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

DECIDED ON : 27th APRIL, 2016

\+ **BAIL APPLN. 545/2015 & CRL.M.A.Nos.4177/2015, 8833/2015 & 9811/2015**

AKASH GUPTA & ANR. ..... Petitioners

Through : Mr.G.L.Rawal, Sr.Advocate with Mr.Kuljeet Rawal & Mr.Saurabh Malhotra, Advocates.

versus

STATE OF NCT DELHI ..... Respondent

Through : Ms.Meenakshi Dahiya, APP. Mr.Sunil K.Mittal, Advocate with Mr.Ashish Pratap Singh & Mr.Vipin K.Mittal, Advocates for the complainant.

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

S.P.GARG, J. (Oral)

1. The petitioners seek anticipatory bail under Section 438 Cr.P.C. in case FIR No. 451/2014 registered under Sections 406/420/468/471/34 IPC at PS Preet Vihar. Status report is on record.

2. I have heard the learned counsel for the parties including the counsel for the complainant and have examined the record. I have also gone through the written submissions placed on record by both the parties.

3. Vide order dated 27.03.2015, the petitioners were granted interim protection and were directed to join the investigation as and when

required. To protect the interest of the complainant, the petitioners were directed to pay ₹1 crore to the complainant through the Investigating Officer within the stipulated period without prejudice and subject to future adjustment (if any). The said order has been complied with. The petitioners have undisputedly joined the investigation since then. It is relevant to note that with the consent of the parties, the matter was referred to Delhi High Court Mediation & Conciliation Centre to explore the possibility of amicable settlement. The matter, however, could not be resolved there. It is pertinent to note that co-accused - R.P.Gupta and Ramesh Mehta have already been granted anticipatory bail by an order dated 03.03.2015 by the learned Addl. Sessions Judge.

4. In the comprehensive complaint lodged on 23.07.2014 with the police, it was alleged that in the first week of November, 2012 the petitioners induced Sunil Kumar Garg and Shyam Agarwal, Directors of the complainant company to work with them and for supply of raw material for iron ore fines and steel items to M/s.Shivom Minerals Pvt. Ltd. They assured to give good profitable business to the complainant company. In the second week of November, 2012 Akash Gupta came to the registered office of the complainant company at Delhi and entered into an MOU i.e. 'Tentative Terms for Supply / Sale'' with a term that the complainant company have to make payment on their behalf through them by transferring the amount in their account and they would work with the complainant company at least for a year. As per their demand, the complainant company in all transferred total amount of ₹ 41,43,00,000/- from 12.11.2012 till 04.09.2013 in the account of M/s.Shivom Minerals Pvt. Ltd. through RTGS. Since the time period of one year was going to be completed, request was

made to the petitioners to settle the complete account and make the balance payment. On 12.10.2013, the petitioners visited the complainant's office at Delhi. On scrutiny of the account, the total outstanding amount payable by M/s.Shivom Minerals Pvt. Ltd. came out to ₹12 crores. The petitioners asked the complainant company to present the cheques earlier issued in their favour in mid of November, 2013 and rest of the balance payment would be transferred in their account through RTGS. Accordingly, as per instructions, the cheques were presented in IDBI Bank, Preet Vihar, but these were dishonoured. It is alleged that issuing and signing the cheques knowing that the signatures would not match, an attempt was made by the petitioners to cheat the complainant company and to play fraud upon it.

5. On scanning the contents of the FIR, it reveals that the primarily the dispute between the parties is of civil nature. The transactions had taken place over number of months from 12.11.2012 to 04.09.2013. Out of ₹41.43 crores admittedly huge amount has been paid / adjusted and as per the complainant's version, only a sum of ₹12 crores was due at the time of settlement of the accounts on 12.10.2013. Since the cheques given by the petitioners were dishonoured, proceedings under Section 138 Negotiable Instruments Act were initiated and are stated to be pending at Karkardoom Courts. It is the petitioners' case that no amount as claimed by the complainant is due. The petitioners never visited Delhi at the office of the complainant. Entire business transactions took place from the Rourkela branch office of the complainant. MOU-1 was never entered into at Delhi. It has been forged and fabricated to attract jurisdiction of the Courts at Delhi. Seven cheques of ₹7.48 crores ('all blank dated') were given by the petitioners for iron ore supply against MOU-1 and another MOU-2 for joint

venture trading and export of iron ore. Despite non-compliance of terms and conditions of the MOUs, the complainant presented all the seven cheques in November, 2013 for encashment. The petitioners filed two complaint cases before the Courts at Rourkela in December, 2013. The petitioners have not disputed receipt of ₹41.43 crores. It is stated that the complainant has suppressed purchase of steel worth ₹37.75 crores. The complainant has admitted the receipt of ₹3.12 crores in the FIR since refunded through bank. As per this calculation, the balance amount was only ₹0.56 crores out of total payment of ₹41.43 crores.

6. Contention of the complainant primarily is that various documents were forged and fabricated by the petitioners to avoid their legal liability towards the complainant. The petitioners in VAT returns filed on behalf of M/s.Shivom Minerals Pvt. Ltd. showed that Invoice No.299 dated 13.09.2013 for ₹93,16,350/- and Invoice No.302 dated 18.09.2013 for ₹88,63,107/- were issued by them in favour of the firm M/s.Pooja Sponge. However, manipulating and forging the revised VAT returns, the same invoices have been shown to have been issued by the petitioners upon the complainant. It is further alleged that the petitioners have attempted to square off the liability of ₹43.41 crores by supplying goods of equivalent amount to the complainant after adjusting the amount already returned by them. The illegalities are evident as some of the alleged truck numbers, mentioned by the complainant through which goods were allegedly supplied, were found to be registration numbers of mopeds and motorcycles. The petitioners generated various frivolous communications among themselves to create an impression of some genuine commercial transactions being carried out. The petitioners lodged two false FIRs in respect of theft and

cheating of the cheques issued by them on their cover letter. The said FIRs have already been stayed by the Hon'ble High Court of Orissa vide orders dated 12.05.2015 and 12.01.2016.

7. Status report filed on 01.10.2015 by the police of PS Preet Vihar reveals that during investigation statements of the accused persons and witnesses were recorded and they have extended full co-operation and furnished documents and information from time to time. It was found that the complainant has suppressed vital information in the FIR. The business relation among both the parties started with a proposal of iron ore business in the shape of two MOUs which did not mature. The complainant was engaged in steel trading business with M/s.Shivom Minerals Pvt. Ltd. and several other companies of Rourkela. These facts were deliberately suppressed by the complainant in the FIR. Payment of ₹37.75 crores was found to have been made against purchase of steel from M/s.Shivom Minerals Pvt. Ltd. as per statutory records and other documents which were suppressed by the complainant. It also reveals that the complainant forged the copy of MOU by adding the word 'Place, Delhi' on original document. It further states that none of the petitioners visited Delhi in the office of the complainant in November, 2012 as claimed in the FIR. The MOU-1 was entered at Rourkela on 10.11.2012 for supply of iron ore by the complainant to the Beneficiation plant of M/s.Shivom Minerals Pvt. Ltd. by GLT on credit basis. Payment of ₹41.43 crores by GLT is not disputed by M/s.Shivom Minerals Pvt. Ltd. but the same was against purchase of steel by Good Luck and nowhere related with the said MOU as reported in the FIR. Apparently, the status report in question does not favour the complainant.

8. The matter is still under investigation. It is informed that the investigation has since been transferred to EOW. No additional status report in contradiction to the previous status report dated 01.10.2015 has been filed on record by EOW. There is no possibility of the petitioners to flee from justice. It is to be ascertained during investigation if any document was forged or fabricated to avoid the liability, and if so, by whom or at whose instance and when.

9. Considering the facts and circumstances of the case, the petitioners are granted anticipatory bail and in the event of arrest, they be released on their furnishing personal bond in the sum of ₹5 lacs with one surety each in the like amount to the satisfaction of the SHO/Investigating officer. They shall, however, join the investigation as and when required.

10. The bail application stands disposed of. Pending applications also stand disposed of.

11. Observations in the order shall have no impact on the merits of the case.

(S.P.GARG)
JUDGE

APRIL 27, 2016 / ***tr***