned counsel for the complainant has argued at length that the complainant is actively pursuing the matter. The charge sheet stands filed and there is no likelihood of their tampering with evidence. It is urged that in these facts, the principles laid down by the Apex Court in ***AIR 1997 SC 2575 Chandra Swami & Ors. v. Central Bureau of Investigation***, would apply and the applicant would be entitled to grant of bail. In this case, the factors which weighed with the Apex Court in granting bail included the fact that the complaint related to an offence allegedly committed nearly 16 years ago; not much progress had taken place in the conduct of the proceedings; the main witness was the complainant himself who was zealously pursuing the matter

and for this reason, there was no likelihood of any evidence being tampered or influenced.

There is no parity on the facts of the case with the present case.

10. Similarly the submission that there is a growing tendency in the business circles to convert a civil dispute into criminal cases would not apply to the instant case wherein there is more than one similar transaction allegedly entered into by the petitioner that too with different persons which prima facie suggests a well designed conspiracy to cheat and dupe members of the public. It needs no elaboration that civil liability and criminal culpability can arise from the same actions. For the same reason, it cannot be contended that the allegations in the present case relate to issues which are purely of a civil nature.

11. As per the allegations on record, the applicant went to the extent of taking Shri Vijay Jain to Czechoslovakia which would only indicate the extent of deviousness and confidence of the accused that he would get away with his alleged actions.

12. Mr. Manoj Ohri, learned APP for the state points out that the receipts, promissory note and the other documents executed by Sh. Vikas Srivastava were sent for forensic examination and a report has been received from forensic science laboratory that the handwritten details of machines and the signatures on the documents are of Sh. Vikas

Srivastava. The forensic reports and the documents corroborate the allegations of the complainant and Sh. Vijay Jain and prima facie support the allegations made in the complaint by Sh. Sanjay Kohli and in his statement by Sh. Vijay Jain.

13. Apart from the forensic examination, the investigating agency places reliance on its verification of the transactions alleged by both the complainant and Sh. Vijay Jain. Mr. Ohri, learned APP points out that so far as the cheque and bank transfers were concerned, the modus operandi adopted by the applicant was that Sh. Vikas Srivastava would withdraw the amounts thereof in cash immediately after deposit. Sh. Vikas Srivastava was the only authorised signatory of the cheque to withdraw the amount for the bank account in question.

14. The transactions to the company in Czechoslovakia by Vijay Jain have been confirmed by the bank. Shri Jain has stated that these were all without any orders being placed on the Czechoslovakia company and were made to dupe the victims.

15. As per learned APP, not a single step was taken by Mr. Vikas Srivastava to forward any proper payments to any Czechoslovakian company or any effort to obtain the machine for which the moneys were taken from these two persons. Details of the telephone communications used by Vikas Srivastava; the complainant Sanjay Kohli and the victim Sh.

Vijay Jain also support the allegations which have been made.

16. Mr. Manan, learned counsel for the applicant rightly did not even remotely suggest any circumstance or explanation with regard to the transactions which have been alleged against the applicant other than the one line in the application to assert that the applicant is innocent. It has been contended by Mr. Manan, learned counsel for the applicant that the charge sheet has not been laid under Section 420 of the Indian Penal Code. Nothing much would turn on this submission inasmuch as the complainant and the witnesses have made serious allegations with regard to the offence of cheating and this aspect would be considered by the trial court at the stage of framing of charge.

17. So far as the continued incarceration is concerned, it may be noted that the applicant had first filed a bail application in this court on 12th December, 2008 which was registered as Bail Application No. 2540/2008. This application was withdrawn after a period of almost six months on the 6th May, 2009.

Shortly thereafter a second application was filed seeking bail on or around the 26th May, 2009 before the learned Additional Sessions Judge. This application was rejected by the learned Additional Sessions Judge by an order passed on 8th June, 2009.

The present application has been filed immediately thereafter on or about 7th July, 2009.

18. Mr. Manan has asserted at length that the bail is being opposed for the reason that the detention of the petitioner is being utilised to compel the petitioner to make payment. He submits that bail cannot be brought. This submission is unfortunate and unfounded to say the least.

19. Mr. Manoj Ohri, learned APP has drawn my attention to the pronouncements of the Apex Court reported **(2001) 4 SCC 280** entitled ***Prahlad Singh Bhati v. NCT of Delhi & Ors.*** In para 8 of this pronouncement, the court laid down the principles which would bind consideration of the present application thus :-

“8. The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

20. It becomes necessary to notice certain essential facts in this case. This is not a case of a complaint by one person but more than one person have made a complaint. As noted above, during the course of investigation, the investigating agency has also recorded the statement of one Sh. Vijay Jain who has complained of the manner in which an amount of over Rs.60.25 lakhs was taken from him. The complainant has stated that there are other persons who have been so duped as well.

21. The allegations in the complaint disclose a clever design by which a huge amount of money has been extracted over a period of time. The allegations made by Mr. Vijay Jain disclose a close overlap between the period when payments were being obtained from Sh. Sanjay Kohli and Sh. Vijay Jain. Payments have been received from Sh. Vijay Jain between 18th June, 2007 and 4th February, 2008. While payments have been received from Sh. Sanjay Kohli between 13th August, 2007 and 12th January, 2008 clearly suggesting the mind and planning of the accused persons.

22. I had dealt with bail applications of brother and father of the applicant. However, I did not get the occasion to examine the above revelations by the witness or other facts disclosed in the investigation while considering those applications.

23. It now becomes necessary to consider the applicable principles which would govern consideration of an application

seeking bail. There can be no dispute with the principles laid down in the several judgments cited on behalf of the applicant. However, no absolute proposition of law can be urged as an entitlement to grant of relief. Perhaps if there was only a single transaction in which the applicant was involved, matters may have taken a different connotation. However in the instant case, it appears that a concerted effort to induce persons to part with large sums of money under the ruse of procurement of printing machines is alleged. It is urged that the complainant induced Sanjay Kohli and Vijay Jain to part with huge sums of money. Sh. Sanjay Kohli has urged that he had got a loan sanctioned from a bank which amount was also paid to the petitioner. Efforts were made by Shri Vikas Srivastava to obtain further and larger amounts from the complainant on false pretexts which were not paid for the reason that the complainant had become suspicious about the intention and the genuineness of the representations being made by Sh. Vikas Srivastava.

24. The allegations as laid thus prima facie disclose a concerted design to dupe persons into making payments to the applicant and substantial arrangements had been made by him to lend credence to the false promises held out. There are allegations that several other persons have been similarly cheated.

25. Deprivation of liberty is a matter of grave concern. In

para 17 of the pronouncement reported at **AIR 1978 SC 527 : (1978) 1 SCC 240 Babu Singh & Ors. vs. State of U.P.**, the Apex Court has noticed that the same may be permissible when law authorising it is inter alia geared to the goals of community good. Refusal of bail is not for punitive purpose but for the bifocal interests of justice – to the individual involved and society affected.

26. The court observed that in regard to habituals, a thoughtless bail order would enable the accused to exploit the opportunity to inflict further crimes on the members of society. Exercise of bail discretion on the basis of evidence about the criminal record of a defendant is, therefore, not an exercise in irrelevance. The court has also to consider the likelihood of the applicant interfering with the witnesses for the prosecution of or otherwise polluting the process of justice.

27. In **(1977) 4 SCC 308 State of Rajasthan, Jaipur vs. Balchand alias Balley**, the Apex Court held that the basic rule is to grant bail except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences, or intimidating witnesses and the like.

28. It is nobody's case that the offences which have been alleged by the complainant are bailable offences. The Apex Court has laid down the conditions which must weigh with the court while grant of bail which include consideration of nature

and seriousness of the offence; character of the evidence and the larger interest of the public or the state. In the instant case, certainly the offence alleged is of serious nature. Nothing has been placed to support that the applicant has any roots in society. There is not even a whisper of an assertion in the application or in any submission that he is involved in any respectable trade business vocation. On the other hand, there are allegations of involvement of his father and brother in the transactions as well.

29. It is the applicant who is alleged to have opened the bank accounts; started a firm; cheated persons and misappropriated the money obtained from them. A well orchestrated conspiracy; the impact on public interest; propensity to cheat other persons are some of the relevant considerations which would weigh with the court in grant of the bail. In this background, there is grave possibility of repetition of the offences and the applicant is clearly disentitled to exercise of discretion in his favour.

30. It is not the applicant's case that the witnesses are only official witness. Learned APP has urged that the applicant has not cooperated in tracing the transactions. He has also not facilitated the investigation agency to reach other persons. An apprehension is expressed that the applicant may tamper with the evidence by advancing monetary amounts to the victims and thereby thwart the course of justice.

For all these reasons, I see no reason to disagree with the learned ASJ who has recorded detailed reasons as well in his order dated 8th June, 2009.

The application is, therefore, dismissed.

(GITA MITTAL)
JUDGE

July 24, 2009
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