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

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Order reserved on: 29.11.2019
Order pronounced on: 12.03.2020

+ **BAIL APPLN. 2145/2018**

ANIL BHUTORIA

..... Petitioner

Through: Mr. Mohit Mathur, Mr. Anna
Malhotra and Mr. Parish
Mishra, Advs.

versus

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

Through: Ms. Neelam Sharma, APP for
State with SI Sanjay from PS-
Prashant Vihar.
Mr. Atul Bhaskar and Mr.
Hariom, Advocates for
complainant.

+ **BAIL APPLN. 2147/2018**

JAI PRAKASH BANGANI

..... Petitioner

Through: Mr. Mohit Mathur, Mr. Anna
Malhotra and Mr. Parish
Mishra, Advs.

versus

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

Through: Ms. Neelam Sharma, APP for
State with SI Sanjay from PS-
Prashant Vihar.
Mr. Atul Bhaskar and Mr.
Hariom, Advocates for
complainant.

+ **BAIL APPLN. 2152/2018**

SANDIP BHUTORIA

..... Petitioner

Through: Mr. Mohit Mathur, Mr. Anna
Malhotra and Mr. Parish
Mishra, Advs.

Versus

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

Through: Ms. Neelam Sharma, APP for
State with SI Sanjay from PS-
Prashant Vihar.
Mr. Atul Bhaskar and Mr.
Hariom, Advocates for
complainant.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J

1. Vide this common order, I shall dispose of three anticipatory bail applications filed on behalf of the petitioners Anil Bhutoria, Jai Prakash Bangani & Sandip Bhutoria under section 438 Cr.P.C. in FIR No. 523/2016 u/s. 403/406/417/420/120-B IPC.

2. Ld. Senior Counsel for the petitioners has prayed for anticipatory bail on the ground that petitioners are innocent and have been falsely implicated in the present FIR. The petitioners Anil Bhutoria, Sandip Bhutoria and Jai Prakash Bangani are the Directors of BGM Consortium Ltd. (BGM) (hereinafter referred to as the said company), which was incorporated on 03.04.2000 and deals in construction of Infrastructure working mainly through contracts of Public Sector Undertakings. During the course of business, the said

company was awarded a contract for carrying out development and operationalization of Tezu Airport situated in the Lohit District within the state of Arunachal Pradesh vide Bid invitation No. 1000000450 by Airport Authority of India (AAI). The said company entered into an agreement dated 16.08.2012 with company namely M/s. Hindustan Alcox Ltd. (HAL) for supply, fabrication & Erection of space frame structure for Teju Airport. However, the supplies were made by the Robienn industries from Kala Amb, Himachal Pradesh to the project site at Arunachal Pradesh on behalf of M/s. Hindustan Alcox Ltd. The complainant supplied around 2 lakh kg of materials against which HAL & Robienn industries together received a sum of Rs. 1,35,52,470/- from the petitioners whereas, the total value of material supplied by Robienn industries was Rs. 2,51,52,662/-.

3. It is submitted that upon mutual discussion the said company namely BGM Consortium Ltd. vide letter dated 27.03.2014, addressed to Airport Authority of India stated that due to financial constraints they are unable to pay the balance amount to HAL & complainant company i.e Robienn industries and requested Airport Authority of India to pay to HAL directly on account of their alleged outstanding amounts and Airport Authority of India vide letter dated 10.04.2014 accepted the proposal of the making payments directly to the vendor namely HAL and/or Robienn Industries. Subsequently the Airport Authority of India made direct payments amounting to Rs. 17,12,500/- to the vendors. The company in total has received a sum of Rs. 1,87,12,500/- from

Airport Authority of India on account of space frame structure and has paid a sum of Rs. 1,35,52,470/- to HAL & Robienn Industries (which includes payment amounting to Rs.17,12,500/- made by AAI directly to HAL). It is submitted that contract of the company was terminated & Airport Authority of India encashed all its Bank Guarantees given on account of Security Deposits and Performance Gurantee amounting to Rs. 2,08,08,417/-.

4. It is next submitted by Ld. Senior Counsel for petitioners that petitioners had paid a sum of Rs. 20 lacs to the complainant vide DD No. 091698 dated 13.08.2018 drawn on UCO Bank, Agartala Branch. The petitioners were having strong apprehension that they may be arrested on the strength of NBW's issued by Ld. MM. The petitioners had, therefore, moved anticipatory bail applications before the Court of Sh. Sanjeev Aggarwal, ASJ-02 (North), Rohini Courts, Delhi and Ld. ASJ vide its order dated 27.08.2018 dismissed the said anticipatory bail applications.

5. Ld. Senior Counsel for the petitioners submits that petitioners are entitled for bail on the parity basis as the other co-accused Pradeep Aggarwal has already been released on anticipatory bail. It is submitted that petitioners have already joined the investigation and also ready to join the investigation in future also as and when required and undertakes to extend full cooperation to the investigating agencies. It is submitted that petitioners were granted interim protection since 14.09.2018 and they have never misused the liberty and joined the investigation. In these circumstances, it is prayed that petitioners be granted anticipatory bail and SHO/IO be

directed to release the petitioners in the event of their arrest.

6. Ld. Counsel for the complainant has argued that petitioner have cheated the complainant for huge amount of money. Though some of the amount has been paid, however, still recovery is to be effected from the petitioners. He has, therefore, prayed that the anticipatory bail application of the petitioners be dismissed.

7. The application is also opposed by the Ld. APP for the State on the ground that the allegations against the petitioner are serious in nature. They are involved in an offence of cheating involving huge amount. Ld. APP, however, submitted that IO does not require custodial interrogation of the petitioners.

8. I have considered the rival submissions. Complainant Mr. Robin Garg, filed complaint on behalf of Robienn Industries, 21 Char Dham Apartment, Sec 9, Rohini, Delhi against M/s. BGM Consortium Ltd., with the allegations of cheating, dishonest misappropriation of property, criminal conspiracy and breach of trust by the said company. The alleged company lured him into supplying 1,80,035 kg of steel space frame structures costing Rs. 2,26,46,789/- during the period from March, 2013 to May, 2013. The supply was acknowledged and received at the project site of AAI by the representatives of the petitioners. Perusal of record reveals that petitioners had moved an anticipatory bail application before Ld. ASJ, Rohini and Ld. ASJ had directed the IO for not taking coercive steps against the petitioners till mediation proceedings. Record further reveals that petitioners have joined the investigation and made a part payment of Rs. 20 lacs to the

complainant company. In compliance of the order dated 14.09.2018 passed by the Ld. Predecessor of this court, petitioners have further paid Rs. 35 Lacs to the complainant and have also secured another Rs. 62 Lacs against properties owned by them and the case was thereafter also referred to the Delhi High Court Mediation and Conciliation Centre for amicable settlement. However, the Mediation failed. IO SI Sanjay has specifically stated that custodial interrogation of the petitioners is not required. Keeping in view the facts and circumstances of the case as well as the fact that a sum of Rs.35 Lacs has been paid to the complainant by the petitioners and another sum of Rs.62 Lacs has been secured against properties owned by them and custodial interrogation of the petitioners are not required by the Investigating Officer, it is hereby ordered that petitioners be released on bail in the event of their arrest on their furnishing a personal bond in the sum of Rs. 1,00,000/- (Rs. One Lac only) each with two sureties of the like amount each to the satisfaction of the Investigating Officer/ SHO subject to the condition that they will join the investigation and co-operate with the Investigating Officer. The bail applications stand disposed of accordingly.

BRIJESH SETHI, J

MARCH 12, 2020

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