* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **BAIL APPLN. 125/2020**

Reserved on : 09.12.2021
Date of Decision : 15.12.2021

IN THE MATTER OF:

SANJAY TULSYAN ..... Petitioner

Through: Mr. Amandeep Singh, Advocate.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Ms. Neelam Sharma, APP for State.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present bail application has been filed under Section 438 Cr.P.C. read with Section 482 Cr.P.C. on behalf of the applicant seeking anticipatory bail in FIR No. 02/2018 registered under Sections 406/409/420/120B IPC at Police Station EOW, Delhi.

2. Learned counsel for the applicant submits that there is no criminality involved in the present case as the entire dispute is civil in nature. He further submits that the FIR in the instant case was lodged at the instance of ex-Directors of *M/s SSP Diamonds Pvt. Ltd.* (hereinafter referred to as 'the Company') after a considerable delay and the applicant, after being granted interim protection vide order dated 20.01.2020 of this Court, has joined the investigation. He also submits that the applicant has receivables from the market, which can satisfy the complainants' claims.

3. Ms. Neelam Sharma, learned APP for the State, on the other hand, has vehemently opposed the bail application. It is submitted that the applicant in the present case was declared a *'proclaimed offender'* on 08.01.2020, and the order declaring him as such has not been assailed till date. Insofar as the merits of the case are concerned, learned APP submitted that the present complaint was lodged against the applicant and others at the instance of *Smt. Pushpa Verma, Sh. Ashok Kumar, Smt. Manju Bandooni, Smt. Saroj Rawat* and her husband *Sh. Rakesh Rawat* (hereinafter collectively referred to as the 'complainants') on the allegation that they were induced by the accused persons to stand as sureties/guarantors for the credit facilities obtained by the Company, in connivance with the bank officials of *Indian Overseas Bank* (hereinafter, referred to as 'the Bank'). Although initially the complainants had agreed to mortgage their properties for one year as collateral securities against the cash credit (CC) limit of Rs.2 crores availed by the Company, their signatures were later misused in continuing the mortgage of the title documents of their properties beyond the agreed period. Subsequently, due to the non-payment of outstanding dues by the Company, the properties of the complainants were attached and auctioned by the Bank under the SARFAESI Act.

It is further contended that the applicant was instrumental in diverting the funds obtained to sister firms/associated companies. In this regard, it is submitted that in October, 2015 the Company had stock worth more than Rs.20 crores however, in December, 2015 the account suddenly turned NPA. Learned APP also contended that during investigation, the applicant has provided ledgers of companies/firms with which the Company carried out sale/purchase of stocks. Out of 16 companies with which maximum dealings were carried out, three companies have been found to have left the available addresses. It is lastly submitted that the applicant has failed to justify the losses suffered by the Company.

4. I have heard learned counsel for the petitioner as well as learned APP for the State and perused the entire material placed on record.

5. From the material placed on record, it is borne out that the applicant is a Director of the Company since its inception i.e. 13.08.2012 and also a major shareholder thereof. He is also stated to be the authorized signatory in the bank accounts of the Company. Initially, the Company availed a CC limit of Rs.2 crores from the Bank in 2013 for which collateral security of Rs.2.05 crores was offered by one *Ms. Kiran Soni*. Subsequently, the Directors/Key Personnel of the Company, induced complainant/*Manju Bandooni* and complainant/*Rakesh Rawat* to mortgage their properties as collateral security. On 25.07.2013, the CC limit of Rs.2 crores was enhanced to Rs.5.5 crores, for which the properties of the two complainants were kept as collateral. Later, at the time of enhancement of CC limit to Rs.15 crores, the properties of complainant/*Ashok Kumar* and complainant/*Pushpa Verma* were mortgaged. The CC limit was further enhanced, from Rs.15 crores to 18.75 crores, for which the properties of the complainants were again mortgaged.

6. As per the investigation, the mutual understanding arrived at between the parties was to mortgage the properties of the complainants for a period of one year only, however at the time of executing documents, their signatures were taken on blank papers by the Bank officials on the commitment that complete loan and guarantee documents will be provided in due time and the same were misused. The complainants had also sought discharge of their title documents, but the applicant avoided the same.

7. As per the Status Report, the liability of the complainants was to expire on 12.03.2015 and as per the audited balance sheet dated 31.03.2015, the Company had enough stock to satisfy the dues of the Bank at the time. The complainants

even made request to the Bank to release their collateral properties, however, the same was not accepted. In between, on 12.04.2014, the applicant and the other accused gave signed declarations/MoUs that in the event of loss to the complainants, they would indemnify them. It was also assured that other entities will take the place of the complainants as guarantors. However, neither assurance was acted upon. Over time, due to non-payment of outstanding dues by the Company, the properties of the complainants were attached by the Bank under the SARFAESI Act, causing them severe losses. Needless to say, the applicant has duped both, the complainants as well as the Bank, in the manner noted hereinabove.

8. It is also worthwhile to note that some of the complainants were made Directors of the Company, but no shareholding was allotted to them. Further, as per the Status Report, the applicant had been declared a *'proclaimed offender'* on 08.01.2020. It was also established during the investigation that the applicant diverted stocks and misappropriated funds, and even after auctioning of the properties of the complainants under the aforesaid circumstances, they have not been absolved of the remaining liability to be recovered by the Bank.

9. In view of the above facts and circumstances, the bail application is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

December 15, 2021

<u>*Click here to check corrigendum, if any*</u>