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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **BAIL APPLN No. 1930/2010**

Decided on: 16.03.2011

IN THE MATTER OF
SURENDER SINGH SOOD

..... Petitioner
Through : Mr.Sunil Mittal with Mr.Kshitij Mittal, Adv.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent
Through : Mr.Navin Sharma, APP for the State.

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*** HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Section 439 read with Section 482 Cr.PC praying, inter alia, for grant of bail in F.I.R. No.829/2006 registered under Sections 420/468/471/120-B IPC at P.S. Paschim Vihar.
2. The status report was called from the State. The same has been filed with advance copy to the counsel for the petitioner.
3. Briefly stated, the allegations of the complainant, Rajender Singh, as set out in the FIR are that he is the owner and proprietor of a Gas

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Agency by the name of Himmat Gas Agency. In May 2005, he met Ram Kumar Pawar, co-accused in the present case, who informed him that he was in the business of exporting human hair. Ram Kumar Pawar introduced the complainant to the petitioner and both of them persuaded the complainant to invest his money in the said business, as they gave him an impression that there was huge demand for the aforesaid item in the European countries. The complainant states that when he expressed his inability to arrange the funds required for the aforesaid business, Ram Kumar Pawar suggested to him that he could take a loan against a newly purchased property, which he could repay in installments as and when he got profit from the said business. The complainant agreed to the proposal and got a loan sanctioned from a bank for an amount of ₹17,50,000/-, against a property owned by his wife.

4. Thereafter, Ram Kumar Pawar took the complainant to Calcutta for purchasing human hair for export and made a payment of ₹13.2 lacs from the money given by the complainant. The purchased human hair were despatched to the petitioner in Delhi. The complainant came back to Delhi and was informed by the petitioner that some more money was required to be sent to Ram Kumar Pawar in Calcutta, in order to purchase more human hair. As a result, the complainant sent two cheques of ₹5 lacs and ₹2 lacs respectively to Ram Kumar Pawar in Calcutta. Within one month of the aforesaid transaction, the complainant again paid ₹20 lacs to the petitioner and Ram Kumar Pawar. Thereafter, both the accused further induced the complainant to arrange for some more money from the property mortgaged by his wife with the bank, so that a large quantity of human hair could be

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purchased and exported to European countries, where the demand for such an item was very high. As a result, in October 2005, the complainant further mortgaged his property, to the credit limit of ₹40 lacs, with the bank. He forwarded a cheque of ₹21 lacs to Ram Kumar Pawar in Calcutta, which amount if included with all the previous payments made by the complainant to the petitioner and Ram Kumar Pawar collectively totalled to ₹51,20,000/-. Thereupon, both the accused informed the complainant that the order for human hair, allegedly placed by a firm based in USA, had been cancelled and that because of this they needed to purchase more human hair so that same could be supplied in huge quantities to other companies which were based in Europe. Pursuant to this, the complainant paid an additional amount of ₹20 lacs, by way of four cheques of ₹5 lacs each. Subsequently, the petitioner and Ram Kumar Pawar further demanded a sum of ₹1 lac from the complainant, but he refused to pay the same. The complainant, therefore, registered the present FIR No. 829 of 2006 against the petitioner and Ram Kumar Pawar, lodged under Sections 420/468/471/120B IPC, claiming that he had paid a sum of ₹71.2 lacs to the petitioner and co-accused, on the basis of a misrepresentation made by them and thus he had been cheated by them of the aforesaid amount.

5. Learned APP submits that during the course of investigation, a visit was made by the Investigating Officer to the New Delhi Railway Station from where, the carbon copies of the invoices/bills showing receipt of goods procured from Calcutta, allegedly signed by the complainant were collected. As the complainant denied having received any goods or having signed any invoices/bills, those documents were then sent to the CFSL for an expert's

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opinion and the report received, supported the contention of the complainant that the signatures on the invoices/bills were forged. The learned APP states that the forgery was either done by the petitioner or someone else on his instructions, as none else except for him could have possibly benefitted from the aforesaid forgery. Learned APP for the State also submits that the accused continued to abscond for one year after his anticipatory bail application was dismissed and he could only be arrested on 8th March, 2008.

6. On 29th May, 2009, the petitioner was granted interim bail in Bail Application No.838/2009, on the condition that an inspection of his godown, where allegedly 1350 kgs of human hair were stored, would be conducted and the said hair would be seized, and the son of the petitioner would apprise the Court of the best buyer for sale of the same. Record reveals that on inspection of the godown on 5th June, 2009, 1275 kgs. of human hairs were found lying there and an inventory of the same was prepared. On 3rd December, 2009, interim bail granted to the petitioner was confirmed, in terms of a voluntary undertaking given by him in Court, that he would pay an amount of ₹15 lacs to the complainant within six weeks from the date of passing of the order, without prejudice to his right to contest the civil and criminal proceedings instituted against him by the complainant. On the basis of an application filed by the petitioner seeking extension of time, the time for depositing ₹15 lacs was extended by three months vide order dated 14th January, 2010. In spite of the fact that the time granted to the petitioner, for making the payment of ₹15 lacs to the complainant, was extended again and again, the petitioner did not abide by his undertaking. In the meantime, the complainant filed an application for cancellation of bail, on

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the grounds of non-compliance with the voluntary undertaking, which was ultimately allowed, after noticing the past conduct of the petitioner, vide order dated 2nd December, 2010.

7. Learned APP for the State informs the court today that the petitioner has still not complied with the aforesaid undertaking and till the end of the year 2010, he had paid only a paltry sum of ₹2.5 lacs to the complainant. He further submits that even though the bail granted to the petitioner was cancelled vide order dated 2nd December, 2010, he surrendered in the trial court on 24th December 2010 and that also only after a direction of this Court. He further states that after the charge sheet was filed, charges were framed on 25th September, 2009, whereafter the petitioner had filed a revision petition registered as CRL.REV.P. No.650/2009, praying, inter alia, for quashing of the charge sheet, which is pending consideration before another Bench and stated to be fixed for hearing on 21st April, 2011. Learned APP further states that in the pending case arising out of the FIR, there are approximately 22 witnesses cited by the prosecution, out of whom 5-6 witnesses are material public witnesses. He submits that the next date of hearing fixed before the trial court is 18th March, 2011 for recording the testimonies of the witnesses. He expresses an apprehension that if the petitioner is released on bail he is likely to influence the witnesses or tamper with the evidence.

8. Counsel for the petitioner states that in the order dated 2nd December, 2010, it was observed by this court that the petitioner was misleading the court and prolonging hearing on his bail application by giving false assurances of clearing the outstanding amount undertaken by him to

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be paid to the complainant, when in reality he had no intention to do so. It is further urged by him that the undertaking given by the petitioner to the Court on 3rd December, 2009, was given under compulsion of the complainant and as the petitioner had actually never volunteered to give such an undertaking, he should not be held responsible for non-compliance of the said undertaking. He further contends that in the circumstances of the petitioner having failed to abide by the undertaking given by him, the Court ought to grant him a hearing on the merits of the case and dispose of the bail application on the said basis.

9. This court has heard the counsels for the parties. As regards the submission of the counsel for the petitioner that the undertaking given by the petitioner to pay a sum of ₹15 lacs to the complainant, as has been recorded in the order dated 3rd December, 2009 passed in BAIL APPLN. No.838/2009, was under compulsion, it may be noted that if such was the case, the petitioner had over one year to approach the Court with the aforesaid plea and seek recall of the order on the ground that he had been compelled by the complainant to deposit the aforesaid amount and that he had never volunteered to do so. But no such application was filed by the petitioner. Further, a perusal of the order dated 14th January, 2010 placed on record reflects that the petitioner had only sought a modification of the order dated 3rd December, 2009 to the extent that the time for making the payment of ₹15 lacs in terms of the order dated 3rd December, 2009 be extended. But no recall of the order dated 03.12.2009 was sought by the petitioner on the ground that he had been compelled to give the undertaking by the complainant as stated today. Furthermore, the aforesaid plea is at

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complete variance to the averments contained in the present petition, wherein it has been repeatedly stated by the petitioner that while giving the undertaking on 03.12.2009, his intention was *bona fide* and he is still keen to comply with the said order. So this plea is rejected as being devoid of merits.

10. Coming to the question of deciding the bail application of the petitioner on merits, having regard to the nature of offence, the contents of status report filed by the State and the arguments addressed by the learned APP as noted above and considering the fact that the testimony of the material witnesses has yet to be recorded, this Court is not inclined to entertain the present petition at this stage. The same is, therefore, dismissed.

11. Needless to state that the observations made hereinabove are limited to the scope of grant of bail to the petitioner and shall not be treated as a reflection on the merits of the case, which is pending before the court below and the said court shall decide the case in accordance with law, uninfluenced by the observations made hereinabove.

MARCH 16, 2011
Bisht


(HIMA KOHLI)
JUDGE