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

Judgment delivered on : September 05, 2016

\+ BAIL APPLN. 389/2016

MURSHIDUL HAQUE ..... Petitioner

Through: Mr.Manu Sharma, Mr.Shambo Nandy and Mr.Rohit, Advocates

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Ms. Manjeet Arya, Additional Public Prosecutor for the State with Sub-Inspector Arun Verma, Sector-1/ EOW.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

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P.S. TEJI, J.

1. By this petition filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.) the petitioner seeks bail in FIR No.228/2009 under Sections 406/420/409/468/471/ 120-B of IPC, at Economic Offences Wing Police Station, New Delhi.

2. The present case is registered on the complaint dated 04.11.2009 of Mr. R.K.Gupta, Senior Manager, Bank of Rajasthan, Overseas Branch Office, K.G. Marg, New Delhi (Now ICICI Bank), on the basis of which the instant FIR was registered and was investigation conducted. It is alleged in the complaint that in criminal conspiracy with G.N. Dass, Santosh Aggarwal, and other accused persons, including the petitioner herein, availed bill

discounting/negotiating facilities against LC by submitting false and forged export documents such as Bill of Exchange, Invoice, Packing List, Certificate of weight and quantity, certificate of origin and consignment note (Truck receipt). It is further alleged that the petitioner has cheated the complainant bank for a sum of Rs.9.2 crores, by availing bill discounting facility through nine alleged companies.

3. Investigation started and it was found that the petitioner is one of the Directors of Ema Exim Pvt. Ltd. and Proprietor of Ema Global Trading and on the basis of false and forged export documents and in conspiracy with other accused persons, availed bill discounting to the tune of Rs.91,58,000/- and Rs.75,37,000/- in the account of his companies. During the investigation, the certificate of origin dated 04.02.2009 issued by Bharat Chamber of Commerce was found to be forged and even the consignment note No.63362 dated 02.02.2009 was also found to be forged. It was further found that the petitioner had submitted 10 invoices for availing bill discounting and only one out of them was genuine and no goods were exported through remaining 9 invoices.

4. Accordingly, eight accused persons including the petitioner herein were absconding and were declared proclaimed offenders. However, on 22.11.2014, the petitioner was arrested from Kolkata, West Bengal. The other co-accused Santosh Agarwal, who was arrested from Kolkata, West Bengal on 23.11.2014 was granted bail

on 08.12.2014 by the learned CMM South, Saket Court on the ground of settlement with the bank.

5. During interrogation, the petitioner revealed that he had made genuine export against the same LC although on a later date. When the same was got verified from Superintendent of Customs, Ghojadanga, L.C.S., it was intimated that the goods were exported through the LC in question. During the trial the petitioner was granted interim bail vide order dated 21.01.2015 on account of settlement with the complainant bank for a sum of Rs.1,18,25,000/- which was to be paid by 31.03.2015, which the petitioner could not deposit, therefore he was again taken into custody on 29.07.2015. Thereafter, another settlement was made with the bank and the petitioner was directed to be released on interim bail on 05.08.2015 and this time again he could not deposit the settled amount with the bank and filed Crl. M.C. No. 3815/2015 for quashing of the FIR in question.

6. Learned counsel for the petitioner contended that the petitioner has not cheated the bank in any way and the contention of the complainant bank that the applicant had not effected export and had submitted fabricated documents to prove the factum of export cannot be true, as the Department of Customs, Union of India by letter dated 28.03.2015 informed the Investigating Officer (EOW) of the case that goods were exported genuinely and also certified the invoice copy and the Export/Import Manifest showing the details of the movement of vehicles between India and Bangladesh carrying the shipment. The

said bill of export was also certified by the Department of Customs, Government of India. The said fact has already been accepted by the prosecution in the charge sheet.

7. It is further contended that for export, a letter of credit had been issued by the Rahim Bank, Cyprus making EMA Global Trading and EMA Exim Private Limited as beneficiaries of the said letter of credit. Thereafter, the applicant exported the goods and raised bill of exchange to Rahim Bank to pay in favour of Rajasthan Bank dated 29.01.2009 and 05.02.2009 amounting to USD 2 lakhs 5 thousand and 2 lakhs 8 thousand against shipment made to Bangladesh.

8. Learned counsel for the petitioner further contended that from the very initiation of the transaction between the applicant and the bank, the applicant made an application for negotiation of Rs.2 crore 10 lakhs based on his export transaction. As per the Bill of Exchange, the LC issuing bank was to pay the due amount to the complainant bank. The LC issuing bank was at default in paying the dues and accordingly the complainant bank which was to raise the demand, did not proceed with any legal forum but lodged a complaint against the applicant because the applicant is a local person and by lodging a criminal case against the petitioner their motive is to easily recover the money.

9. It is further contended on behalf of the petitioner that if the ship is under LC terms, exporter has to pay top most attention while preparing the documents in order to meet all necessary requirements

under the terms of letter of credit. In the instant case, the petitioner has fulfilled all the conditions, thus stands in no way connected with the allegation made in the FIR. It was only on the basis of commitment of the Rahim Bank, the complainant bank credited the amount to his account.

10. It is contended on behalf of the petitioner that while negotiating, both the petitioner and the complainant bank had opted for Exporter Credit Guarantee Corporation of India Insurance Scheme and the petitioner on his own volition had submitted such policy to the complainant bank to show his bona fide. But the complainant bank without taking recourse for realization of the money under the said policy, implicated the petitioner in the instant criminal proceedings. It is further contended on behalf of the petitioner that as per Uniform Customs and Practice 2007, issued by International Chamber of Commerce, the complainant bank should have filed a complaint before the International Chamber of commerce for appropriate relief but the complainant bank without taking such recourse filed the instant FIR. In fact the complainant bank is trying to shift its burden from recovering the amount from the foreign bank by initiating criminal proceedings against the petitioner.

11. Learned counsel for the petitioner further contended that the other co-accused Santosh Aggarwal has already been granted bail in this case, therefore on the principle of parity, the petitioner is entitled to bail in this case.

12. Lastly it is contended that since the charge sheet in this case has been filed and there is no reasonable apprehension of the petitioner tampering with any witness, as even when the petitioner was on interim bail, he never missed any dates of hearing, though he had to travel from Kolkata on every date. The petitioner ought to have been granted bail in the case, especially when the other co-accused has been granted bail by this Court.

13. Learned Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions raised on behalf of the petitioner and submitted that there is huge outstanding amount on the petitioner and he has been charged with the offences under Section 406/409/420/468/471/120B of IPC, therefore, considering the nature of allegations and gravity of offence and the amount involved in the case, the petitioner be not released on bail.

14. I have heard the contentions raised by learned counsel for the petitioner as well as learned Additional Public Prosecutor for the State and also gone through the material placed on record.

15. The admitted facts of the case are that charge sheet in this case has been filed and the petitioner is charged with the offence punishable under Sections 406/409/420/468/471/120B of IPC. This Court futher observes that the petitioner had twice entered into settlement with the complainant bank and for which he was granted interim bail but despite that, he failed in fulfilling the settlement. No doubt, the petitioner was always present in Court by travelling from

Kolkata on each date. This Court further notes that there is a considerable amount involved in the case which is due to the complainant bank.

16. So far as the contentions, grounds, circumstances, explanations and reasoning given by the petitioner in support of his contentions regarding his false implication in the case are concerned, this Court is of the opinion that all such circumstances shall be tried by the concerned Court and shall be decided by leading cogent evidence. For the purpose of deciding the bail application, this Court need not go to the merits of the case, what this Court needs to consider is as to whether or not the petitioner has been able to make out any prima facie case for grant of bail to the petitioner.

17. This court observes that the petitioner has sought parity with the other co-accused Santosh Aggarwal. While going through the contents of the present petition, this Court is of the opinion that the petitioner cannot seek bail on parity with the other co-accused, as the amount involved in her case was Rs.20,28,000/- and she had settled the matter with the concerned bank and the concerned bank had issued a 'No Objection Certificate' in his favour. However, in the case of the petitioner, there is huge amount involved in the case and the petitioner himself had twice backed out from the settlement arrived at with the complainant bank and ultimately he was taken into custody.

18. This court further observes that the petitioner in this case was declared proclaimed offender and only on 22.11.2014, he could be

arrested. Apart from this fact, this court notes that the other six co-accused are still absconding and in the facts of the present case, there is every possibility of petitioner absconding again. Therefore, considering the nature of allegations and the gravity of offence and the amount involved in the case, this court is not inclined to grant bail to the petitioner – Murshidul Haque at this stage.

19. In view of the aforesaid, the facts emerging from the record culminate into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage.

20. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for cancellation of bail made by the petitioners. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

21. In view of the aforesaid directions, the present petition filed by the petitioner is disposed of.

(P.S.TEJI)
JUDGE

SEPTEMBER 05, 2016
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