

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

% BAIL APPL.N. 1017/2012

+ Date of Decision: 30th October, 2012

GURDEEP SINGH SUDAN & ORS. Appellant
! Through: Mr. Ramesh Gupta, Sr. Advocate
with Mr. Jatan Singh, Advocate

Versus

\$ STATE GOVT. OF NCT OF DELHI Respondent
Through: Mr. M.N. Dudeja, APP for the
State with IO SI Arun Verma,
EOW
Mr.Arun Bhardwaj, Sr. Advocate
for Complainant/R-2 with
Mr.P.C. Dhingra and Mr. P.
Chaudhary, Advocates

CORAM:
*** HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

The petitioners-accused claim anticipatory bail in a case registered against them vide FIR No.152/2011 under Sections 406/420/120-B IPC in view of the directions of the Additional Chief Metropolitan Magistrate, Saket under Section 156(3) Cr.P.C. when the

complainant had approached the Court after the police had not found out any cognizable offence to be made out against the petitioners-accused on the basis of its complaint.

2. The relevant facts had been noticed by this Court while allowing anticipatory bail application, of co-accused Yashpal Sharma (being Bail Application No. 1204/2011).

3. Para no. 5 of the bail order dated 10.4.2012 is reproduced below:-

“5. Briefly the allegations set out by the Complainant are that one Chander Prakash Bhateja and others including the Petitioner herein who was the Attorney of the alleged company M/s Fixwell Pushincords Pvt. Ltd. approached the Complainant company in the year 2004 for the sale of property bearing 393, Udhyog Vihar, Phase-III, Gurgaon, Haryana. The alleged persons represented that the said property was lying mortgaged with Syndicate Bank. They further represented that there were some dues of HSIDC, Provident Fund Commissioner, Haryana and the Provident Fund Commissioner, Delhi. However, the alleged persons deliberately concealed the fact regarding the attachment proceedings against the property in question and dues towards Haryana Sales Tax Department to the tune of Rs.1,08,73,605/-. The Complainant purchased the said property from the alleged persons and full demand was made after executing an Agreement to Sell dated 30th October, 2004. After the property was purchased for a sum of Rs. 5,50,00,000/- and was to be registered in the name of the Complainant an objection was raised by Tehsildar, Gurgaon upon which the Complainant came to know about the dues and attachment proceedings.”

4. It was contended by the learned Senior Counsel for the petitioners-accused that they were not aware of any attachment order in

respect of the property in question when the property deal was finalized with the complainant-company and when this point was urged before the Sessions Court, the learned Additional Sessions Judge had directed the police to investigate that aspect of the matter and interim protection against their arrest was also given. It was also contended that the police claims to have recorded the statement of one employee of the Company in whose name the property in question stood registered, and relying upon his statement it is being claimed that the petitioners had the knowledge about the attachment order of the property in question. However, it was clear from his statement itself that all that he had claimed was that he had received one attachment order from the Sales Tax Department but he was not sure whether he had delivered that letter to any of the Directors of the Company, of which the petitioners were the Directors at the relevant time, since none of the Directors used to visit the business premises because of strike of the employees. It was also contended that the Sales Tax Authorities had also written to the Investigating Officer on 02.12.2011 that there was no communication between the department and the assessee company in respect of the attachment of the property in question, which was ordered in December 1997, prior to 30th October, 2004 and this fact was evident from the status report dated 24th July, 2012 filed on behalf of the respondent-State before this Court. Still, bail was refused. Learned Senior Counsel also submitted that the petitioners had already taken steps to challenge the assessment proceedings leading to the raising of the disputed demand of sales tax and in case they lose in that

legal battle they shall pay to the complainant the amount of sales tax which it claims to have paid to the Sales Tax Department after execution of the sale deed to have NOC from the Department for transfer of the property in its name. It was further contended that the police had itself earlier closed the case finding no offence having been committed by any of the petitioners and twice closure reports were submitted in Court and it was only when the Magistrate ordered registration of FIR that the police has started extending threats to arrest the petitioners. It was contended that the complainant was now trying to extract huge money from the petitioner under the pressure of criminal proceedings. It was also submitted that the petitioners are ready to take back the property and return the sale consideration to the complainant as also the amount of sales tax deposited by it if it considers to have been cheated.

4. This application has been opposed on behalf of the State by learned Additional Public Prosecutor who was assisted by a Senior Counsel for the complainant. It was submitted that the allegations against the petitioners are serious in nature. Learned Senior Counsel for the complainant submitted that in case petitioners pay to the complainant the amount of money which it had paid to the Sales Tax Department to have NOC from it, it would have no objection for the grant of anticipatory bail to the petitioners but the offer of return of the property to the petitioner was not acceptable.

5. Considering all the facts and the circumstances including the fact that one co-accused has already been granted anticipatory bail by this Court, I am of the view that the petitioners can also be granted anticipatory bail provided that they make a fixed deposit in any nationalized bank for the amount of ₹ 1,08,73,605/-, which the complainant admittedly has paid to the Sales Tax Department, to be kept with the Investigating Officer in the name of the complainant subject to the final outcome of the criminal proceedings and further subject to their furnishing personal bond in the sum of ₹50,000/- each with one surety of the like amount to the satisfaction of the Arresting Officer. The FDR shall be got made and handed over to the Investigating Officer within ten days.

6. This application stands disposed of accordingly.

P.K. BHASIN, J

October 30, 2012