* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on : 22nd March, 2022
Pronounced on: 27th April, 2022

\+ BAIL APPLN. 3836/2021

RACHIN BANSAL ..... Petitioner

Through: Mr. Mohit Chaudhary, Mr. Kunal Sachdeva, Ms. Mahima Ahuja and Ms. Anubha Surana, Advocates

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Ms. Kusum Dhalla, APP with SI Rajiv Gulati, P.S. EOW, Delhi

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant application under Section 438 of the Code of Criminal Procedure has been filed on behalf of the petitioner seeking anticipatory bail in FIR No. 263/2019 registered at Police Station EOW, Mandir Marg, New Delhi for offences punishable under Section 420/406/120B of the Indian Penal Code, 1860.

2. The case of the complainant is that M/s Shri Balaji Beans Pvt. Ltd. (Accused No.1), its director Mr. Ramesh Kumar Bansal (Accused No.2), Mr. Anil Kumar Aggarwal (Accused No.3) and the present applicant committed a default of Rs. 8 Crores.

3. M/s Shri Balaji Beans Pvt. Ltd approached the complainant bank requesting for sanctioned working capital facilities to the tune of Rs. 8 Crores, which was sanctioned on 14th December, 2017 and the sanction letter was countersigned by Mr. Ramesh Bansal.

4. Pursuant to the sanction, a loan agreement was executed on 16th December, 2017. The said credit facility was to revolve around 12 months line and was repayable on demand as per the term of the sanction letter. The said credit facility was agreed to be secured by way of equitable mortgage in addition to the deed of Guarantee. As per the stipulation in the deed of Guarantee the following properties were secured:-

i. Residential Property at H-22, Ashok Vihar, Phase-1, Delhi-110052.

ii. Industrial Property at Plot No.428, Food Park, Industrial Area, Rai, Sonipat, Haryana.

iii. Industrial Property at Plot No. 561, Food Park, Industrial Area, Rai, Sonipat, Haryana.

iv. Commercial Property at 3980-B, Naya Bazar, Delhi-110006.

5. It is alleged that the accused persons did not adhere to the terms and conditions of sanctions and failed to make re-payment of the sanctioned amount.

6. It is also alleged M/s Shri Balaji Beans Pvt. Ltd. is not providing the insurance for their security hypothecated or mortgaged with bank.

7. Learned counsel for the applicant submitted that the applicant herein was neither a director nor a shareholder nor a managerial person who was conducting day-to-day affairs in the company i.e., 'M/s. Shri Balaji Beans Pvt. Ltd.' The applicant never had any knowledge of the transaction which occurred between the complainant bank and other accused persons. Moreover, the applicant is not even a borrower in the present matter. The applicant was only a guarantor in the alleged transaction which occurred between the complainant and other accused persons.

8. It is submitted that the applicant has been regularly appearing before the Investigating Officer and has assisted in investigation. The applicant had already surrendered his personal properties (basis of guarantee to loan) to bank without demur. It is submitted that the applicant surrendered all his assets to the complainant bank when the complainant bank invoked guarantee on 3rd January, 2019 by issuing a notice of invocation to the guarantors of the facility.

9. It is submitted that all the properties which have been surrendered by the applicant has equivalent value to the actual loan amount which has been sanctioned by the complainant bank to M/s Shri Balaji Beans Pvt. Ltd.

10. Learned counsel for the applicant submitted that transactions which is reflected from the FIR itself shows that the whole transaction is of civil nature moreover, the complainant bank has also filed recovery proceedings at Debt Recovery Tribunal (DRT), Delhi and complaints under Section 138 of the Negotiable Instruments Act (NI Act).

11. It is further submitted that a bare pursual of the allegations as made in the FIR against the applicant, no offence of cheating or criminal breach of trust has been made out against the applicant. It is submitted that merely because a person has given a guarantee in a loan agreement, he cannot be made as an accused for an offence which he has not committed.

12. Learned counsel appearing on behalf of the petitioner submitted that no offence of cheating under Section 420 of the IPC is being made out against the applicant since in order to constitute the offence of cheating, it is important to show that a person has dishonestly induced a person to deliver any property. However, in the FIR it is evident that no offence of cheating is being made out against the applicant, moreover, the allegations do not disclose any inducement or deception being done by the applicant. There is also no allegation of wrongful loss having been caused by the applicant to the complainant. In support of his arguments, he has relied upon the case of ***Harmanpreet Singh Ahluwalia v. State of Punjab,*** **(2009) 7 SCC 712** in which Supreme Court held that:-

> *"25. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:*
>
> *"(i) deception of a person either by making a false or misleading representation or by other action or omission;*
>
> *(ii) fraudulently or dishonestly inducing any person to deliver any property; or*
>
> *(iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."*

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out. We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Penal Code is existence of an intention (sic a fraudulent or dishonest intention at the time) of making initial promise or existence thereof from the very beginning of formation of contract. "

13. It is submitted that the offence of Criminal breach of trust under Section 405 of the Indian Penal Code is not being made out against the applicant since the applicant was not entrusted with the loan amount. The loan amount was transferred to M/s Shri Balaji Seed Pvt. Ltd. and the applicant was merely a guarantor and it is stated that there was no entrustment done by the complainant in favour of the applicant. In support of his argument, he has relied upon the judgment of ***Asoke Basak v. State of Maharashtra,*** **(2010) 10 SCC 660** in which Hon'ble Supreme Court has held that:-

"21. It is plain that for constituting an offence of criminal breach of trust, the following ingredients must be satisfied:

(a) a person should have been entrusted with property, or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

14. Learned counsel for the applicant submitted that offence under Criminal Conspiracy under section 120-B of Indian Penal Code is also not being made out against the applicant. It is submitted that that allegations for criminal conspiracy as alleged in the FIR are vague, moreover merely because the applicant is related to co-accused does not *per se* raise a suspicion against him for criminal conspiracy. It is vehemently submitted that the applicant was not related to affairs of M/s Shri Balaji Beans Pvt. Ltd.

15. It is submitted that the applicant is a innocent person and has not committed any offence as alleged in the FIR. He also undertakes that the petitioner shall cooperate in the investigation or in the trial if he will be released on bail. There is no previous criminal history of the applicant.

16. Learned counsel for the applicant submitted that in the case of ***Gurbaksh Singh Sibbia v. State of Punjab*** **(1980) 2 SCC 565,** the Hon'ble Supreme Court has held that:-

"31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of

anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh {AIR 1962 SC 253: (1962) 3 SCR 622: (1962) 1 Cri LJ 216}, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail. "

17. It is submitted that the applicant will not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the present case so as to dissuade him from disclosing such facts to the court or to any police officer. It is also submitted that the applicant is ready and willing to furnish sound surety to the satisfaction

of this Court while admitting him to anticipatory bail. The applicant undertakes to abide by any condition as imposed by this Court while admitting him to anticipatory bail.

18. *Per contra,* Ms. Kusum Dhalla, learned APP for State vehemently opposed the bail application and submitted that accused Ramesh Kumar Bansal and Anil Kumar Aggarwal availed a working capital facility of Rs. 8 Crores on 14th December, 2017. 36% of the credit facility was secured by mortgaging property and 64% was secured through stocks purchased by case credit facility, and the said CC was also secured by personal guarantee of accused Rachin Bansal and his Proprietorship SBS Pulses.

19. It is stated that the accused persons through a well hatched conspiracy had obtained separate loans from the complainant bank by giving guarantee of loan of each other in a fraudulent manner. It is submitted that accused persons including the applicant herein are habitual offenders and by a similar modus operandi they also have availed cash credit facility of Rs. 30 Crores from ICICI Bank for the same business and by keeping the same properties as securities. ICICI Bank also filed complaint against M/s Balaji Beans Pvt. Ltd. In this regard, a case vide FIR No. 159/20 dated 17th December, 2019 under Sections 406/420 of the Indian Penal Code, 1860, P. S. EOW has also registered.

20. It is submitted that the applicant herein stood as a guarantor of the financial facility obtained by the accused company and additionally M/s Om Industries through its proprietor Mr. Rachin Bansal (applicant herein) also obtained working capital facility of Rs. 12 Crores from the

complainant bank and defaulted in the same, where the other co-accused, his father and uncle had stood gurantor, a case was also vide FIR No. 282/2019 dated 17th December, 2019 under Section 406/420 of the Indian Penal Code, 1860, Police Station EOW has also registered.

21. It is stated that all the accused persons including the applicant herein acted in connivance with each other, through a well hatched conspiracy and defrauded the bank with the loan amount from the complainant bank by giving gurantees of loan of each other. Thus, the role of the applicant herein is suspicious and could only be ascertained after his detailed/custodial interrogation to unearth the conspiracy hatched by him with other accused directors and to recover/trace the credit facility amount granted by the complainant bank. Therefore, the instant anticipatory bail application is devoid of any merits and is liable to be dismissed.

22. Heard learned counsel for the parties and perused the record.

23. The company M/s Shri Balaji Beans Pvt.Ltd. deals in trading of pulses at Naya Bazar, Delhi. The credit facility was secured upto 36% by mortgaging property (1) Residential property at H-22, Ashok Vihar, Phase-1, Delhi-52 (2) Plot no.428, Food park, Industrial area Rai, Sonepat, Haryana and (3) Plot no. 561, Food Park, Industrial area Rai, Sonepat, Haryana and remaining 64% have been secured by stocks purchased by cash credit facility. The said credit facility was also secured by way of (1) personal guarantee of applicant Mr. Rachin Bansal and (2) SBS Pulses, a proprietorship of Mr. Rachin Bansal and his uncle Anil Kumar Aggarwal.

24. The applicant stood guarantor of the financial facility obtained by the accused company M/s Shri Balaji Beans Pvt. Ltd. and additionally M/s Om Industries through its proprietor Rachin Bansal also obtained working capital facility of Rs. 12 Crore from complainant bank and defaulted in the same where in his father accused Director Ramesh Kumar Bansal and his uncle accused director Anil Kumar Aggarwal stood as a guarantor. The above company M/s Shri Balaji Beans Pvt. Ltd. and M/s Om Industries also obtained cash credit facility of approx. Rs. 30 Crore from ICICI Bank for the same business on the basis of consortium banking arrangement by keeping the same properties as security. ICICI bank also filed complaint against M/s Shri Balaji Beans Pvt. Ltd. and the FIR No. 159/2020 dated 17th December, 2019 under Sections 406/420 of the IPC, Police Station EOW was registered. On the basis of the above facts, it is clear that Rachin Bansal and accused company hatched a criminal conspiracy to obtain separate loans from the complainant bank by giving guarantees of loans of each other.

25. In view of the above facts and circumstances, the prima facie case is made out against the application. In the case of ***P. Chidambaram v. Directorate of Enforcement*****, (2019) 9 SCC 24**, the Hon'ble Supreme Court held that:-

> *"The investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigation officer exercise his investigating powers well within the provisions of the law and the legal bounds.*
>
> *Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other*

> *purpose. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. It is well settled law that the anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."*

26. In the State represented by the ***CBI v. Anil Sharma***, **(1997) 7 SCC 187**, the Hon'ble Supreme Court held that:

> *"6. We find force in the submission of the CBI that* ***custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he is interrogated.*** *Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders."*

27. In the case of ***Directorate of Enforcement v. Ashok Kumar Jain,*** **(1998) 2 SCC 105**, the Hon'ble Supreme Court held that "in economic offences, the accused is not entitled to anticipatory bail."

28. Observing the economic offence is committed with deliberate design with an eye on personal profit regardless to the consequences to the community, in ***State of Gujrat Vs. Mohan Lal Jitamalji Porwar*** **(1987) 2 SCC 364**, it was held that:

> *"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 eye unmindful of the damage done to the national economy and national interest."*

29. This Court has considered the submissions made by both the parties and in view of the aforesaid discussions on the facts, it is quite obvious that the applicant and accused/company in which his father and uncle were Directors hatched a criminal conspiracy to obtain a separate loan from the banks. This Court is also convinced that the said loan was obtained in fraudulent manner.

30. Keeping in view of the serious nature of the offence committed by the applicant/petitioner, the gravity of the accusations, possibility of the applicant to flee from the justice and to tamper with the evidence, also the fact that the investigation is at its initial stages and that the custodial interrogation of the applicant is required to unearth larger conspiracy i.e. the involvement of the other persons i.e. officers of the bank and to recover the huge amount involved in this case, the applicant has no

ground available with him to entitle him for being granted anticipatory bail.

31. Accordingly, the application is dismissed.

32. Pending application, if any, also stands disposed of.

33. It is made clear that any observations touching merits of the case are purely for the purpose of deciding the question of grant of bail by this Court and shall not be construed as an expression of final observation in any proceedings before any other Court.

34. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

APRIL 27, 2022
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