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IN THE HIGH COURT OF DELHI AT NEW DELHI

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DATE OF DECISION : JULY 02, 2012

+ CRL.M.C. 4137/2011

TRINITY GLOBAL ENTERPRISES LTD Petitioner
Through : Mr.Ajay Burman and Mr.Alok
Kumar, Advocates.

versus

RAJ HIEMATH & ANR Respondents
Through : Mr.V.Srivastav, Advocate.

AND

+ CRL.M.C. 4139/2011

TRINITY GLOBAL ENTERPRISES LTD Petitioner
Through : Mr.Ajay Burman and Mr.Alok
Kumar, Advocates.

versus

SAVITA RAJ HIEMATH & ANR Respondents
Through : Mr.V.Srivastav, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

1. These two Criminal M.C. Nos.4137/2011 and 4139/2011 have been filed by Trinity Global Enterprises Ltd. (hereinafter referred to as 'TGEL') under Section 439(2) read with section 482 CrPC seeking cancellation of anticipatory bail granted to Raj Hiemath and his

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wife Savita Raj Hiremath in case FIR No.158/2011, PS EOW. The allegations against the respondents Raj Hiremath and Savita Raj Hiremath are that the complainant D.K.Jain, Group Chairman, Trinity Group entered into an agreement with Raj Hiremath and Savita Raj Hiremath of M/s Tandav Film Entertainment Pvt. Ltd. (hereinafter referred to as 'TFEPL') with a proposal for production and marketing of a Hindi Film titled '*Sharafat Gayi Tel Lene*'. Memorandum of Understanding was entered into on 21.08.2009 and pursuant to that, complainant transferred Rs.2.95 Crores in the account of TFEPL. Subsequently, on coming to know that the respondents Raj Hiremath and Savita Raj Hiremath have misappropriated the amount and had got executed agreements with various artists showing inflated amount and expenses incurred while producing the film, on their refusal to divulge the details of the financial dealings/payments/expenses incurred out of the funds provided by the complainant, FIR was got registered.

2. After registration of the FIR, both the respondents applied for grant of anticipatory bail claiming it to be a case of alleged breach of promise which could invite only civil liability.

3. Before the learned ASJ, the State filed the status report wherein it was mentioned that during the course of investigation, it has been found that amount of Rs.2,95,75,165/- was credited in favour of TFEPL by TGEL. The fund amounting to Rs.2.40 crores were also credited in the bank account of TFEPL which was opened on 24.06.2009. In another bank account of TFEPL which was already in operation, funds amounting to Rs.55 lacs were also credited. It was further revealed during investigation that respondents Raj Hiremath and Savita Raj Hiremath were also having an account in

the name of company Usha Kaal Communication Ltd. in United Bank of India from where they have availed facility of secured cash credit loan against their residential property and at present, there is debit balance of Rs.1,49,44,142/-. An amount of Rs.23,10,000/- was transferred from the accounts of TFEPL in the account of Raj Hiremath and Savita Raj Hiremath which was in the name of Usha Kaal Communication Ltd. In the account of TFEPL, an amount of Rs.55 lacs was credited from the account of TGEL at Punjab National Bank.

4. It was further revealed during investigation that from the account of TFEPL (authorised signatories Raj Hiremath, Savita Raj Hiremath and Deepa Goyal), there were self withdrawals to the tune of Rs.68,78,647/-. An amount of Rs.2.40 crores was also found credited in this account and this account was closed on 08.07.2010. Self withdrawals to the tune of Rs.3,23,000/- were also found from another account of TFEPL in which amount of Rs.55 lacs were got credited by TGEL for production of the film. It was also revealed that amount of Rs.5.10 lacs was transferred from the bank accounts of TFEPL during the period 01.05.2009 to 08.01.2010.

5. During investigation, on questioning the actor Zayed Khan, it was revealed that he signed an agreement dated 19.05.2009 for Rs.1 crore but thereafter he was asked to give discount and he slashed his market price by 70% by agreeing to receive Rs.30 lacs. Out of Rs.30 lacs, he received Rs.7,66,000/- only which was transferred in his bank account vide two cheques and that he was completely shocked to see his name being misused by the respondent Raj Hiremath and Savita Raj Hiremath. Same facts regarding inflated figure being used in the documents were revealed

in payment to various other crew members.

6. It was brought to the notice of learned ASJ that the expenditure incurred in the production of film was shown inflated and the money has been diverted to other accounts by the respondents for their personal expenditure and thereby the amount which was entrusted to them for production of film, was misappropriated by Raj Hiremath and Savit Raj Hiremath.

7. Vide impugned order dated 16.11.2011, learned ASJ while granting anticipatory bail to respondent Raj Hiremath observed as under :-

'The main allegation against the applicant/accused is that applicant/accused failed to maintain his promise and could not fulfil his part of obligation as was agreed upon between the parties. It is not the case even of the prosecution that the applicant/accused had not taken any step towards fulfilment of his commitment. The allegations are only to the effect that the targets could not be met by the specified dates. Keeping in view the totality of circumstances, in the event of arrest IO/arresting officer is directed to release the applicant/accused on bail on furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount. The applicant/accused is directed to cooperate in the investigation of the case. That he shall not intermediate any witness and shall not remove, destroy or temper with any evidence. Ordered accordingly.'

Vide impugned order dated 23.11.2011, anticipatory bail was also granted to Savita Raj Hiremath by Learned ASJ observing as under :-

'The main allegation against the applicant/accused is that applicant/accused failed to maintain her promise and could not fulfil her part of obligation as was agreed upon between the parties. It is not the case even of the prosecution that the applicant/accused had not taken any step towards fulfilment of his commitment. The allegations are only to the effect that

the targets could not be met by the specified dates. The co-accused has already been granted anticipatory bail. Keeping in view the totality of circumstances and on the ground of parity, in the event of arrest IO/arresting officer is directed to release the applicant/accused on bail on furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount. The applicant/accused is directed to cooperate in the investigation of the case. That she shall not intermediate any witness and shall not remove, destroy or temper with any evidence. Ordered accordingly.'

8. Learned counsel for the petitioner has referred to the various documents and the statements as well as the status report in support of his contention that the manner in which the anticipatory bail has been granted to both the respondents taking it to be a case of non-fulfilment of the obligation as agreed upon between the parties or that the allegations in the FIR to the effect that the targets could not be made by specified dates, is contrary to the record. The bank statement of the respondents clearly reveal that the amount has been misappropriated by respondents namely Raj Hiremath and Savita Raj Hiremath for personal use and the anticipatory bail has been granted in an arbitrary manner without fully appreciating the facts of the case or considering the status report. Thus, in these circumstances, the anticipatory bail may be cancelled so that during custodial interrogation, the amount misappropriated may be recovered. Learned counsel for the petitioner has relied upon **Puran vs. Rambilas** (2001) 6 SCC 391; **R.Rathinath vs. State of Punjab** (2000) 2 SCC 391; **Avtar Singh vs. State of Punjab** 1996 (2) RCR 665; **K.K.Dhawan Vs. State** 1999(!) Crimes 565; **Nafees Ahmed Siddiqui vs. State** 1999(4) Crimes 125; **Hukum Chand vs. State** 1993(3) Crime 479; **Gurcharan Singh vs. State** 1978 AIR 179; **Harshad Mehta vs. Union of India** 1992 Crl.L.J. 4032; Crl.M.C.Nos.4137 & 4139 of 2011

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A.K.Murmu vs. Prasenjit Chowdhury and Ors. 1999 Cri.L.J. 3460; **Nityanand Rai vs. State of Bihar** 2005 Cri.L.J. 2187; and **Rakesh Gupta vs. State** 2012(2) JCC 1301, in support of his contentions.

9. On behalf of respondent, it has been submitted that once bail is granted by the Court, it cannot be cancelled just on the asking of the complainant. It has been submitted that bail can be cancelled only in the circumstances when extremely cogent and overwhelming circumstance has been shown like interference in course of administration of justice/abuse of concessions granted are required to cancel a bail order. It has been further submitted that in case there is no interference in course of administration of justice by the accused, there can be no cancellation of anticipatory bail. It has also been submitted that monetary condition on the respondents also cannot be imposed by the Court. Learned counsel for the respondents submitted that even Apex Court had held such types of directions by the High Court like requiring the husband to pay maintenance to the wife while granting anticipatory bail, as not considered proper. It has been further submitted that unnecessary conditions cannot be imposed by the Court while granting anticipatory bail as such conditions have the effect of defeating the very purpose. Reliance has been placed on **Munish Bhasin & Ors. Vs. State (Govt. of NCT of Delhi) & Anr.** AIR 2009 SC 2072 wherein the Apex Court has considered the direction by High Court requiring the petitioner to pay maintenance to wife when she has already approached appropriate Court for said relief, as not proper.

10. Learned counsel for the respondents has also placed reliance on **Gurbax Singh Sibia & Others vs. State of Punjab** (1980) 2

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SCC 565 wherein the Apex Court has observed as under :-

'We find a great deal of substance in Mr.Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the Court should lean against imposition of unnecessary restrictions when no such restriction have been imposed by the Legislature in terms of such Section. Section 438 is procedural provision which is concerned with the personal liberty of the individual who is entitled to the benefit of the presumption of innocence since he is not, on the date of application for anticipatory bail convicted of the offence of which he seeks a bail. An over generous infusion of constrains and conditions which are not to be found in Section 439 can make its provisions constitutionally vulnerable since right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved and not jettisoned.'

Learned counsel for the respondents has also relied upon **Shekhar and Anr. . State of Maharashtra & Anr.** AIR 2001 SC 2023; **Mahesh Gupta vs. NCT of Delhi & Anr.** 108 (2003) DLT 213; **Hazari Lal Das v. State of West Bengal & Anr.** (2009) 10 SCC 652; **Parveen Malhotra v. State** 1990 Cri.L.J. 2184; **Ashok Jain v. State** 2009 (4) JCC 3005; **anil Kumar Malil v. Delhi Administration, Delhi** 1993 (26) DRJ 290; **Ravindra Saxena v. State of Rajasthan** 2009 (14) SCALE 609; **Savitri Agarwal & Ors. Vs. State of Maharashtra & Anr.** (2009) 8 SCC 325; **Ramathal & Ors. Vs. Inspector of Police & Anr.** 2009 Cri.L.J. 2271; and **Ira Juneja & Anr. V. State of Anr.** 2004 (72) DRJ 207, in support of his contentions.

11. I have considered the rival submissions.

12. So far as the contention of learned counsel for the petitioner seeking cancellation of bail so that the respondents could be subjected to custodial interrogation to get the amount recovered, is

concerned, I am of the opinion that the anticipatory bail once granted to the respondent cannot be cancelled on this ground as the transaction took place many years back and the amount allegedly withdrawn by the respondents Raj Hiremath and Savita Raj Hiremath has allegedly been misappropriated by them for personal use and has already been spent by them.

13. So far as the contention of the petitioner praying for cancellation of bail is concerned, I find that in the proceedings dated 31.01.2012 in Crl.M.C. No.4137/32012, learned counsel for the petitioner conceded before the Court that he is not interested to litigate in the Courts of law, rather petitioner is interested either to get the money released or to get the rights of the film. Thereafter the talks for settlement were also going on wherein the complainant gave three proposals i.e. *'(a) Return of amount of Rs.2.95 crores given with some interest; or (b) Transfer of Movie Rights to the complainant; or (c) Actual payments made to various parties/vendors with supporting documents/affidavits in compliance with clause 2.3, 3.2 and 3.4 with the balance to be paid directly to the said parties/vendors by the complainant so that Movie is completed'*, which were not acceptable to the respondents/accused. In the circumstances, I find that cancellation of bail is not the right course of action when the complainant himself seems to be more interested in the return of his money either in cash or through transfer of Movie Rights to him as suggested by him.

14. But then the question arises as to whether learned ASJ was justified in releasing the respondents Raj Hiremath and Savita Raj Hiremath on anticipatory bail without putting some condition on them in respect of the amount allegedly misappropriated by them

which was entrusted by the complainant for production of the film. The FIRs against the respondents namely Raj Hiremath and Savita Raj Hiremath have been registered under Sections 420/406/120-B IPC. The bank statement of the two respondents as reflected in the status report and referred to above reveal the modus operandi by which the amount entrusted by the complainant/petitioner to them was allegedly misappropriated and the complainant has been cheated. The complainant even as on date seems to be interested more in refund of his money as the amount involved is to the tune of about Rs.2.95 crores out of which about 1/3rd of the same has allegedly been misappropriated. Even during the course of hearing of these petitions, such proposals were considered. Learned counsel for the respondents Raj Hiremath and Savita Raj Hiremath submitted that the respondents cannot refund any amount to the petitioners and it is only when the film is completed and released that any such situation can arise to return the amount invested by the complainant but till then, they are not in a position to either return the amount or willing to transfer the Movie Rights to the petitioner. Learned counsel for the respondents was specifically asked the question about the two sets of the documents regarding the price paid to Actor Zayed Khan and other crew members showing different figures, he informed that after one film of Zayed Khan flopped, he reduced his price but on being asked to show any agreement with Zayed Khan reflecting any circumstance under which the price by him was reduced to Rs.30 lacs, could not be shown by him and in fact it is not controverted that documents are silent as to how the payment reflected in one set of the documents vary from the other set which does give rise to the impression that two sets of

documents were allegedly prepared, one with inflated price for purpose of the complainant and another was for actual payment.

15. Mere audit of the accounts at this stage will not be of much help to the respondents. Learned counsel for the respondents was also questioned as to whether at any point of time in the Memorandum of Understanding, it was disclosed to the complainant that behind the legal entity Usha Kaal Communication Ltd., the real face was that of the respondents who received the money in the name of that company, learned counsel for the respondent submitted that it was not necessary to disclose about the payments received by the respondents on behalf of Usha Kaal Communication Ltd.

16. Learned ASJ committed a grave error in considering this case only to be a case of failure to maintain the promise and non-fulfilment of their part of obligation as was agreed upon between the parties. As per the FIR, the respondents namely Raj Hiremath and Savita Raj Hiremath allegedly cheated the complainant and misappropriated an amount of about Rs.1 crore by different modes.

17. In the case **Lalit Goel v. Commissioner of Central Excise** 2007 (3) JCC 2282, this Court, while dealing with bail application in a case of Customs Act, observed as under :-

'The economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Noticing ever growing materialistic outlook setting unscrupulous elements on a prowl to maximize material gains by unlawful means, this Court even suggested appropriate legislative measure and judicial intervention to safeguard the interest of the State and public at large.'

18. In another case **State of Gujarat v. Mohanlal Jitmalji Porwal and Anr.** AIR 1987 SC 1321, the Honble Supreme Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:

'The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.

The above referred observations were quoted with approval in Ram Narain Popli v. CBI MANU/SC/0017/2003 : 2003 (3) SCC 641. The Honble Court also observed as under: Unfortunately in the last few years, the country has seen an alarming rise in white-collar crimes which has affected the fiber of the countrys economic structure. These cases are nothing but private gain at the cost of the public, and lead to economic disaster.

19. In the case **Prem Kumar Parmar v. State (CBI)** 1989 RLR 131, the observation made by this Court is extracted as under:-

'The offences such as cheating and forgery bring imbalance in the economy of the country, which has the effect of making the life of majority of people, particularly those belonging to economically weaker sections of the society miserable and that such economic offences are worse than murders.'

20. In respect of contention of learned counsel for the respondents that while dealing with the application for anticipatory bail, the Court cannot impose condition regarding deposit of the amount, reference can be made of the judgment of Apex court in the case **Suresh Chandra Ramanlal v. State of Gujarat** 2008 (7) SCC 591, which was a case involving cheating and forgery in respect of funds of a bank, the Supreme Court even while granting bail on verified medical grounds, imposed a condition that he would deposit a sum of Rs. 40 lakhs with the bank in four monthly installments. This was despite the fact that in the case before the Honble Supreme Court, there were as many as 49 accused and each one of them had already been enlarged on bail and that included the Chairman, Vice-Chairman, Managing Director, 11 other Directors of the bank and the case of the appellant, Ex. Vice-Chairman of the bank, was that he had resigned in the year 1999, whereas the FIR was registered in the year 2002.

21. The reliance placed by learned counsel for the respondent in this regard on **Munish Bhasin & Ors. V. State (Govt. of NCT of Delhi) & Anr.** (Supra) is of no help to the respondents as in that case the dispute was between husband and wife and when the husband applied for anticipatory bail, the High Court required him to pay maintenance to his wife which was considered to be not proper.

22. The respondents Raj Hiremath and Savita Raj Hiremath allegedly cheated the complainant and mis-appropriated the amount to the extent of Rs.1 crore provided by the complainant for direction of the film. The respondents are not disputing the finance to the tune of Rs.2.95 crores by the complainant and their statement of account reflect the manner and the extent to which the amount

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provided was allegedly misappropriated. Admittedly nothing has been refunded to the petitioners till date nor the respondents are ready to refund even partially to the petitioner.

23. The petitioner, therefore, continues to enjoy the fruits of their crime. Such persons who continue to reap the benefit of their crime after committing the offence of personal gain and preceded by calculated design need to be put under some restriction by imposing a reasonable condition so that it does not send a wrong message to the potential offenders that even after committing the crime, they can continue to enjoy the ill-gotten wealth. The Court may impose conditions as specified under Section 438(2) CrPC.

24. This Court is conscious of the fact that criminal Court is not a recovery forum but in the given case, it is the duty of the Court to safeguard the interest of the society as also of the complainant who has been duped of huge amount. If some reasonable condition is imposed on the respondent while letting them enjoy the benefit of anticipatory bail, it would have the effect of avoiding unnecessary adjournment and delay in trial at the behest of respondents who are accused in FIR No.158/2011, PS EOW.

25. The impugned order needs to be interfered by this Court for the reason that the reasoning given by learned ASJ while enlarging the respondents namely Raj Hiremath and Savita Raj Hiremath on anticipatory bail, is not on sound judicial principles. But at the same time, cancellation of anticipatory bail at this stage would also not be in the interest of justice. The amount allegedly misappropriated by the respondents i.e. Raj Hiremath (in CrI. M.C. No.4137/2011) and Savita Raj Hiremath (in CrI.M.C. No.4139/2011) who are husband and wife, is to the tune of about Rs.1 crore.

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26. Taking into consideration the peculiar facts and circumstances of the case, the impugned order is modified to the extent that respondents Raj Hiremath (in Crl. M.C. No.4137/2011) and Savita Raj Hiremath (in Crl.M.C. No.4139/2011) are directed to deposit Rs.25 lacs each with Registrar General of this Court within 10 days from the date of this order, who shall keep the same in the form of FDR initially for a period of one year which shall be renewed from time to time, as a condition for their release on anticipatory bail.

27. The observations made in this order being necessary only to deal with the contentions raised shall not prejudice the decision of the case at any stage of the trial.

28. Crl.M.C.Nos.4137/2011 and 4139/2011 stand disposed of in the above terms.


PRATIBHA RANI
(JUDGE)

JULY 02, 2012
'st'

— Crl.M.A 12178/12 for
modification / stay of
Judgment

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

+ CRL.M.C. 4139/2011

TRINITY GLOBAL ENTERPRISES LTD Petitioner
Through : Mr.Alok Kumar and Mr.Amit
Kumar, Advs.

versus

SAVITA RAJ HIREMATH & ANR Respondents
Through : Mr.V.Shrivastava, Adv.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

% **ORDER**
13.07.2012

Crl.M.A. No.12178/2012

1. This is an application moved on behalf of respondent No.1 Savita Raj Hiremath for modification/stay/abeyance of order dated 02.07.2012 passed by this Court.
2. Notice.
3. Mr.Alok Kumar, Adv. accepts notice on behalf of petitioner.
4. Learned counsel for the applicant/respondent No.1 submits that the order dated 02.07.2012 be modified/stayed or kept in abeyance for a period of four weeks to enable the applicant to move the Apex Court and in case she is unsuccessful before the Apex Court, she will submit herself to the process of law.
5. Learned counsel for applicant/respondent No.1 further submits that the applicant is unable to arrange Rs.25 lacs required to be deposited before Registrar General, hence she is left with no other option but to file an appeal before the Supreme Court against the order dated 02.07.2012.
6. Heard. The order dated 02.07.2012 was pronounced in the

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open Court after hearing learned counsel for the parties at length. At that time, no request was made by learned counsel for the respondent No.1 that 10 days time provided by the Court to deposit Rs.25 lacs as condition for anticipatory bail, be extended to four weeks. The present application has been moved when the period of 10 days is just going to expire to gain more time and remain on anticipatory bail without complying with the conditions imposed vide order dated 02.07.2012. I do not find any justification to pass any order for keeping the order dated 02.07.2012 in abeyance. Application dismissed.

JULY 13, 2012
'st'


PRATIBHA RANI, J

Fresh Application

Crl.M.A 12680/12 for modification