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

Reserved on : 28.02.2022
% **Pronounced on : 04.04.2022**

+ **BAIL APPLN. 3073/2021**

VINAY SHARMA ..... Petitioner

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

versus

STATE NCT OF DELHI .... Respondent

Through: Dr. M.P. Singh, APP for the State with Insp. B.M. Bahuguna, EOW

Mr. Sanjay Gupta, Advocate with Mr. Ateev Mathur, Mr. Amol Sharma and Mr. Jogih Ahuja, Advocates for complainant.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 92/2016 under Section 420/467/468/471/120-B IPC registered at Police Station Barakhamba Road.

2. In brief, the facts of the case are that the present FIR was registered on the complaint of Senior Relationship Manager of the Standard Chartered Bank, Barakhamba Road, against Indian Technomac Company Limited and its directors including the present petitioner.

3. As per the allegations, the above said company has availed certain credit facilities from the complainant bank including overdraft facility and Non fund facility. The Letter of Credit were opened by the bank and the sanctioned amount under the Letter of Credit were not paid by the said accused No.1 Company which was paid by the complainant bank. It is alleged that the accused company was required to repay the amount paid by the complainant bank under Letter of Credit alongwith accrued interest on or before 30.07.2013 which was not paid.

4. Prior to the registration of the present FIR, another FIR No. 0009/2016 was registered against the petitioner and other accused persons at PS CID, Nahan, Himachal Pradesh U/s 420, 467, 468, 471, 210, 217, 218, 120-B IPC and Section 5 and 7 of H.P. Prevention of Specific Corrupt Practices Act and Section 13 (1)(d)(ii) of P.C. Act.

5. The Standard Chartered Bank in February 2011 sanctioned a Working Capital Facility (hereinafter referred to as “Finance Facility”) to the Indian Technomac Company Ltd. vide sanction letter dated

10.02.2011 bearing reference No. 10087739 on the terms and conditions mentioned in the said banking arrangement/facility letter.

6. The petitioner and co-accused R.K. Sharma signed and executed various documents at the Barakhamba Road Branch of Standard Chartered Bank. Various meetings between accused as well as officers of Standard Chartered Bank also took place in the Barakhamba Road Branch of the bank. After the terms and conditions of the banking arrangement/facility letter was accepted, a Board of Resolution dated 17.02.2021 was passed by the Indian Technomac Company Ltd. (Accused No. 1.) thereby authorizing R.K. Sharma, accused No. 2 to sign and execute the documents on behalf of Indian Technomac Company Ltd. (Accused No. 1). The facility which was given by the bank to Indian Technomac Company Ltd. was a Non-Fund based facility, whereby Standard Chartered Bank agreed to open Letter of Credit as and when there was a request from the accused.

7. After the acceptance of the terms and conditions of the facility letter, the following documents were executed by the Indian Technomac Company Ltd (accused No 1): (1) Demand Promissory Note, (2) Letter of Continuity for DPN (3). Working Capital Demand Loan Agreement (4) Hypothecation Agreement (5) Indemnity (6) Letter of Set off (7) Fax Indemnity (8) Scan Indemnity (9) Personal Guarantee of Mr. R.K. Sharma (10) Personal Guarantee of Mr. Vinay

Sharma (11) Letter of No Commission from the Company (12) Pre Shipment (13) Post Shipment Agreement (14) Corporate Guarantee from Thunder Traders Limited (15) Corporate Guarantee from Gurupath Merchandise Limited (16) Undertaking under Section 372A from Thunder Traders Limited (17) Undertaking under Section 372A from Gurupath Merchandise Limited. Subsequently, Indian Technomac Company Ltd (Accused No. 1) through co-accused (accused No. 2) made a request that the non-fund facility of Rs 30 Crores be modified so that an amount of Rs. 10 Crores is made available as a fund based facility within the overall limit of Rs. 30 Crores of non- fund facility for the purposes of opening Letters of Credit. An amended Banking Facility letter was issued which was duly accepted by the Indian Technomac Company Ltd. (Accused No. 1) through R.K. Sharma (accused no 2) and accused No. 3 (Petitioner).

8. Subsequently, on various dates, the non-fund facility of Rs. 20 Crores was utilized by Indian Technomac Company Ltd. (Accused No 1). The Letter of credits which were opened by the bank were irrevocable Letter of Credit and on the purported supply being made and based upon the facility so sanctioned, the amount under the Letter of Credit were not paid by the accused no. 1 company and therefore, were paid by Standard Chartered Bank.

9. In accordance with the terms of the facility letter, the Indian Technomac Company Ltd. (Accused No. 1) was required to repay the amount paid by bank under Letter of Credit along with accrued interest on or before 30.07.2013. However, no such amount was paid by the Indian Technomac Company Ltd. (Accused - No 1).

10. While the bank was contemplating on the action to be taken, to the complete shock and surprise of Standard Chartered Bank, a person claiming to be an ex-employee of Indian Technomac Company Ltd. (Accused - No 1) informed the Bank in writing that the Indian Technomac Company Ltd. (Accused - No 1) have committed fraud not only upon Standard Chartered Bank but on many other Banks. The letter further informed that all these transactions were fake and there is no actual transaction which has lair place.

11. On account of the aforesaid letter informing about the fraud perpetuated by Indian Technomac Company Ltd. (Accused - No 1), Standard Chartered Bank got suspicious and an internal investigation was carried out by Standard Chartered Bank. On investigation being carried out by Standard Chartered Bank, it was revealed that a serious fraud has been perpetuated upon Standard Chartered Bank by accused No. 1 to 3 in active connivance with each other. The stock statements provided by the Indian Technomac Company Ltd. (Accused - No 1) were examined by Standard Chartered Bank and it was revealed that

out of the total list of the debtors, 23 number of parties were Private Limited Companies and rest were either sole proprietorship or partnership firms. When Standard Chartered Bank inspected the records of the companies at the website of the Ministry of Corporate Affairs, it was revealed that out of 23 companies, 15 companies were incorporated with Registrar of Companies with 3 common e-mail ids.

12. A bare perusal of the details of these companies available at the website of the ministry of corporate Affairs will reveal that the registered office of the companies is in one particular locality of Delhi. The turnover of the Indian Technomac Company Ltd. (Accused No. 1) as per the audited accounts submitted by Indian Technomac Company Ltd. (Accused No. 1) has increased tenfold since 2010 after the formation of the above mentioned companies. The turnover of the Accused No 1 company in 2010 was approximately INR 500,00,00,000- (Rupees Five Hundred Crores) and thereafter these companies were formed within a span of three years and during which period the turnover of the Indian Technomac Company Ltd. (Accused No.1) rose to INR 50,00,00,00,000- (Rupees Five Thousand Crores) approximately. Standard Chartered bank is not aware of as to what nature of business activities is being carried out by the debtors companies but the list of the debtors given by Indian Technomac Company Ltd. (Accused No. 1) as of 31 May, 2013 shows the outstanding balance of INR 688 crores approximately by these debtor

companies. A threadbare examination of the statement of stocks and book debts submitted by Indian Technomac Company Ltd. (Accused No.1) would reveal that the outstanding towards the debtors companies is running into crores of rupees despite the fact that some of these companies have been formed as recently as March 2013. Accused No. 1, 2 and 3 cheated Standard Chartered Bank crores of rupees and has misappropriated the amount so given by Standard Chartered Bank by fabricating documents for the purpose of claiming payment under the letters of credit issued by the bank on the request of Indian Technomac Company Ltd. (Accused No. 1). Fraud has been committed upon Standard Chartered Bank and the bank has been duped of a sum of Rs. 30,00,00,000/- (Rupees Thirty Crores Only) by the above named accused persons.

13. I have heard the Ld. Sr. counsel for the petitioner, Ld. APP for the State assisted by the Ld. counsel for the complainant, perused the Status Report filed by the State and also perused the records of this case.

14. It is submitted by the Ld. Sr. Counsel for the petitioner that the petitioner is in J.C. since 23.06.2021 and has been falsely implicated in this case as he was only a salaried director in the company and was neither promoter nor beneficiary of any amount from the accused company or the complainant bank and he was only drawing his salary.

It is further submitted by the Ld. Sr. counsel for the petitioner that the petitioner has not purchased any assets during his employment with the accused company and he has fully co-operated in the investigation and has provided all the relevant documents.

15. He further submitted that the allegations in the present FIR have already been investigated by the Himachal Pradesh Police in FIR bearing No. 0009/2016 P.S. CID Nahan, Himachal Pradesh. The investigation by the CID at Nahan has been done to find out each and every affair related to the Accused Company. Even the records of the accused Company such as Project reports, Audit reports, Balance sheet, Bank Vouchers, Form-26-A, Builty Book belonging to various Transport Companies were seized by the Investigating Agency in the FIR registered at Himachal Pradesh. He further submitted that in that case, the charge sheet has already been filed and the petitioner has been granted bail by the Himachal Pradesh High Court in the said FIR vide order dated 28.05.2018.

16. It is further submitted by the Ld. Sr. Counsel for the petitioner that the gravity alone cannot be a ground for denying the bail and complete factors are required to be balanced. He further submitted that all the evidences pertaining to the present FIR are documentary in nature which has been seized by the agencies and now there are no chances of tampering with the evidence or the witnesses. He further

submitted that the object of the bail is to secure the appearance of the accused person at his trial by reasonable amount of bail and the object of bail is neither punitive nor preventative. He further submitted that the petitioner is a citizen of this country and has a family to support and has roots in the society. He has relied upon ***Criminal Appeal No. 227/2018, Dataram Singh Vs. State of Uttar Pradesh & Anr. decided on 06.02.2018*** and ***Y.S. Jagan Mohan Reddy Vs. C.B.I., (2013) 7 SCC 439***.

17. On the other hand, Ld. APP for the State assisted by the Ld. Counsel for the complainant has vehemently opposed the bail application. It is submitted by the Ld. APP for the State that petitioner alongwith co-accused R.K. Sharma has executed various forged and fabricated documents on behalf of accused No. 1 Company namely M/s Indian Technomac Company Limited in order to avail credit facility to the tune of Rs. 30 Crores. It is further submitted that a sum of Rs. 10 Crores was fund based and Rs. 20 Crores was non fund based facility. It is further submitted by the Ld. APP that Rs.10 Crores was used by way of an overdraft and Rs. 20 Crores which was paid by the complainant to the material supplying companies through Letter of Credit was not paid by the accused No. 1 company on or before 30.07.2013 and the petitioner and his co-accused also did not return Rs. 10 Crores.

18. It is further submitted by the Ld. APP that during the investigation, it was revealed that the petitioner had signed the letter regarding banking facilities/arrangements dated 27.02.2012 and he alongwith his associate also furnished and signed Deed of Guarantee dated 23.05.2012. He further submitted that petitioner alongwith his associate R.K. Sharma was authorized as Directors of the company to settle, finalize and accept the terms and conditions and execute all such agreements, papers, declarations undertaking etc.

19. It is further submitted by the Ld. APP that out of the five companies, four companies, as mentioned in the Letter of Credit, were not found to be existing in ROC and the vehicles used by this company to transport the material from Delhi to Paonta Sahib are found to be fake. It is further submitted by the Ld. APP that the petitioner in collusion with excise employees used to make forged bill with the excise department at the interstate border with Himachal Pradesh, which were created for increased turnovers and these high turnovers were used by the alleged company to avail the credit facility from the bank.

20. As per the Status Report filed by the State, during investigation, it is revealed that the Letter regarding Banking Facilities/Arrangements dt 27.02.12 were signed by the alleged Directors Vinay Sharma and Rakesh Kumar Sharma. Vinay Sharma had also furnished his personal

Guarantee with the bank. The Deed of Guarantee dt. 08.09.2011 was executed by Vinay Sharma and others and were empowered to execute this document vide resolution dt. 05.09.2011. The Deed of Guarantee dt. 23.05.12 was executed and signed by the Directors of M/S ITCOL i.e. by Vinay Sharma, R K Sharma and two Corporate Guarantors.

21. As per the extracts of the minutes of the meeting of the Finance Committee of the Board of Directors M/S ITCOL dt. 22nd May 2012, Vinay Sharma and Rakesh Sharma were authorized as Directors of the company to settle, finalise and accept the terms and conditions and execute all such agreements, papers, declarations, undertakings, deeds, applications, acknowledgement of debt regarding between the bank and the company. Hence, Vinay Sharma was involved in the day to day affairs of the company.

22. The alleged company, which was engaged in the manufacturing of Ferro alloys, purchased the vanadium Pentaoxide, Molybdenum Ore and Aluminium Scrap from the 05 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 also do not exist at the given addresses. The other 02 beneficiary companies i.e. M/S Western Alliance Tradexim Pvt. Ltd. and M/S Ford Asia Trading Pvt. Ltd. were incorporated on 22.04.10 & 21.04.10

respectively. These companies were not found existing at the given addresses.

23. The 04 transporters through which the material was supplied from Delhi to Ponta Sahib (HP) by the 04 companies to the manufacturing unit of the alleged company, also were not found at the given addresses and enquiries in the vicinity revealed that no such transport operator ever existed at those premises. The vehicles used by these companies to transport the material from Delhi to Paonta Sahib (HP) were also found fake. The record of the RTOs revealed that these vehicles were either scooters/motorcycle/moped or they were not registered with the concerned authorities.

24. 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 re-routed through various accounts to the account of one of the Debtor of the company.

25. The fake/forged bills/builties/GRs were created by the company employees on the direction of Rakesh Sharma and Vinay Sharma. 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. He used to make adjustment with the employees/concerned inspector for these entries to pay the sales tax/GST. These bills were created with malafide intentions to indicate

increased turnover. With the help of this increased turnover, the alleged company availed credit facility/loan from the banks, which was used for their own purpose.

26. As per the allegations, there are 02 accused Directors and out of them, Vinay Sharma, has been arrested on 23.06.21. The other accused person, namely Rakesh Kumar Sharma has been evading arrest and initially NBW was issued against him, but he could not be arrested and proceedings of 82 CrPC is underway. The NDOH is 16.10.21. Vinay Sharma is also involved in FIR No. 09/16, PS-CID, Bharari (HP), 08/16, PS-CID (HP) and FIR No. RC0502021A0004/CBI/SC-II/N. Delhi CBI.

27. It is also pertinent to mention that the complainant bank is a part of Consortium of 15 Banks. The Bank of India is a Lead bank in the Consortium. As per the Working Capital Consortium Agreement executed on 23.05.12 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. This letter was executed and signed in pursuance of the Minutes of the Meeting of the Finance Committee of the Board of Directors of the ITCOL held on 22.5.12. The account of the alleged company was satisfactory till 31.03.13 and was classified as 'NPA' w.e.f 31.3.14.

28. The forensic audit of the accounts of ITCOL was conducted for the months 01 April 2011 to 30 September 2013. The findings of this audit are**:**

> "a. After the receipt of LC payment into the accounts, it was immediately transferred (in the form of RTGS) to the accounts of debtors of ITCOL and to a extent in cash withdrawls. No payment was ever made to any mines for purchase of material by these firms.
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> b. The payments received by the beneficiaries of the LC were re-routed through various accounts and channelized back to either the account of ITCOL or one of the subsidiary/associate concerns of ITCOL.
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> c. No payment was made by the beneficiary of LC for the purchase of raw material from the mines. There is no debit for the purchase of goods made by these companies.
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> d. The transporters who supplied material under LC to the premises of ITCOL were verified and most of them were fictitious and enquiries in the vicinity revealed that no such transport operator ever existed at these premises. The two transporters intimated that the lorry receipts attached with the invoices were fake and not issued by them. One of the

transporter had changed its name long back and ITCOL management was using its old name lorry receipts as evidence for transport of material. The lorry receipts and invoices in most of the cases did not have any authentication of having passed through any toll barrier from origin of the goods till its destination.

e. The round trip transactions (Round tripping) played a crucial part in inflating the turnover of the company. There were actually no purchases and/or movement of stock as depicted by the ITCOL in its books of account and audited financial statements.

f. ITCOL has been showing the stock lying at its factory at Orrisa in the stock statements being submitted to the bank till Sept 2013. The factory at Orrisa, Jaipur was taken on lease rental and bank records show that the rent was paid to the owners of the factory till March 2012. There is no record of any further lease rental payment.

g. The top 10 debtors were analysed and they were not found at their addresses. All credits received in their accounts were received either from sundry creditors of ITCOL, beneficiary of LC of ITCOL or from the Associates/subsidiary companies of ITCOL. There was no credit received on account of any sale made by these buyers. The amount of these debtors was either transferred to ITCOL or to one of the associates/subsidiary companies of ITCOL.

h. M/s Western Alliance Tradexim Pvt. Ltd., Kamal Raj Udyog, Green Overseas and Ford Asia Trading Pvt. Ltd. are also found to be the beneficiaries."

29. There were vide variations in the monthly figures (stock statements) submitted by the ITCOL to the banks for arriving at the drawing power for availing the limits.

30. There is no dispute with regard to the propositions of law laid down in the judgments relied upon by the Ld. Sr. Counsel for the petitioner, but each case has to be decided on be basis of its own factual matrix.

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.

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.

RAJNISH BHATNAGAR, J

APRIL 04, 2022

Sumant