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Neutral Citation No. - 2024:AHC-LKO:37763

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12633 of 2023

Applicant :- Morimisetty Pandu
Opposite Party :- State Of U.P. Thru. Prin.Secy. Home Deptt.
Counsel for Applicant :- Salil Tripathi,Amrendra Nath Tripathi
Counsel for Opposite Party :- G.A.,Anoop Kumar

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Hon'ble Jaspreet Singh,J.

1. Heard Shri Salil Tripathi, learned counsel for the applicant, Shri Ran Vijay Singh, learned Additional Government Advocate for the State-respondent and Shri Anoop Kumar, learned counsel for the complainant.

2. Learned counsel for the applicant has filed a rejoinder affidavit, which is taken on record.

3. By means of the instant bail application, the applicant Morimisetty Pandu seeks bail in respect of FIR/Case Crime No.0161/2020, under Sections 120-B, 420, 409, 467, 468, 471 IPC, Police Station Pasgawan, District Kheri.

4. It is submitted that the accused/applicant along with other directors incorporated a company in the name of M/s. Shri Venkateshwara Global trading Pvt. Ltd. (Sugar Export Firm) where the applicant served as a Director of the Company till 03.05.2017. The applicant submitted his resignation to the Board of Directors, which was duly accepted, and communicated to the Registrar of companies via resolution dated 26.06.2017. After resignation, the name of the applicant was removed from the list of Directors. It is submitted that the applicant or accused has been implicated on the basis of GST registration and incorporation certificate only, where as the applicant himself has neither signed any agreement nor

was ever present before the informant.

5. As per the version of the FIR the alleged company in 2019-20 entered into contract with DCM, Shri Ram Ltd., Sugar Unit at the approved export quantity of 2500 mt. Tonnes. The firm as per the terms of agreement had to make an advance RTGS before the dispatch of each shipment from the said plant. On 26.11.2019 a post dated cheque was issued by the accused/applicant of Rs.26120000/- as security and was given to the the company. 2500 mt. Tonne sugar was supplied to the said company through the transporter appointed by them. Further an employee of DCM, Shri Ram Ltd. Manik Talwar gave statement stating that all the necessary documents relating to shipment and transport were required for the collection of subsidy grant of Rs. 10448 per tonne (total Rs.26120000), which the accused/applicant and the said company failed to provide. It was further stated that on 20.01.2020 DCM, Shri Ram Ltd sent a shipping bill, upon further analyzation no sugar goods were ever transported. It was further stated in the FIR that even after many accused/applicant could not be contacted or approached.

6. As per the govt guidelines the firm had to provide the necessary forms to the mill after export process, so that the sugar mill could receive the approved subsidy amount. But the required and approved forms were not provided by the firm to the plant, thus the same could not be submitted which resulted in a loss of 26120000/-.

7. The submission of the learned counsel for the applicant is that the applicant has been falsely implicated in the instant case. His identity documents have been misused by M/s. Shri Venkateshwara Global Trading

Pvt. Ltd. i.e. Sugar Export Firm.

8. It is further urged that the applicant had already resigned from the Directorship of the Company in May, 2017. All the agreements as alleged are subsequent thereto. It is further submitted that the documents i.e. agreement signed between the Sugar Export Firm and Cooperative Sugar Mill does not bear the signatures of the applicant. The applicant had resigned as a Director and it was also informed to the Ministry of Corporate Affairs. Resolution was passed by the Sugar Export Firm, as a result, the financial powers of the applicant were seized and this was also communicated to the other authorities including the Bank.

9. The allegations against the applicant are false. The Sugar Export Firm and Cooperative Sugar Mill are already getting their dispute resolved through arbitration and for the aforesaid reasons, the matter in question is purely civil in nature yet by lodging the FIR, the criminal colour has been given but even otherwise the proceedings are of recovery of money.

10. It is further submitted that the applicant was the founding Director of the Sugar Export Firm and since he had submitted his identity documents at the time of incorporation, the same has been misused by the current Directors of the Sugar Export Firm and thus have falsely implicated the applicant.

11. It has further been submitted that since the Sugar Export Firm had made bids for sugar lifting contracts in various parts of the country, hence, the current Directors of the Sugar Export Firm adopted a similar methodology to misuse the identity documents of the present applicant and

it is for the said reason that various first information reports have been lodged in different parts of the country and the applicant has been named therein.

12. The applicant has explained his criminal history and in number of cases, he has been enlarged on bail including certain orders passed by the Coordinate Bench of this Court and also in other different States.

13. In the aforesaid facts and circumstances, where the applicant has been enlarged on bail by this Court in FIR/Case Crime No.0306/2022 by means of its order dated 31.10.2023 passed in Criminal Misc. Bail Application No.38040 of 2023 and by means of the order dated 15.12.2023 relating to FIR/Case Crime No.222/2022 passed in Criminal Misc. Bail Application No.11185 of 2023 and certain other bail orders have already been filed with the bail application and the applicant's present bail application deserves to be allowed.

14. Shri Anoop Singh, learned counsel for the complainant and Shri Ran Vijay Singh, learned Additional Government Advocate for the State, both have opposed the prayer for bail.

15. It has been urged that the applicant has adopted fraudulent means and he is responsible for committing fraud with the Sugar Mill to the tune of several lakh of rupees and as such his bail application deserves to be rejected.

16. It has been elaborated that there was an export policy of the Government in order to boost the sugar exports, hence, it was provided that any exporting firm could procure the sugar from the Cooperative Sugar

Mills at a subsidized rates only for the specific purpose of selling the said sugar meant for exports in various foreign markets. The documents relating to the export were to be furnished by the exporting firm to the Cooperative Sugar Mills, who in turn would submit the documents with the Government and claim the subsidy.

17. It is further submitted that the applicant by falsely projecting himself as a Director of the Sugar Export Firm entered into an agreement and after procuring the sugar instead of exporting it, sold the same in the domestic market and failed to handover the documents of export, as a result, the Sugar Mills suffered loss as the subsidy could not be claimed by them from the Government and the applicant in connivance with the Directors of the Sugar Export Firm made profits by selling sugar meant for export purpose in domestic market and this *modus operendi* has been used by the applicant along with other Directors of the Sugar Export Firm across various States, hence, large number of FIRs have been filed against the applicant and the other Directors.

18. It is further urged that the applicant used his own IP address to bid for the aforesaid sugar contracts. He put in his documents with his signatures. He also furnished his Income Tax Returns wherein he is showing himself as the Director in the Sugar Export Firm.

19. Learned Additional Government Advocate has also pointed out that apart from the documents filed by the first informant i.e. Sugar Mills, during the investigation, it also revealed that it was the applicant who had arranged for transportation of sugar and he also duped the transporter and the applicant has criminal history of 21 cases which emerge from the

similar patterns and transactions from States across India.

20. There is ample evidence to indicate that the applicant permitted his documents to be used in the name of the Sugar Export Firm and it is only at a later stage to avoid his liability and complicity, it has been stated that the applicant has resigned from the Directorship. In the aforesaid circumstances where the applicant is instrumental in committing fraud he is not entitled for bail.

21. The Court has heard learned counsel for the parties and also perused the material on record.

22. It is the case of the applicant that he had resigned from the Directorship of the Company in May, 2017. In order to substantiate the same, the applicant has drawn the attention of the Court to the Annexure No.2 which is a letter dated 03.05.2017 indicating that the applicant is resigning from the Board of Directors. It is urged that the same came to be accepted on 26.06.2017 and the applicant resigned. This was also mentioned in the master-data of the Company dated 31.07.2020 which is placed on record as Annexure No.4.

23. It has further been pointed out that notice of the arbitration proceedings pending before the Sole Arbitrator in the matter of arbitration between DCM, Shri Ram Ltd. v. M/s. Shri Venkateshwara Global Trading Pvt. Ltd., has been brought on record.

24. The attention of the Court has also been drawn to the rejoinder affidavit to indicate that Form No.DIR-12 was also furnished indicating that the applicant had resigned and all the transactions have occurred

subsequently, hence, the applicant cannot be held responsible and moreover once the disputes are being adjudicated before the arbitral Tribunal it takes the form of a civil disputes, hence the applicant be enlarged on bail.

25. Upon examining the aforesaid documents, the following facts are discerned.

26. It is not disputed that the applicant was the founding Director of the Company. Even though the document which has been furnished by the applicant indicating that he resigned on 03.05.2017, yet on perusal, there are various discrepancies in respect thereto.

27. Illustratively, the document of resignation is allegedly dated 03.05.2017, however, the documents by which the said resolution has been passed by the Company is allegedly dated 26.06.2017, but the same does not bear the signatures of the three Directors namely Mr. Raghavendra Addageri, Mr. Rajendaran Subbanaidu and Mr. Mohammed Azmuthulla Khan whereas their signatures are on the right side placed upon rubber stamp seal, upon which there is a stamp of a public notary with the seal of the Company has been placed.

28. In juxtaposition to the aforesaid documents if the tender form and the accompanying documents which were furnished to the Sugar Mills is seen which has been brought on record along with the counter affidavit filed by the complainant, it would indicate that on all the documents, the signatures of the applicant appears as Managing Director for the Company (Sugar Export Firm) and these documents are of the year 2019-2020. In the importer exporter Code, the Directors of the Company are mentioned and it

shows the applicant and one Shri Kumar Jayaraman as Director, the GST Certificate, PAN Card which ave been furnished including the certificate of incorporation, they all belong to the Company but they have been authenticated and signed by the applicant as its Managing Director.

29. The record further indicates that the applicant has furnished Income Tax Returns for the Assessment Year 2017-2018, 2018-2019 and 2019-2020 wherein it is indicated that these reports have been digitally signed by the applicant in the capacity of the Managing Director of the Company. The Assessment Year 2019-2020 would relate to the Financial Year 2018-2019 commencing w.e.f. 01.04.2018 till 31.03.2019. This could not have been done, had the applicant retired on 31.05.2017. The financial statements filed by the Company through the Charted Accountant also indicate that they have been signed by the applicant on behalf of the Company as its Director.

30. Another document which has been brought on record as Annexure No.9 with the counter affidavit of the complainant is dated 28.01.2020 whereby the Company is said to have passed a resolution as Director of the Company referring to the present applicant, who is authorized to sign on behalf of the Company in respect of the bid for procuring sugar from the Sugar Mills. These documents, *prima-facie*, indicates that the theory as set up by the applicant that he had resigned on 03.05.2017 does not appear to be convincing. Even assuming if the agreements signed between the Sugar Mills and the Company are post the date of alleged resignation i.e. 03.05.2017, but there is no plausible explanation as to the fact that when the applicant had retired then under what capacity and how he was signing

as Director on behalf of the Company. Even though the Company may have separate and distinct identity yet it function through its Board of Directors.

31. Moreover, even though the applicant may have resigned as stated by him but the fact remains that all the bid documents furnished for and on behalf of the Company were signed by the applicant and in case if the said documents have been misused by the Directors of the Company at the cost of the applicant then there is nothing to indicate as to what action, the applicant has taken against the erring Directors of the Company. Prima-facie, till such time the deal was being done, there was no demur from the side of the applicant but once the bubble of fraud burst, the blame game has started.

32. Upon noticing the earlier bail orders which has been referred by the learned counsel for the applicant, but the said bail orders do not notice the documents which have been filed by the applicant for and on behalf of the Company as its Managing Director which has been noticed by this Court in the instant case.

33. For the aforesaid reasons, *prima-facie*, complicity of the applicant is made out where the applicant has allegedly embezzled the public funds which were to be received by the Sugar Mills to the tune of several lakhs. The attempt of the applicant to discharge the liability by issuing cheques which were also dishonoured and the same *modus oprendi* has been used by the applicant in different Sugar Mills. Thus, for the aforesaid reasons, this Court is unable to persuade itself to enlarge the applicant on bail. Consequently, the instant bail application is **rejected**. It is made clear that any observations made by this Court may not be taken as an expression of

opinion on merits of the case and it is only for the *prima-facie* consideration of the bail application only.

Order Date :- 17th May, 2024
Rakesh/-

Digitally signed by :-
RAKESH PRAJAPAT
High Court of Judicature at Allahabad,
Lucknow Bench