

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

+ **Crl. Rev. P. No. 399/2009**

Date of Decision : 18.08.2009

Ranbir Kaushik

.....Petitioner

Through: Mr. N. S. Dalal, Adv.

Versus

B.S.E.S. R.P. Ltd.

..... Respondent

Through: Ms. Anjali Sharma with
Mr. Pankaj, Adv.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers can 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. (Oral)

1. This is a revision petition filed by the petitioner by virtue of which the petitioner has challenged the order dated 2nd June, 2009 passed by Mr. Anoop Kumar Mendiratta, the learned Additional Sessions Judge/Special Electricity Court, Dwarka, New Delhi. The aforesaid order is challenged on the ground that while enlarging the petitioner on anticipatory bail the learned Additional Sessions Judge could not have imposed a condition regarding deposit a sum of Rs.7,00,000/- towards the theft assessment bill as a pre condition.

2. That briefly stated the facts of the case are that an inspection of premises bearing shop no.5 at property no.22-B,

Block-NW, Vishnu Garden Extension, New Delhi-110018 belonging to the petitioner was conducted. It was alleged in the inspection report that the meter installed at the premises in question was not having any display while as the connected load was being consumed from the said meter. The CMRI data could not be down loaded due to the connection failure. The respondent/complainant observed that there was high voltage sparking marks/ burning marks on the optical port of the said meter indicating that the meter was subjected to high voltage by the consumer drawing the electricity. Accordingly, the petitioner was alleged to have been consuming electricity through tampered meter and total connected load was found to be 132.132 KW as against the sanctioned load of 41 KW for industrial purpose.

3. On 9th September, 2008 further inspection was conducted for the purpose of seizing of meter, however, the meter which was seen on 6th September, 2008 was found to have been deliberately burnt and smell of kerosene emanating from the same. A show cause notice was purported to have been issued to the petitioner that he should be assessed for electricity consumption on the basis of fraudulent abstraction. Thereafter, a speaking order was passed on 26th September, 2008 raising a theft assessment bill for a sum of Rs. 93,78,630/-. After completing the formalities the respondent/complainant filed a complaint case in the Court of Special Electricity Court which was heard by the learned Additional Sessions Judge on 22nd July, 2009. The petitioner appeared before the said Court with a prayer for grant of

cancellation of warrant as the same was issued against the petitioner on account of his continuing evasion to appear before the Court in order to seek the indulgence of the Court. The learned counsel for the petitioner made a statement that they were voluntarily prepared to deposit a sum of Rs.7,00,000/- towards the theft assessment of bill.

4. It was on the basis of this voluntarily statement made by the learned counsel for the petitioner that the learned Additional Sessions Judge directed the petitioner to be admitted on bail on furnishing a personal bond in the sum of Rs.40,000/- with one surety for the like amount with the condition that the amount of Rs.7,00,000/- volunteered to be deposited by the petitioner towards the theft assessment bill shall be paid without prejudice to the contentions of the parties in three installments. The first installment would be of Rs.3 lacs which was to be deposited within a period of one month from 2nd June, 2009 and the remaining two installments of Rs.2 lacs each were ordered to be deposited within a period of six weeks each, thereafter. This order was passed on 2nd June, 2009.

5. After availing of the aforesaid benefit of bail the present revision petition has been filed and it has been urged that no condition could be imposed by the learned Additional Sessions Judge regarding deposit of Rs. 7,00,000/- while enlarging the petitioner on bail. The learned counsel for the petitioner has placed reliance on case titled **Munish Bhasin & Ors. Vs. State**

(Government of NCT of Delhi) & Anr. (2009) 4 SCC 45, **Suresh Chandra Raman Lal Vs. State of Gujarat & Anr.** (2008) 7 SCC 591 and **H.S. Pannu Vs. Govt. of NCT of Delhi & Anr.** 145 (2007) DLT 101.

6. As against this, the learned counsel for the respondent/complainant has contended that no such condition as is sought to be urged by the petitioner was imposed regarding the deposit of Rs.7,00,000/- as a matter of fact it was the petitioner and his counsel who had volunteered to deposit the amount in order to avoid the execution of warrants against him and threat of being incarcerated on account of continued absence. They volunteered to deposit a sum of Rs.7,00,000/- towards the theft assessment bill to earn their liberty. The learned counsel further contended that a distinction is to be made between a case where the condition of this nature was imposed by the Court as against the case where a petitioner/accused either in person or through his duly authorized counsel volunteers to deposit an amount towards the theft assessment bill without prejudice and contentions. In the later case it could not be said to be a condition which is imposed by the Court, and therefore, cannot be assailed by a party after getting a bail order.

7. I have considered the respective submissions of the parties and gone through the record.

8. The learned counsel for the petitioner has also filed an affidavit dated 29th July, 2009 trying to explain the statement which is purported to have been made by his counsel voluntarily by observing as under:

“That during the course of hearing the bail application the following situation occurred. Had my counsel not volunteered to give statement to deposit a certain amount then it was certain at that time that the learned Trial Court would have rejected the bail and would have sent me in judicial Custody. It is pertinent to mention here that my counsel initially volunteered to give statement to deposit Rs.3,00,000/- to which the learned Trial Court did not agree. Then my counsel requested for Rs.5,00,000/-, even to which the learned Trial Court did not agree. Finally the amount to be deposited settled at Rs.7,00,000/-. Under the threat of being behind the bar and rejection of the bail application, the aforesaid statement came to be made by my counsel. Hence, it can be said that the situation compelled my counsel to give statement to deposit Rs.7,00,000/.”

9. A perusal of the aforesaid extract of the affidavit would clearly show that the petitioner himself was at fault on account of his continued absence and he had sought enlargement on bail as he was apprehending that he will be sent to jail so he volunteered to deposit a sum Rs.7,00,000/- towards the theft assessment bill of his own. The reasoning which has been given by the petitioner is now that in case he would not have volunteered he would have been sent behind the bars is of no consequence as the fact remains that the said statement was made by his counsel voluntarily. No doubt, the Hon’ble Supreme Court in **Suresh Chand** and **Munish Bhasin’s** case (supra) have clearly laid down that while enlarging a party on bail only a

condition which is germane to procure his attendance in Court can be imposed but that would not cover a case where a party of his own will comes forward with a view to get the benefit of bail. It is in the light of the same background that the present condition of depositing a sum of Rs.7,00,000/- in various installments was passed by the learned Additional Sessions Judge on 2nd June, 2009. On the basis of this voluntarily statement of the learned counsel for the petitioner, it cannot be said that the direction to deposit Rupees Seven Lacs given by the learned Court was in violation of the law laid down by the Supreme Court.

10. So far as the judgment of the learned Single Judge of this Court in **H.S. Pannu's** case (supra) is concerned, that also echoes the same proposition that while granting the anticipatory bail in theft cases the Special Court should not ordinarily impose a condition as a precedent for grant of bail as that would tantamount to reducing the Special Court to the Court of recovery on behalf of Electricity Companies. But facts of the said judgment in **H.S. Pannu's** case (supra) is also distinguishable from the facts of the present case on account of the fact that a distinction has to be made in a case where a condition is imposed by the Court by way of pre deposit for enlarging the petitioner on bail and a case where the accused himself volunteers to make the payment of his own. The present case admittedly falls in the latter category and accordingly does not offend the law laid down by the Hon'ble Supreme court or by

the learned Single Judge of this Court. On the contrary, this view finds support from the judgment of another Single Judge of this Court in case titled **Sanjit Malik & Anr. Vs. The State (NCT) & Ors.** bearing Crl. Rev. P. No. 360/2007 decided on 24th January, 2008.

11. For the reasons mentioned above, I feel that there is no illegality, impropriety or incorrectness in the order dated 2nd June, 2009 by the learned Additional Sessions Judge and the present petition is misconceived and the same is dismissed.

V.K. SHALI, J.

August 18, 2009
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