

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

Judgment delivered on : November 26, 2015

+ BAIL APPLN. 1739/2015

AJAY TAYAL

..... Petitioner

Through

Mr.Ramesh Gupta, Sr. Adv. with
Mr.Bharat Sharma, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent

Through

Mr.Panna Lal Sharma, APP.
Mr.Ravi Bassi, Adv. for the
complainant. SI Rajiv Kumar, PS
North Rohini.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. Aggrieved by the order dated 12.08.2015, passed by the learned Special Judge, NDPS/ASJ (NW), Rohini, Delhi, vide which the bail application filed by the present petitioner has been rejected, the petitioner has preferred the present bail application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 for seeking bail in a case registered under FIR No.433/2012 under Section 420/380/34 of Indian Penal Code, Police Station North Rohini, New Delhi.

2. The allegation levelled against the petitioner is that he, in connivance with other co-accused persons, induced the complainant for taking franchisee of leading international brands of apparels/readymade garments, such as “ALLEN COOPER” “FREE LOOK” and “LEE SOLLY” etc., by investing Rs.25,00,000/- as refundable security and in return the complainant would be paid a fixed amount of Rs.35,000/- every month in addition to commission of 4% on net sale. According to the FIR, the complainant was also fraudulently misrepresented by the present petitioner alongwith other co-accused persons, that the accused No.1 – M/s. Ess Aay Fasions (India) Private Limited, will provide the showrooms to their franchisees at various places in Delhi & NCR. Due to misrepresentation of the petitioner alongwith other co-accused the complainant agreed to become franchisee of accused No.1 company for its brand “FREE LOOK” for Rohini Area and Rs.25 lacs were paid to the accused persons in the name of the company as refundable security. The complainant has also described the date and mode of payment of Rs.25 lacs to the accused persons. Consequently, Franchisee Agreement was executed on 19.06.2010 duly signed by

the present petitioner on behalf of the company and the complainant and her brother Sanjay Bindal. The said agreement was valid for three years. According to the complainant, the showroom was opened on 19.06.2010 and up to December 2010 the readymade garments were supplied to complainant for sale in the showroom and the complainant regularly deposited the sale amount with accused No.1 company after deduction of expenses for running the showroom, Rs.35,000/- per month and 4% commission on the net sale. It is alleged that after May 2011, no fresh supply of garments was made by the present petitioner alongwith other co-accused and when the complainant asked to refund the deposit money of Rs.25 lacs, the petitioner in connivance with other co-accused persons, blatantly refused to refund the said money. It is alleged that the complainant had to incur expenses from her own resources for paying salaries to the employees, rent to the landlord and day to day operation of showroom. On 09.09.2011, the landlord disconnected the electricity of the showroom and threatened the complainant to vacate the showroom otherwise she will be dispossessed with the help of goondas. A complaint in this regard was also lodged by the complainant with the police. It is alleged that the

landlord had put a lock on the showroom on 13.11.2011 and told the complainant that he had been authorised by the present petitioner alongwith other co-accused persons to take forcible possession of the showroom. She was also threatened by the landlord of dire consequences, in case any complaint is lodged with the police. It is also alleged that on 29.02.2012, the landlord in conspiracy with the petitioner as well as other co-accused persons broke the locks of the showroom and removed all the garments, goods and gadgets of the complainant from the showroom. PCR was called and a complaint with the police station North Rohini was lodged.

3. Mr. Ramesh Gupta, Senior Advocate, on instructions of the petitioner submits that the petitioner is in judicial custody since 20.05.2015 and vide order dated 30.04.2013, the petitioner and other co-accused were incorrectly, improperly and unjustifiably declared proclaimed offender by the Trial Court. It is further submitted that after the aforesaid order, the supplementary charge sheet qua the petitioner was filed on 06.07.2015 under Section 420/380/506/34/174 of IPC against the petitioner and co-accused Satish Mittal. It is further submitted that on 13.02.2013, the NBW were issued and according to

the petitioner, the same was not executed. Thereafter on 15.03.2013 an application for initiating proceedings under Section 82 and 83 of Cr. P.C. against the petitioner by Sub-Inspector Satish Kumar, was moved and the application was allowed by the Trial Court. It is contended that the process under Section 82 & 83 of Cr. P.C. was sought to be initiated on the address C-7/160-161, Sector 7, Rohini, Delhi and no efforts were made to carry the said proceedings on the two other available addresses, as mentioned in the complaint and FIR. Ultimately, on 30.04.2013, the petitioner was declared proclaimed offender, and it was observed that despite execution of process, petitioner has failed to appear. It is also contended on behalf of the petitioner that on 12.08.2015, the Session Court had directed the Investigating Officer to report as to whether the NBW/process under Section 82 & 83 of Cr. P.C. were executed at the two other addresses or not, to which the Investigating Officer had made a false report that it was done so. It is however contended that no settlement could arrive at between the petitioner and complainant because of complainant's non-cooperative attitude. It is further contended that the complainant did not approach the court with clean hands and the Investigating

Officer had misled the court in the manner of issuance of non-execution of the NBW/process under Section 82 & 83 of Cr. P.C. and further by misleading the court got him declared as Proclaimed Offender. It is further submitted that the Investigating Officer had three available addresses with him but he did not make any effort to serve the NBW/82 & 83 Cr. P.C. proceedings on the other two addresses. It is further contended that the petitioner had no knowledge about the filing of the complaint and registration of FIR in question and therefore the petitioner had no occasion to appear before the Investigating Officer for the purpose of investigation in FIR in question or to appear before the Trial Court to attend the proceedings. It is contended that the ingredient of Section 420 of IPC is not made out and at best it is a case of civil nature as the subject matter is of the franchisee agreement. It is submitted that the charge sheet / supplementary charge sheet has already been filed and the petitioner is no more required for the purpose of investigation. It is further informed that the co-accused has already been granted bail in the present case. It is further submitted that the petitioner is a sole bread earner of his family and the family of the petitioner is being adversely

affected due to his non-presence, therefore the petitioner/applicant ought to be granted bail in the aforesaid case.

4. The petitioner had also moved the bail application before the learned Special Judge, NDPS/ASJ (NW), Rohini, Delhi, which was dismissed vide order dated 12.08.2015, which is impugned in the present petition.

5. To oppose the contentions raised by learned counsel for the petitioner, Mr. Panna Lal Sharma, learned Additional Public Prosecutor for the State submitted that the charge sheet in this case has been filed and the trial is at initial stage, therefore the petitioner be not released on bail.

6. I have heard the submissions made by learned counsel for the petitioner and the learned Additional Public Prosecutor for the State and also gone through the material placed on record.

7. After considering the contents of the present petition as well as the material placed on record, this Court observes that the proceedings under Section 82 & 83 of Cr. P.C. were initiated against the petitioner and he was declared proclaimed offender on 30.04.2013. The question, whether the petitioner was served with the NBW/process

under Section 82 & 83 of Cr. P.C. at all the addresses available with the Investigating Officer or not, is the subject matter of trial and can be proved by leading cogent evidence. However, at present the fact remains that the present petitioner has already been arrested on 20.05.2015 and since then he is in custody. Perusal of the record also reveals that the co-accused Satish Mittal has already been granted bail by the Metropolitan Magistrate 03, North-West, Rohini, Delhi, on 14.07.2015, therefore, the petitioner cannot be deprived of the benefit of parity with the co-accused in the present case. It is also revealed that the charge sheet in the present case has already been filed and the prosecution does not seek the custody of petitioner for any further investigation in the present case. It is also informed that the petitioner is a sole bread earner of his family and the family of the petitioner is being adversely affected due to his non-presence.

8. Considering the facts and circumstances of the present case and the material placed on record, this court is of the opinion that there would be no impediment in releasing the petitioner – Ajay Tayal on bail. Accordingly, the petitioner – Ajay Tayal is ordered to be released on bail, subject to his furnishing personal bond in the sum of

Rs.50,000/- with two sureties of the like amount, to the satisfaction of the Trial Court. The petitioner is directed not to tamper with the evidence; not to influence the prosecution witnesses and shall not leave the country without prior permission of the Court concerned.

9. It is made clear that any observation made in the aforesaid order shall not affect the merits of the case.

10. With aforesaid directions, the present bail application filed by the petitioner stands disposed of.

11. Dasti.

(P.S.TEJI)
JUDGE

NOVEMBER 26, 2015
pkb