* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 11th July, 2016

\+ **BAIL APPLN. 838/2015**

SUNIL GOEL & ANR
..... Petitioner
Through Mr Rajiv Gupta, Adv.

versus

THE STATE & ANR
..... Respondent
Through Mr Hirein Sharma, Additional Public Prosecutor for the State alongwith Sub Inspector Jasbir Singh Police Station Preet Vihar, Delhi
Mr Abhik Kumar and Mr Siddhartha Shankar Ray, Advs. for R2

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CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

: SUNITA GUPTA, J.

1. Apprehending their arrest in case FIR No.58/2015 under Ss. 420/465/467 IPC registered at Police Station Preet Vihar, Delhi, this application under S. 438 Cr. PC has been filed by the petitioners – Sunil Goel and his wife Abha Goel.

2. The FIR in the instant case was registered on the complaint of Mr Akhilesh Gupta, who is brother in law of Sunil Goel and brother of Abha Goel. As per the complaint Sunil Goel is one of the directors of A.S. Autotech Pvt. Ltd. and holds 45% of the equity. The complainant is another director of A.S. Autotech Pvt. Ltd. who also holds 45% of the equity in the company. In July, 2014, the complainant came to know that the petitioners have availed home loan of Rs.2.63 crores from Bajaj Finserve making the company A.S. Autotech Pvt. Ltd. a co-applicant and the complainant a guarantor by forging the signatures of the complainant on various loan documents such as Deed of Guarantee, KYC

documents, Board Resolution, etc. without the knowledge and consent of the complainant.

3. It is submitted by counsel for the petitioners that it is not in dispute that the petitioner no.1 and the complainant are directors in the company – A.S. Autotech Pvt. Ltd. situated at Main Road, Radhey Puri, Delhi. This company is managing and controlling an agency of Honda two-wheelers. Both the directors were assigned specific tasks to manage the company. The petitioner no.1 was given the task of looking after both the workshops of the company and the complainant was looking after the sales and managing the finances. In July – August, 2014, the petitioner no.1 came to know that the complainant is misappropriating the funds of the company and misappropriating the sale proceeds of about 973 vehicles sold by the company between 30.06.2014 till 03.011.2014. When the fraud committed by the complainant was revealed to the petitioner no.1, he confronted the complainant but he threatened the petitioner no.1 to implicate him in a false case if he prolongs this matter any further. Thereupon, the petitioner no.1 approached Police Station Jagagpuri, Delhi and lodged a formal complaint against the complainant on 15.11.2014. However, the SHO failed to take a timely action and the complainant got an opportunity to lodge a false FIR against the petitioner no.1 and his wife. The FIR is based upon the false allegations. The petitioner no.1 had applied for home loan through M/s Andromeda Sales and Distribution Pvt. Ltd. from M/s Bajaj Finance Ltd. for buying a residential property in Surya Nagar, Ghaziabad and the loan was sanctioned and no guarantor was demanded or provided by the petitioner no.1. the petitioner no.1 is regularly paying the EMIs and by no stretch of imagination the complainant can be burdened with any financial liability towards the said loan as he is neither the guarantor nor his property is being kept mortgaged with the bank. The petitioner no.1 got sent a legal notice on 04.03.2015 to M/s Bajaj Finserve Lending stating therein that the petitioners have no role in forging the signatures as the same had no bearing on the home loan that the petitioners availed. The petitioner no.1 got the FIR registered against the complainant and his wife on 03.02.2015. Counsel

further submits that pursuant to the directions given by this Court, the petitioners have joined investigation and are still further ready and willing to join the same. Accordingly, they be granted anticipatory bail.

4. The bail application is vehemently opposed by learned Additional Public Prosecutor for the State as well as the complainant / respondent no.2.

5. The respondent no.2 filed a reply to the bail application stating therein that in February, 2014, the petitioners connived with the officials of M/s Bajaj Finserve Lending and took a home loan of Rs.2.63 crores by making the company - A.S. Autotech Pvt. Ltd. a co-applicant and the respondent no.2 as a guarantor by affixing his forged signatures on loan documents and his KYC documents. In September, 2014, the respondent no.2 approached various authorities of Delhi police to get his complaint registered but due to the petitioners political and economical clout, nothing happened. Ultimately, the respondent no.2 filed an application under S.156(3) Cr.PC and as per the directions of learned ACMM on 18.01.2015 the FIR was registered. It was denied that the complainant misappropriated the funds of the company. It was also denied that the petitioners have not forged the signatures of the respondent no.2 in order to obtain the home loan or that no guarantor was demanded by M/s Bajaj Finserve Lending or provided by the petitioner no.1. In fact, M/s Bajaj Finserve Lending in their written reply dated 20.10.2014 to the Investigating Officer of Police Station Preet Vihar, Delhi had clearly mentioned that to support the loan, a guarantee was requested from Mr Akhilesh Gupta as Mr Akhilesh Gupta was holding 50% share in A.S. Autotech Pvt. Ltd. and company was a co-applicant to the home loan. It was also denied that the petitioner no.1 is regularly making the payment of the said home loan and in fact the petitioners have defaulted in making the repayment of the loan amount and M/s Bajaj Finserve Lending has already raised loan recall notice and subsequently demand notice to recover the unpaid dues of their home loan given to the petitioners. Copy of forged home loan documents was filed to show that the respondent no.2 was fraudulently made a guarantor in the said loan and the company was fraudulently made a co-applicant in the said loan.

6. Learned Additional Public Prosecutor for the State also opposed the bail application on the ground that the investigation reveals that the officials of M/s Bajaj Finserve Lending and M/s Andromeda Sales and Distribution Pvt. Ltd. never met the complainant Akhilesh Gupta during the course of loan disbursement. This shows that the petitioners themselves provided documents related to the complainant to Bajaj / Andromeda and get the loan. After learning that complainant has taken legal recourse with respect to forgery committed upon him, the petitioner no.1 started approaching Mr Saurabh Sharma - Zonal Head (Sales) of M/s Bajaj Finserve Lending with a request to remove the name of Mr Akhilesh Gupta as a guarantor on the loan. When M/s Bajaj asked him to provide a written request in this regard, he refused to do the same. Post disbursement of loan, a welcome call was given to Sunil Goel by Bajaj. All loan documents were uploaded on Bajaj website and user id/password provided to him. That being so, the petitioners are falsely making a statement pleading ignorance about company's name being included as co-applicant and Mr Akhilesh Gupta as a guarantor on the loan taken by them. Since beginning, the petitioner no.1 had fraudulent intentions. He paid only five EMIs of the loan taken from Bajaj. He paid the last EMI in the month of November, 2014. The petitioners took loans from various institutions whose repayment far exceeded their monthly income. The complainant has also received a notice from M/s Bajaj Finserve Lending after the petitioners stopped paying the EMIs. This shows that the guarantor is equally liable for the repayment of the loan. The petitioners did not give proper answers to the questionnaire given to them as such the petitioners are not entitled to be released on bail. Their custodial interrogation is required. Various documents received by the Investigating Officer of the case have been placed on record.

7. I have given my considerable thoughts to the respective submission of learned counsel for the parties and have perused the record.

8. The FIR in the instant case has been registered on the basis of complaint made by the respondent no.2 alleging therein that the petitioners obtained the

home loan from M/s Bajaj Finserve Lending to the tune of Rs.2.63 crores by submitting forged and fabricated documents by forging the signatures of the complainant as a guarantor. It is not disputed by the petitioners that they had availed the loan to the extent of Rs.2.63 crores from M/s Bajaj Finserve Lending. However, according to them there was no requirement of furnishing any guarantor or to make the company as a co-applicant and, therefore, according to them no document pertaining to the complainant standing as a guarantor to the home loan were filed by them. The respondent no.2 has placed on record a copy of the letter dated 20.10.2014 sent by M/s Bajaj Finserve Lending to SHO Police Station Preet Vihar, Delhi whereby the finance company was asked to produce the documents regarding the complaint filed by the respondent no.2 under S. 91 Cr.PC. A detailed reply was submitted regarding the documents submitted by the petitioners for availing the loan facility which includes the documents of the complainant for standing as a guarantor and the documents were pan card, election card, application for guarantor with photographs. Similarly, for making company as a co-applicant, memorandum of articles of Association, pan card, ITR, balance sheet for the year 2012-13, financial report upto 31.03.2013, HDFC bank statement account and MTNL bills were filed. Photocopies of these documents were also sent. The loan application was processed by M/s Andromeda Sales and Distribution Pvt. Ltd. by its employee Mr Vishank Aggarwal. He sent a reply stating therein that pursuant to the request made by the petitioner no.1, he facilitated the loan process with M/s Bajaj Finserve Lending in January, 2014. M/s Bajaj Finserve Lending asked him to make Mr Akhilesh Gupta, second director of the company as a co-applicant on the application of the petitioner no.1. A meeting was arranged, however, the petitioner no.1 refused to take Mr Akhilesh Gupta as a co-applicant. Thereafter, representative of M/s Bajaj Finance Ltd. asked him to make Akhilesh Gupta as a guarantor to which also the petitioner no.1 – Sunil Goel declined. According to him, he neither met Akhilesh Gupta nor collected any documents from him. He never asked M/s Bajaj Finserve Lending's representative to make Akhilesh Gupta as a guarantor on those loan documents. However, M/s

Bajaj Finserve Lending had sent a reply to the SHO Police Station Preet Vihar, Delhi giving the details of the loan documents filed by the petitioners which included the documents of Akhilesh Gupta / complainant as a guarantor and the documents of the company for making it a co-applicant. The photocopies of all the relevant documents were also annexed with the reply. Vide letters dated 21.07.2015 and 06.02.2016, they further informed the SHO that in October – November, 2014, the petitioner no.1 requested Mr Saurabh Sharma - Zonal Head (Sales) of M/s Bajaj Finserve Lending for removal of name of guarantor - Akhilesh Gupta for the loan in question and he was asked to give such request in writing but no such written request has been given by the petitioner. Pursuant to the questionnaire given to the petitioners it has been admitted that the petitioners have stopped paying EMIs since December, 2014 as such recall notice has been issued by M/s Bajaj Finserve Lending not only upon the petitioners but also upon the company / co-applicant and the complainant showing him as a guarantor. Not only that, arbitration proceedings were initiated against the petitioners as well as against the company and the complainant and a copy of the award dated 11.09.2015 has also been placed on record whereby all the respondents therein, including the complainant have been jointly and severally made liable to make payment of the amount. Under the circumstances, the plea of the petitioners that since the petitioners are paying the EMIs, no financial liability is fastened on the complainant falls to the ground.

9. Keeping in view the seriousness and gravity of the offence, so far as the petitioner no.1 – Sunil Goel is concerned, he is not entitled to the discretionary relief of anticipatory bail. As such, the application qua him is dismissed. The interim protection granted to him vide order dated 13.07.2015 and extended thereafter from time to time stands vacated.

10. However, as regards the petitioner no.2 is concerned, primarily the allegations are against the petitioner no.1 only as such interim protection granted to her vide order dated 13.07.2015 is made absolute and it is ordered that in the event of arrest:

(i) She be released on bail on her furnishing personal bond of Rs.50,000/- with one surety in the like amount to the satisfaction of Arresting Officer / SHO concerned.

(ii) She is further directed to join investigation as and when required.

(iii) She shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

(iv) She shall not leave the country without previous permission of Trial Court concerned.

11. The application stands disposed of accordingly.

12. A copy of this order be given *dasti* under the signatures of the Court Master to counsel for the petitioner.

(SUNITA GUPTA)
JUDGE

JULY 11, 2016/*rd*

HIGH COURT OF DELHI
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