

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

% Order delivered on: 2nd June, 2015

CRL.M.C. 2396/2015

AMIT GUPTA Petitioner
Through Ms.Geeta Luthra, Sr.Adv. with
Mr.Nishant Datta & Ms.Naina
Dubey, Advs.

versus

STATE Respondent
Through Mr.Ravi Nayak, APP for the State
along with SI Bhagwan Singh, PS
EOW, in person.
Mr.M.S.Vinaik, Adv. with
Mr.Sudhir Siwas & Mr.Deepak
Kaushik, Advs. for complainant.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The present petitioner has been filed by Amit Gupta for quashing of order dated 25th May, 2015 against imposition of condition of deposit of an amount of Rs.4 crores without prejudice to the rights and conditions of the parties while granting the regular bail to the petitioner.

2. It is argued by Ms. Geeta Luthra, learned Senior counsel for the petitioner that the condition imposed in the case to deposit Rs. 4 crore is unreasonable while granting the regular bail as charge sheet in the matter has been filed and the petitioner is otherwise entitled for

bail. Counsel also argued that the dispute in the matter is of civil nature. The imposition of such condition should be declared as an arbitrary condition which is not sustainable in view of settled law. Learned Senior has referred many decisions in support of her argument.

3. Even otherwise on merit, it is argued by the Senior counsel that the petitioner is one of the directors in M/s Shree Shyam Pulp and Board Mills Ltd. and in order to secure Rs.15 crores, the following movable and immovable properties are mortgaged. The details of the said properties are as follows :

- i) Property situated at Dhabora Ehtmal Kashipur, Distt. U.S.N. admeasuring 50359.12 sq. mt. with a market value of Rs.125897800/-(Rupees Twelve Crore Fifty Eight Lac Ninety Seven Thousand Eight Hundred only). A copy of the valuation report dated 9th May, 2015 is filed. She has informed to the court that the value of this property as per the circle rate as on date i.e. 28th May, 2015 is Rs.8,05,74,400/- (Rupees Eight Crores Five Lacs Seventy Four Thousand only). The Notification dated 31st October, 2014 issued by the Collector, Uddam Singh Nagar is also filed.
- ii) The petitioner has also pledged 2134900 shares to IFCI Factors Ltd. The total value of the shares pledged is Rs.69832579/- (Rupees Six Crore Ninety Eight Lacs Thirty Two Thousand Five Hundred Seventy Nine only). A certificate by a Chartered Account is also filed.

4. It is urged on behalf of petitioner that the detail of said moveable and immovable properties are sufficient in order to secure the amount of the complainant. Thus, there was no occasion to put the condition in the order which is contrary to the law. Short affidavit of Ms. Rashmi Gupta wife of the petitioner has also filed in Court.

5. Mr.M.S. Vinaik, learned counsel for the complainant has submitted that when the directors of the company known as Shree Shyam Pulp and Board Mills Ltd. approached IFCI Factors Limited for grant of factoring facility, they produced a valuation of the properties which were to be kept as security for due repayment of their dues. At that point of time, a valuation report, prepared at the behest of the present petitioner and other persons in the management of the said company have specified the value of the property offered as mortgage, at approximately Rs. 3.5 crore.

6. The complainant company got the assets forming the security, valued by a leading valuation agency by the name of Hardicon Limited. According to this report, the distress sale value of the agricultural land provided as security is Rs.1.61 crore. In normal course, the value has been estimated at Rs. 2.01 crore. The amounts owing are as on 31st March, 2015 approximate sum of over Rs.20.50 crore (includes principal of Rs.14.97 crore and discount charges of Rs.5.53 crore). Counsel has challenged the validity of valuation report submitted on behalf of petitioner.

7. It is alleged that the petitioner has cheated the complainant company by presenting false invoices and forged and fabricated documentation in order to induce them to part with valuable funds. The petitioner has failed to refund the cheated amount. He alongwith other co-accused intent to defraud and cheat. The complainant company is a Government of India Undertaking in the business of factoring in order to promote genuine industry and entrepreneurship. The complainant company has been cheated and defrauded by the petitioner and his co-accused.

Mr. Vinaik by referring these abovementioned facts and documents filed alongwith the short affidavit of Lalit Narain Joshi filed in the Court submits that the petitioner is not entitled for relief who has to comply the condition imposed in the order dated 26th May, 2015 if the petitioner wishes to enjoy the liberty of bail.

8. It is submitted that while defaulting on payment of dues legally available, the petitioner and his family members have created huge assets for their personal benefit. The petitioner seems to have access to the equities and insurance policies as well as jewellery is worth Rs. 4.22 crores. There are numerous bank accounts whose balances are not known to the complainant would be enough to pay off the dues of the complainant company.

9. The petitioner is in judicial custody since 23rd March, 2015. His earlier bail application was dismissed on 18th April, 2015. The charge sheet has been filed against the petitioner on the same date. The second application was filed by the petitioner before trial court on 21st

May, 2015, the same was allowed subject to the condition imposed which is challenged before this Court.

10. It is necessary to extract the relevant part of the impugned order dated 25th May, 2015 passed by the Sessions Judge :

“Although it is not specifically mentioned in the application, however this is the second bail application moved on behalf of applicant/accused, whose first application was dismissed on merits on 18th April, 2015.

The only new ground cited by Ld. Senior Counsel is filing of charge sheet qua accused, who is stated to be in J/C for the last about two months. It has also been submitted that an amount of Rs.15 crores outstanding as claimed by the complainant is a variable factor and actual amount to be paid would be ascertained, only when the parties sit together for one time settlement.

Shri Deepak Kaushik, learned Counsel appearing for the complainant has drawn my attention to the order dated 18th April, 2015 passed by the court only by which first bail application was decided against the accused while keeping in view the initial stages of investigation as well as possibility of tampering of evidence and also the huge amount involved in the present case.

It has also been submitted by the learned Counsel for the complainant that since Managing director of the company, who also happened to be the father of the applicant/accused is still at large and absconding , hence there is possibility of accused also fleeing once released on bail.

Although, this argument has been raised by the Ld. Counsel for the complainant, but he has also shown a letter purported to have been written by Naresh Gupta father of applicant/accused to the complainant of even date.

It is surprising to note that an absconder is running and managing all the functions of the company and the investigating agency is not even able to nab him.

Although all the contentions of applicant/accused as raised by learned Senior Counsel were already dealt with by the undersigned in the order dated 18th April, 2015.

However, I do find some force in the submission of learned Senior Counsel that applicant/accused is ready to abide by all the conditions imposed upon him while releasing him on bail. The investigation qua him is already over and chargesheet has already been filed against him and his custodial interrogation is no more required and hence a person cannot be punished by keeping him in jail for an indefinite period without holding him guilty or convicting him.

IO has submitted that he has still not obtained any coercive process against the absconder Naresh Gupta, therefore keeping in view all the facts and circumstances of the case, it is hereby directed that applicant/accused be released on bail after depositing an amount of Rs.4 crores without prejudice to the rights and contentions of the parties with the Trial Court and also on furnishing his personal bond a sum of Rs.50,900/- with one surety in the like amount to the satisfaction of concerned MM/Link MM/Duty/MM. Application stands disposed of.”

11. It is specifically recorded in the impugned order that the senior counsel all the time of argument before the trial court has agreed to abide by all the conditions imposed upon him while releasing on bail. Mr. Vinaik counsel for the complainant and learned APP has informed the court that once the petitioner has granted bail from the trial court on certain condition instead of complying the condition, the

petitioner has filed the present petition before this Court. Learned APP has informed that co-accused who are other directors of the company are not cooperating with investigation.

12. The allegation against the petitioner and other directors are of cheating and forgery. It is not denied on behalf of petitioner that more than Rs.4 crores are due. The complainant is a Government Undertaking Company.

13. Generally it is true that while granting the bail, the condition of depositing the amount may not be necessary but at the same time, if the dispute between the complainant and accused is of commercial in nature and when liability is admitted and after suggestion is made to the Court on behalf of the accused to grant the bail to abide by any condition imposed upon him then there is no impediment for the Court for passing the conditional orders while considering the bail. In the present case, all such elements are available on record. Firstly more than Rs.4 crores are due and secondly it is a commercial transaction and thirdly at the time of hearing before the trial Court the suggestion was made. Otherwise it is the admitted position that two days earlier the bail application of the petitioner was rejected. Therefore, I am of the opinion that the impugned order is legally correct order and is sustainable in law.

14. However, in rejoinder submission, the suggestion is made and informed to the Court that the petitioner at this moment is not able to arrange the said amount and an offer was made to furnish the security of immovable property belonging to the petitioner and other family member. The original title was shown to the Court and also

assured that after release from custody, they would approach the complainant and try to settle the liability.

15. Considering the said circumstances, the condition of bail is modified to the extent that instead of depositing of Rs.4 crores with the trial Court, the petitioner through other Directors and family member(s) shall furnish a security of the immovable property in order to secure the amount to the satisfaction of the trial court by depositing the original title deed and undertaking by way of affidavit. After releasing, the petitioner shall also file an undertaking in this regard about the security.

16. Subject of furnishing the said security of immovable property and depositing the original titles, the petitioner be released on bail. The other remaining conditions as imposed by the trial Court shall remain the same.

17. The petition is accordingly disposed of.

18. Copies of this order be given *dasti* under the signatures of Court Master.

(MANMOHAN SINGH)
JUDGE

JUNE 02, 2015