* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on : 14th August, 2018
Judgment delivered on: 24th September, 2018

\+ BAIL APPLN. 494/2018

SURYAKANT SANDIBIGRAHA & ANR. ..... Petitioners

versus

THE STATE GOVT. OF NCT OF DELHI ..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Lalit Choudhary, Ms. Priya Sharma and Mr. Jaskirat Narula, Advs.

For the Respondent : Ms. Neelam Sharma, Addl. PP for the State with Inspr. Samar Pal, Cyber/EOW
Mr. Manoj Ohri, Sr. Adv. with Mr. Rajesh Kr. Singh, Mr. Sagar Roy, Mr. Nawab Singh Jaglan and Mr. Abhimanyu Singh, Advs. For the complainant.

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The petitioner seeks regular bail in FIR No. 17 of 2017 under Sections 408/419/420/467/468/471/447A/120B/34 of the IPC and Section 66 (C) (D) of the Information Technology Act, 2000, Police Station EOW Wing.

2. The allegations in the FIR are that the complainant had opened a proprietorship concern for manufacturing and trading office

furniture. Petitioner no. 1 was the accountant of petitioner no. 2, Service In charge of the said concern. The husband of the prosecutrix was running, controlling and managing affairs of her business besides running another proprietorship concern.

3. It is contended that in the year 2008 husband of the prosecutrix was diagnosed with serious health problem because of which the prosecutrix herself became busy in his treatment and entrusted all accounting responsibilities to petitioner no. 1, being the senior most employee of the firm.

4. It is contended that in July, 2016 when the condition of her husband improved, he started involving himself in the affairs of her concern as well as his concern and noticed suspicious transactions in the accounts of both firms, inter-alia, in ticket bookings, online shopping, Paytm recharges, purchasing from unknown parties, online transfers to vendors, contractors and individuals who had no association with the two concerns. When enquiries were made and account books of both the concerns were got verified, it was found that approximately Rs. 5 crores had been misappropriated.

5. It is alleged that petitioner no. 1 induced the prosecutrix in opening bank accounts in the name of her firm in private banks and obtained authorization for online banking facilities, without the knowledge of the prosecutrix. It is alleged that probably the signatures of the prosecutrix and her husband were forged for obtaining online

banking facility. It is further alleged that in online banking facility the accused had dishonestly quoted his mobile number and e-mail ID, instead of the mobile number and e-mail ID of the prosecutrix. By availing online banking facility, huge sums of money have been transferred and siphoned off.

6. It is alleged that several lakhs of rupees have been transferred to individuals, who had no concerns with the firms, personal shopping has been done. Funds have been siphoned off and account books have been dressed up by making fake entries in the accounts. FIR further alleges that several properties have been purchased in their names and names of their family members.

7. Learned counsel for the petitioners submits that the petitioners have been falsely implicated. He submits that all banking transactions have been done by the petitioners, under instructions of the complainant and her husband and online transactions, were also done for booking travel tickets and shopping of complainant and her husband as well as booking tickets for the employees of the firm. So, the allegation that they were not aware of the transactions is baseless.

8. Further, it is contended that the registered mobile numbers in the bank accounts were that of the firm and not the personal mobile number of petitioner no. 1. It is contended that the allegation that the husband of the prosecutrix was not well is false as he was well and used to go office daily and used to sign bills and was aware of all

financial transactions. It is submitted that the books of accounts were duly audited by chartered accountants and were signed by the complainant and her husband as such they were fully aware of all the transactions and have also reflected the profits in their income tax returns.

9. Status report has been filed by learned Addl. PP appearing for the State. It is alleged that investigation has shown that the husband of the prosecutrix was diagnosed with serious health problem towards end of 2008. In February 2009, the prosecutrix was engaged in his treatment for an Autoimmune Disorder by the name *Wegeners Granulamatosis:* a very rare disease. He was undergoing Chemotherapy in MAX Saket, which finished in August 2009 after which he was under medication to bring the disease under Remission. The total period under this treatment was five years, which finished in the year 2014 and thereafter he was advised not to carry out hard work and remain in clean and sterile environment so that *Wegeners* does not reoccur.

10. It is alleged that during inquiry and investigation it has been established that all payments have been debited from the bank accounts of the two concerns and online transactions have been done by petitioner no. 1 from the official e-mail IDs allotted to him and his personal e-mail ID which was registered for online net banking at corporation banks and other banks. Personal e-mail IDs were used for online purchases from online stores; for making purchases for himself

and his family. Travel bookings for his family and relatives were done from online payments, online shopping from various shopping sites were done and articles delivered to the residence of petitioner no. 1. Even the premiums for the insurance policies of petitioner no. 1 and his family members were paid through the accounts of the company and were debited as Drawings/Company expenses.

11. Approximately Rs. 46 lakhs were misappropriated through bearer cheques; amounts withdrawn by forging signatures of contractors and additional online transfers made to the contractors.

12. As per the status report, petitioner no. 2 opened a bogus firm in the name and style of M/s S.S. International in August 2007 with the connivance of other co-accused. Invoices were raised by said concerns, which were bogus. No material was received from the firm but bills were entered into books of accounts, without the approval of the complainant or her husband and payment being made through online transfers. Money so received in the account of S.S. International was immediately withdrawn through ATM by petitioner no. 2.

13. Scrutiny of bank accounts of S.S. International shows that all the credit entries were only from the concerns of the prosecutrix and her husband and the withdrawal of money only through ATM. No evidence or proof was provided for purchase of raw material or goods, for sale to the concerns of the prosecutrix or her husband. No

payments were made by S.S. International to any other party for purchase of material. During the period 2007 to 2016 approximately Rs. 1.17 crores were siphoned off by raising bogus bills.

14. It is further contended that call recording has been found in the memory of the mobile phone of petitioner no. 2 wherein he is acknowledging and accepting his guilt to the other accused.

15. Investigation has revealed that petitioner no. 1 had transferred money to his own and his relatives' accounts and this siphoned off money was used for purchase of various properties in Delhi and Orissa in his own name as well as in the name of his relatives. Ten properties had been identified until filing of the status report. 33 accounts were opened by petitioner no. 1, in different banks in his own name and in the names of his relations. Cash deposits were made in these accounts.

16. Approximately Rs. 78 lakhs had been detected in these accounts. Approximately Rs. 20.5 lakhs were transferred from the complainant company to an ex-employee.

17. During course of the investigation, forensic audit of both the companies had been done by the complainant through chartered accountant and said chartered accountant has reported fraudulent unauthorized payments of approximately 5.25 crores. Status report gives the details of the suspected transactions.

18. Further investigation has revealed that 142 bearer cheques that were issued to the various contractors, were encashed by putting fake signatures of the bearer of the cheques, while corresponding online payments were also made to the contractors thereby withdrawing double payments for an alleged supply. It is alleged that after registration of FIR two of the properties, which were purchased by petitioner no. 1, have been sold off and money appropriated.

19. It is further contended that petitioner no. 1 and petitioner no. 2 were employed with the complainant and drawing a salary of approximately Rs. 40,000/- and Rs. 20,000/- per month respectively and despite having salaries of Rs. 40,000/- and Rs. 20,000/- respectively, petitioner no. 1 had purchased 10 properties worth crores of rupees and 34 bank accounts had been opened and several lakhs of rupees deposited in these accounts, which was way beyond the income capacity of both the petitioners.

20. Learned counsel for the petitioners, under instructions, submits that approximately Rs. 75 lakhs have been seized in the accounts of the petitioner no. 1 and petitioner no. 1 is willing to undertake that he shall not alienate or transfer any of the properties that have been identified by the IO.

21. The offer given by the petitioners not to sell the properties that have been identified by the IO or to utilise the amounts in his bank account, in the facts of the present case, is not acceptable.

22. There appears to be merit in contention of learned APP that if the petitioners are released on bail, they are likely to destroy evidence and sell off the properties, some of which were purchased based on power of attorneys. She submits that several crores of rupees are still to be traced and recovered.

23. Nature of allegations and the alleged *modus operandi* adopted by the petitioners in committing the offence, reveal a well-planned systematic approach and a well-planned conspiracy in siphoning off funds from the concerns of the complainant and her husband. Further, on meagre salaries of Rs. 40,000/- and Rs. 20,000/- respectively, petitioners have been able to amass wealth worth several crores of rupees. I am of the view that releasing the petitioners on bail, at this stage, would hamper further investigation and the petitioners may be in a position to influence witnesses and destroy evidence.

24. Keeping in view the totality of the facts and circumstances of the case and the nature of allegation and the material on record, I am not inclined to admit the petitioners to bail, at this stage. The Petition is accordingly dismissed.

25. It is clarified that observations made in this order are *prima facie* and shall not be considered at the time of the trial of the case.

26. Order *Dasti* under signatures of the Court Master.

SEPTEMBER 24, 2018/'*rs*' **SANJEEV SACHDEVA, J**