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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 08.09.2022

Order delivered on: 26.09.2022

\+ BAIL APPLN. 1585/2022

VINAY SHARMA ..... Petitioner

Through: Mr. K.K. Manan, Sr. Advocate with Ms. Uditi Bali, Ms. Komal Vashisht and Mr. Rahul Gautam, Advocates.

versus

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

Through: Mr. Laksh Khanna, APP for State.
Ms. Jagriti Ahuja, Advocate for complainant/Bank.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

O R D E R

ANOOP KUMAR MENDIRATTA, J.

1. An application has been preferred on behalf of the petitioner under Section 439 read with Section 482 Cr.P.C. for grant of regular bail in FIR No. 92/2016, under Sections 420/467/468/471/120B IPC, registered at Police Station Barakhambha Road.

2. In brief, as per the case of prosecution, the FIR was registered on directions of learned MM, Patiala House Courts under Section 156(3) Cr.P.C. on the complaint of Mr. Pradeep Gupta, AR, Standard Chartered Bank, who alleged that Rakesh Kumar Sharma (M.D.) and Vinay Sharma, (Director) (petitioner in the present case) executed various documents on

behalf of M/s Indian Technomac Company Ltd. (ITCOL) in order to avail credit facility to the tune of Rs.30 Crores. Standard Chartered Bank agreed to consider the opening of 'Letter of Credit Facility' as and when requested from the company. Subsequently, the facility was modified on the request of the company as Rs.10 Crores as 'fund based' and Rs.20 Crores as 'non fund based facility'. It is further alleged that an amount of Rs.10 Crores was used by way of an overdraft by ITCOL. Further, an amount of approximately Rs.20 Crores which was paid by the bank, was not paid by ITCOL on due date i.e. on or before 30.07.2013. ITCOL also did not pay back the overdraft facility of Rs.10 Crores.

3. During investigation, it was revealed that the letter regarding banking facility/arrangements dated 27.02.2012 was signed by the Directors Vinay Sharma (petitioner) and Rakesh Kumar Sharma. Petitioner Vinay Sharma also furnished his personal guarantee with the bank and also deed of guarantee dated 08.09.2011 was executed by Vinay Sharma and others as empowered vide resolution dated 05.09.2011. Also, the deed of guarantee dated 23.05.2012 was executed and signed by the Directors of M/s ITCOL i.e. Vinay Sharma (petitioner), Rakesh Kumar Sharma and two Corporate Guarantors. Further, Vinay Sharma was involved in day-to-day affairs of the company and duly authorized by the minutes of meeting of Finance Committee of the Board of Directors dated 22.05.2012.

4. It is further the case of prosecution that ITCOL allegedly engaged in manufacturing of Ferro alloys, purchased the Vanadium Pentaoxide, Molybdenum Ore and Aluminium Scrap from five companies through the letter of credit. The record of 02 companies i.e. M/s Kamal Raj Udyog and

M/s Green Overseas was found nowhere in ROC and their offices did not exist on the given addresses. The other 02 beneficiary companies i.e. M/s Ford Asia Trading Pvt. Ltd. and M/s Western Alliance Tradexim Pvt. Ltd. were incorporated on 21.04.2010 & 22.04.2010 respectively, but were not found existing on the given addresses.

The four transporters through which the material was supplied from Delhi to Ponta Sahib (HP) by the aforesaid four companies to the manufacturing unit of ITCOL, were not found at the given addresses and the enquiries revealed that no such transport operator ever existed at the said premises. The vehicles used by the said companies to transport the material from Delhi to Ponta Sahib (HP) were also found fake.

The amount of LC received by the beneficiary companies i.e. M/s Ford Asia Trading Pvt. Ltd. and M/s Western Alliance Tradexim Pvt. Ltd. were also found re-routed through various accounts to the account of one of the debtor of the company.

5. It is further the case of prosecution that the fake/forged bills/builties/GRs were created by the company employees on the direction of Rakesh Sharma and Vinay Sharma (petitioner). Further, Vinay Sharma in collusion with Excise employees made the entries of these forged bills with the Excise/Sales Department at the interstate border with HP. The bills were created with malafide intentions to indicate increased turnover. With the help of this increased turnover, the company availed credit facility/loan from the banks, which was used for their own purpose.

6. It is also the case of the prosecution that co-accused Rakesh Kumar Sharma is absconding and the petitioner is also involved in FIR No. 09/2016,

PS-CID, Bharari (HP), 08/16, PS-CID (HP) and FIR No. RCO502021A0004/CBI/SC-1/N. Delhi CBI. The earlier bail application preferred on behalf of the petitioner is stated to have been dismissed by Hon'ble Mr. Justice Rajnish Bhatnagar vide detailed order dated 04.04.2022. It is also pointed out that the complainant bank is a part of Consortium of 15 Banks and the Bank of India is a lead bank in the Consortium. As per the Working Capital Consortium Agreement executed on 23.05.2012 between M/s ITCOL and Bank of India (on behalf of Consortium as lead bank), the working capital fund and non fund based credit limits/facilities granted by the Consortium have been enhanced from Rs.47,400 Lacs to Rs.1,33,500 Lacs. The account of the company is pointed out to be satisfactory till 31.03.2013 and was classified as 'NPA' w.e.f. 31.3.2014.

7. Learned counsel for the petitioner submits that the petitioner was only arrested on 21.05.2021, though the FIR was registered on 17.05.2016. The investigation in the case is stated to be complete and chargesheet has been filed. It is further submitted that the petitioner had no role in any diversion of funds and the main accused is absconding. It is also urged that disposal of the case is likely to take some time since the charge is yet to be framed.

Reliance is further placed upon the judgments passed by Hon'ble Supreme Court in ***Centrum Financial Services Limited Vs. State of NCT of Delhi & Anr.,*** **Criminal Appeal No. 94/2022 decided on 28th January, 2022,** order dated 20.07.2022 passed by Hon'ble Supreme Court of India in ***Sudhanshu Dwivedi vs. Central Bureau of Investigation***, **SCP (Crl.) No. 1050 of 2022** and order dated 20.07.2022 passed by Hon'ble Supreme Court of India in ***Central Bureau of Investigation through Director vs. Ayodhya Prasad Mishra***, in **Special Leave to Appeal (Crl.) No. 8398/2021.**

Contention is also raised that the allegations in the present FIR have already been investigated by the Himachal Pradesh police in FIR No. 09/2016, PS CID Bharar, Himachal Pradesh and the petitioner has already been granted bail by the Hon'ble Himachal Pradesh vide order dated 28.05.2018 in aforesaid case.

8. *Per contra*, learned APP for the State vehemently opposes the bail application and it is pointed out that vide detailed order dated 04.04.2022 passed by Hon'ble Mr. Justice Rajnish Bhatnagar, the earlier bail application preferred on behalf of the petitioner was dismissed on merits and there is no change in circumstances thereafter. Reliance is also placed upon order dated 02.08.2021 passed by Hon'ble High Court Orissa Cuttack in BLAPL No. 8126 of 2020 in Basanta Panda vs. State of Odisha. It is further pointed out that the credit facilities were availed on the basis of documents signed by the petitioner and were wrongly utilized. The petitioner is stated to be involved in day-to-day affairs of the company and could not be absolved of the responsibility, now claiming that co-accused Rakesh Kumar Sharma has since absconded.

10. I have given considered thought to the contentions raised.

Considering the observations made in ***'M. Jagan Mohan Rao v. P.V. Mohan Rao'***, ***(2010) 15 SCC 491*** reiterating the principles laid down in ***'Shahzad Hasan Khan v. Ishtiaq Hasan Khan and Another'***, ***(1987) 2 SCC 684, 'State of Maharashtra v. Captain Buddhikota Subha Rao', 1989 Supp (2) SCC 605 and 'Harjit Singh V. State of Punjab' (2002) 1 SCC 649***, the bail application was directed to be placed before the concerned Bench. However, since the bail application has been received back from the concerned Bench, the same has been taken up for consideration.

11. At the outset, it may be observed that the earlier bail application preferred by the petitioner was dismissed vide detailed order dated 04.04.2022 after considering all the relevant contentions which have been reiterated before this Court. The relevant observations made by Hon'ble Mr. Justice Rajnish Bhatnagar vide order dated 04.04.2022, dismissing the earlier bail application after noticing the evidence appearing against the petitioner may be reproduced for reference:

> "*31. As far as the submission of the Ld. Sr. Counsel for the petitioner that all the related investigation of this case has already been done in the FIR registered at Himachal Pradesh, it is pertinent to mention here that the said FIR is in relation of non-payment of VAT of about Rs. 2100 Crores. But the present FIR is regarding availing of Credit Facility of Rs. 30 Crores from the complainant Bank on the basis of forged and fabricated documents which has come out in the investigation.*
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> *32. The Ld. counsel for the complainant has relied upon the Judgment of Supreme Court of India in* ***Criminal Appeal No. 94 of 2022, Centrum Financial Services Limited Vs. State of NCT of Delhi & Anr. decided on 28.01.2022****, in which the Supreme Court has cancelled the bail granted to the petitioner for the offences U/s 409/420/467/468/471/120-B IPC and while cancelling the said bail the Supreme Court has observed that the High Court while granting the bail has not considered the relevant factors including the nature and gravity of the accusation, modus operandi and the manner in which the offences have been committed through shell companies and creating the forged and fabricated documents and / or misusing the PAN cards, Aadhar Cards and KYCs of the employees showing them as Directors of the fake and shell companies. The Supreme Court further observed that the High Court had not at*

all considered and taken into consideration the status report and the evidence collected during the course of the investigation.

33. Now keeping in view the observations made by the Supreme Court in the judgment ***Centrum Financial Services Limited Vs. State of NCT of Delhi & Anr. (supra),*** *the Status report filed by the prosecution which enumerates the manner in which the fraud has been committed and how the petitioner alongwith co-accused had made forged and fabricated bills, builties and GRs and created different shell companies on the basis of the said documents in-collusion with the excise employees, the Forensic Audit of the accounts of the accused No. 1 company i.e. ITCOL was conducted of which the petitioner is one of the Director and the same also reveals the manipulations done in the accounts of the company, therefore, keeping in view the entire facts and circumstances, gravity of the offence, modus operandi adopted by the petitioner alongwith his co-accused and involvement of the petitioner in a case of much larger magnitude at Himachal Pradesh, no ground for bail is made out. The bail application is, therefore, dismissed.*

34. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case".

12. It may be observed that the subsequent application for bail despite the rejection of an earlier application, is not precluded in case there is any further development or change in circumstances. However, in case the successive bail applications are filed on the same existing material and the earlier bail application was rejected on merits, it may not be appropriate to consider the application afresh on account of superficial considerations. The fresh grounds for warranting the reconsideration should be substantial failing which it may be a sheer wastage of time and effort of the Court.

13. It has been held in ***Nimagadda Prasad Vs. CBI (2013) 7 SCC 466***, that economic offences constitute a class apart which need to be visited with

a different approach in the matter of bail. The relevant observations may be quoted as under:-

> *"Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*

Also, the observations in ***State of Gujarat Vs. Mohanlal Jitamalji Porwal & Others (1987) 2 SCC 364*** are apt to be noticed:-

> *"5. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eve unmindful of the damage done to the national economy and national interest."*

14. Considering the detailed reasons recorded in order dated 04.04.2022 as well as evidence brought on record during investigation, I do not find any substantial reasons to take a divergent view and as such the bail application is dismissed. It may be observed that merely because the petitioner is in custody since 21.05.2021 and the disposal of learned Trial Court is likely to take some time, cannot be sole grounds for reviewing of the earlier order passed by earlier Bench.

For the foregoing reasons, the application preferred on behalf of petitioner is dismissed.

Nothing stated herein shall tantamount to expression of opinion on the merits of the case.

The application is accordingly disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

September 26, 2022/*A*