

Reserved

Neutral Citation No. - 2023:AHC:238627

Court No. - 78

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14833 of 2023

Applicant :- Rajesh Kumar Sharma

Opposite Party :- C.B.I.

Counsel for Applicant :- Alok Saxena, Gaurav Singh Tomar

Counsel for Opposite Party :- Sanjay Kumar Yadav

Hon'ble Raj Beer Singh, J.

1. Heard Sri Alok Saxena, learned counsel for the applicant-accused, Sri Gyan Prakash, learned Senior Advocate/ Deputy Solicitor General of India, assisted by Sri Sanjay Kumar Yadav, learned counsel for the C.B.I and perused the record.

2. The present bail application has been filed by the applicant-accused in Special Case No.01 of 2022 RC No.219 2019 E 006, under Sections 120B read with 420, 467, 468, 471 IPC and section 13 (2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, police station CBI/EO-1, New Delhi, District Delhi with the prayer to enlarge the applicant on bail.

3. Perusal of record shows that the FIR / R.C. pertaining to this case was got registered by the Deputy General Manager (D.G.M.) of Corporation Bank, alleging that M/s. Nafto Gaz India Pvt. Ltd. is operating as an E.P.C. contractor for exploration, drilling, extraction and production of minerals oils, natural gas and petroleum products and it was enjoying credit facility from Noida Mid Corporate Branch under consortium finance led by State Bank of India (S.B.I.). One foreign B.G. was issued on 07.05.2010 for an amount of USD 103572/ for a period from 13.05.2010 to 13.05.2011 and it was yet to be crystallized. The account of M/s. Naftogaz India Pvt. Ltd. was operated properly till 27.07.2012 but later on it started signs of sickness and the said account turned N.P.A. on 22.11.2012 with outstanding book balance of Rs.9221.22/ lakh as on date excluding interest. The account was classified by the Bank as fraud on

03.02.2015 and reported the matter to the Reserve Bank of India on 16.02.2015. The aggregate amount involved in the fraud is Rs.10500.00/ lakhs with problematic exposure of Rs. 9280.00/. Later on, the title of the property situated at Arjun Nagar, Yusuf Sarai, New Delhi in the name of guarantors was found to be defective. Registered mortgage property was created on PariPassu basis with ICICI Bank, P.N.B. and U.B.I. The valuation of property was done by Adroit Technical Service on behalf of ICICI Bank. As per its report, the property was valued at Rs.43.60/ crores and distress sale value was shown Rs.37.06 crore. Another valuation was done by Mr. Vishnu Kumar Agarwal, empanelled valuer of S.B.I., and he reported the value of property as Rs. 67.47 Crore. The I.C.I.C.I. Bank vide later dated 24.10.2014 informed that its enforcement agency for initiating action under SARFAESI Act, after physical verification of revenue records, has reported that enforcement of said security is very difficult as the name of the owner is not appearing in revenue records and the said property spreads around the wide area without proper demarcation. It was revealed that previous owners have sold this property by sub-dividing the land to different owners. The new owners have constructed various shops and residential flats on the said property. In view of this, the valuation of this property from Bank's perspective is negligible. M/s. Nafto Gaz India Pvt. Ltd. offered another immovable property being Plot No. H-7, Khasara No.79/06/01, Laxmi Park, Nagloi Jat, Delhi as security. The said property was grossly over valued by the borrower. As per last available book debt statement as on 31.07.2012 there are outstanding book debts to the extent of Rs. 281.12 crores. M/s. Nafto Gaz India Pvt. Ltd. with dishonest and fraudulent intention connived and conspired with the advocate and valuers, misrepresented the facts and led the banks to believe in the inflated valuation reports submitted on its behalf and thereby inducing the banks to sanction the higher credit facilities to it.

4. Learned counsel submitted that applicant is innocent and he has been falsely roped in and made an accused, whereas, there is not even an iota of evidence to show his involvement. In the first information report, there were no allegations against the applicant and all the allegations were against Director of M/s Nafto Gaz India Pvt. Ltd. and other persons involved in preparation of excessive valuation reports of the properties mortgaged and the properties of guarantors. Co-accused Mahdoom Bava is Promotor/Director of said company. It was stated that on one hand the C.B.I. claimed that the applicant had opened a firm under the name and style of M/s. Aggarwal Traders and opened a bank account in the name of Ram Prakash but on the other hand it has claimed in the charge-sheet that accused Yatish Sharma was operating not only the account of M/s. Aggarwal Traders but also another account in the name of M/s. Shri Radhey Traders. As per investigation, the two mobile numbers mentioned in the invoices/letters of M/s. Aggarwal Traders were being used by the accused Shri Yatish Sharma. As per prosecution version, the accounts in the Axis Bank in the name of M/s. Aggarwal Traders and in the name of M/s. Shri Radhey Traders were being operated by accused Yatish Sharma and the application for letter of credit for Rs.24.42 crores was also submitted by another accused Ramesha JS, the then Branch Head of Corporation Bank. Referring to facts of the matter, it was submitted that even as per prosecution version there was a criminal conspiracy between the bankers and the prime accused Mahdoom Bava and Yatish Sharma. The entire case is based on the statement of Ram Prakash, who had opened account in Axis Bank in the name of M/s. Aggarwal Traders and all the alleged cheques were signed and issued by him and thus, he should have been made an accused but he has been made a witness to frame the accused-applicant.

5. Learned counsel further submitted that statement of accused is not at all admissible against any other accused in the case and such a statement

cannot be made basis to return a finding about the guilt of any other accused. Further, the charge-sheet has already been submitted. During investigation, the Investigating Officer did not feel any necessity of custodial interrogation of the applicant. Learned counsel has referred the case of Sunil Kumar Antil vs. CBI [SLP (Crl) 5191 of 2021] and submitted that in view of aforesaid facts and circumstances there is no requirement of keeping the applicant-accused in jail. It was also pointed out that in three connected appeals, the Hon'ble Supreme Court has granted anticipatory bail to all the accused-applicants including main accused Mahdoom Bava and the case of applicant is on better footing than that of accused Mahdoom Bava. Co-accused Ramesha J.S. has been granted bail by the trial court. There is no apprehension of applicant of absconding or fleeing away from justice. The criminal history shown against applicant has duly been explained in affidavit. Referring to these facts, it was submitted that in view of the facts of the matter and aforesaid contentions the applicant is entitled to be released on bail.

6. Sri Gyan Prakash, learned Senior Advocate/ Deputy Solicitor General of India has opposed the application and submitted that co-accused Mahdoom Bava is M.D. of M/s. Naftogaz India Pvt. Ltd., in criminal conspiracy with other accused persons cheated Corporation Bank, SME Branch, Sector-18 Noida to the tune of Rs.92 Crore by fraudulently availing credit facility from the Bank and subsequently not repaying the same. Co-accused Deepak Gupta in the capacity of guarantor in the loan account had executed a mortgage deed in respect of property No.51-A, Arjun Nagar, New Delhi. The said property was not found in his name in revenue record. Co-accused Ravinder Pandita, Valuer had submitted a false report in respect of another property mortgaged to the Bank. Co-accused K. Gangadharan has submitted a false illegal search report in respect of property situated at Laxmi Park, Nagloi Jat, Delhi. Co-accused Rakesh Singh MD of M/s. Boom Buying Pvt. Ltd in conspiracy with

accused Mahdoom Bava and accused Ramesha JS, got for LC's worth Rs. 35 crores opened by Corporation Bank in favour of M/s. Boom Buying Pvt. Ltd. and subsequently got the same discounted through HDFC Bank and Standard Chartered Bank by submitting false/fabricated invoices/lorry receipts and later on diverted the proceeds of the LC's. Accused Akash Gupta and Anil Gupta Director/Authorized signatory of M/s CCL International Ltd. with conspiracy with accused Mahdoom Bava and accused Ramesha JS also got one LC worth Rs.7.55 Crores in favour of their company and subsequently got the same discounted through IDBI Bank by submitting false/forged documents. Co-accused Mahdoom Bava in conspiracy with accused Ramesha JS, Rakesh Sharma and Yatish Sharma got opened one LC worth Rs.24.42 crores in favour of his firm namely M/s Aggrawal Traders and the same were discounted through the account of Nafto Gaz India Pvt. Ltd. with SBI Global Factors Ltd. and the discounted amount was transferred to the account of M/s Aggrawal Traders and the funds were diverted. Accused Rajesh Kumar Sharma in conspiracy with accused Yatish Sharma had got opened a firm namely, M/s Aggrawal Traders in the name of one of his employee Ramprakash and also got opened an account of the firm in Axis Bank and took cheque book of the account. The said cheques were subsequently used for diverting of proceeds of the LC to different accounts from account of M/s Aggrawal Traders. The account of M/s Aggrawal Traders was being operated by accused Yatish Sharma. Accused Mahdoom Bava also diverted Rs. 6.7 Crore from C.C. account of M/s Nafto Gaz India Pvt. Ltd to accused M/S AB Petrol Services Pvt. Ltd. It was submitted that account of M/s Nafto Gaz India Pvt. Ltd turned NPA on 22.11.2012 with outstanding of Rs.92.21 crore. Learned Senior Counsel submitted that role of applicant Rajesh Kumar Sharma is in formation of the firm M/s Aggrawal Traders, in whose name LC worth Rs. 24.42 crores was got issued from Corporation Bank and subsequently the same was got

discounted on the basis of bogus bills and the proceeds were siphoned off through the accounts of M/s Aggrawal Traders, which was got opened by accused Rajesh Kumar Sharma through his employee Ram Prakash. It was submitted that investigation revealed that accused Rajesh Kumar Sharma has got opened firm M/s Aggrawal Traders in name of his employee Ram Prakash and he also got opened an account of firm in Axis Bank and took cheque book of the account and the said cheques were subsequently used for diverting of the proceeds of the LC to different accounts from the account of M/s Aggrawal Traders. The account of M/s Aggrawal Traders and M/s Radhey Traders were operated by Yatish Sharma an associate of applicant Rajesh Kumar Sharma and they were hand in glove.

7. Learned Dy.S.G. further submitted that economic offences constitute a class apart and need to be visited with a different approach in matters of bail. The economic offence having deep-rooted conspiracies and involving the huge loss of public fund need to be viewed seriously and the accused of such offences are serious threat to the financial health of the country. The applicant-accused has criminal history of two cases. Referring to the facts of the matter, it was submitted that no case for bail is made out.

8. I have considered rival submissions and perused the record.

9. In the alleged incident, the Corporation Bank was cheated to the tune of Rs.92 crore by fraudulently availing credit facility from Bank and subsequently not repaying the same. During investigation, it was revealed that applicant accused was having role of in formation of firm M/s Aggrawal Traders, which was opened in the name of one of his employee Ram Prakash and a LC worth Rs. 24.12 crore was got issued from the Corporation Bank in the name of said firm and subsequently the same was got discounted on the basis of bogus bills and lorry receipts and the

proceeds were siphoned off through the account of M/s Aggrawal Traders. The only allegation against the applicant-accused is that said firm was opened by applicant in conspiracy with accused Yatish Sharma, who is a close associate of applicant-accused Rajesh Kumar Sharma. It was shown that main co-accused Mahdoom Bava and some other co-accused persons have been granted bail by the Hon'ble Apex Court vide judgment and order dated 20.03.2023, passed in S.L.P. No.376 of 2023 and connected matters. In the said bail order the co-accused persons, in paragraph Nos. 9, 10 and 11, the Hon'ble Apex Court held as under:-

“9. On the strength of the aforesaid allegations, which are certainly serious in nature, the prayer of the appellants for anticipatory bail is opposed vehemently by the learned Additional Solicitor General. But in our considered view there are at least three factors which tilt the balance in favour of the appellants herein.

They are:-

(i) Admittedly, the CBI did not require the custodial interrogation of the appellants during the period of investigation from 29.06.2019 (date of filing of FIR) till 31.12.2021 (date of filing of the final report). Therefore, it is difficult to accept the contention that at this stage the custody of the appellants may be required;

(ii) In the reply/counter filed before the High Court, the CBI had taken a categorical stand that the Court had merely issued summons and not warrant for the appearance of the accused. In the case of Shri Deepak Gupta, CBI had taken a stand before the Special Court that “the presence of the accused is not required for the investigation but it is certainly required for trial” and that therefore he needs to be present. Therefore, all that the CBI wanted was the presence of the accused before the Trial Court to face trial. In such circumstances, to oppose the anticipatory bail request at this stage may not be proper; and

(iii) All transactions out of which the complaint had arisen, seem to have taken place during the period 2009-2010 to 2012-2013 and all are borne out by records. When the primary focus is on documentary evidence, we fail to understand as to why the appellants should now be arrested.

10. More importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial Court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case. Suffice for the present to note that it is not the CBI which is seeking their custody, but the appellants apprehend that they may be remanded to custody by the Trial Court and this is why they seek protection. We must keep this in mind while deciding the fate of these appeals.

11. In the case of the prime accused, namely Shri Mahdoom Bava, an additional argument advanced by the learned Additional Solicitor General is that he was involved in eleven other cases. But the tabulation of those eleven cases would show that seven out of those eleven cases are complaints under Section 138 of the Negotiable Instruments Act, 1881 and three out of those seven cases are

actually inter-parties and not at the instance of the Bank. The eighth case is a complaint filed by the Income Tax Officer and it relates to the non- payment of TDS amount. The remaining three cases are the cases filed by CBI, one of which is the subject matter out of which the above appeals arise. ”

10. It is apparent that the main co-accused Mahdoom Bava has already been granted anticipatory bail and some co-accused persons have already been granted anticipatory bail. The only allegation against applicant is that he was involved in formation of firm M/s. Agarwal Traders, which was being operated by the co-accused Yatish Sharma. The C.B.I. did not require any custodial interrogation by applicant during investigation. The investigation is complete and charge-sheet has been filed in the Court. The applicant-accused is languishing in jail since 21.02.2023.

11. Considering the facts of the matter, particularly, the observations of Hon'ble Apex Court made in aforesaid order while granting anticipatory bail to main co-accused Mahdoom Bava, the accused- applicant is entitled for bail.

12. Let the applicant-accused **Rajesh Kumar Sharma** involved in aforesaid crime be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:

- (i) The applicant-accused shall not tamper with the evidence during the trial.
- (ii) The applicant-accused shall not pressurize/ intimidate the prosecution witness.
- (iii) The applicant-accused shall appear before the trial court on the date fixed, unless personal presence is exempted.
- (iv) The applicant-accused shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v) The applicant-accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(vi) If the applicant holds any passport, the same shall be surrendered before the trial court.

13. In case of breach of any of the above condition, the Court concerned shall be at liberty to cancel bail of applicant-accused in accordance with law.

Order Date :- 16.12.2023

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