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

\+ BAIL APPLN. 148/2024, CRL.M.A. 1174/2024

CHETNA THAKUR .....Petitioner

Through: Mr. N.Hariharan, Sr. Adv. with Mr.Siddharth S. Yadav, Ms.Punya Rekha Angara, Mr. Sharian Mukherji, Mr. Aman Akhtar, Ms. Kashish Ahuja, Mr. Ayush Kumar Singh, Mr. Keshav Saini, Mr. Yash Varma, Mr. Raj Ratnam Nagar, Advs,

versus

STATE OF NCT OF DELHI .....Respondent

Through: Ms. Priyanka Dalal, APP for State and SI Vijay Kumar, PS EOW.
Mr. Ajay Kumar, Adv. for complainant.

\+ BAIL APPLN. 153/2024, CRL.M.A. 1203/2024

SANJAY KUMAR .....Petitioner

Through: Mr. N.Hariharan, Sr. Adv. with Mr.Siddharth S. Yadav, Ms.Punya Rekha Angara, Mr. Sharian Mukherji, Mr. Aman Akhtar, Ms. Kashish Ahuja, Mr. Ayush Kumar Singh, Mr. Keshav Saini, Mr. Yash Varma, Mr. Raj Ratnam Nagar, Advs,

versus

STATE OF NCT OF DELHI .....Respondent

Through: Ms. Priyanka Dalal, APP for State and SI Vijay Kumar, PS EOW.

Mr. Ajay Kumar, Adv. for complainant.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% **07.08.2024**

1. The present applications have been filed under Section 438 Cr. P.C. seeking grant of anticipatory bail in case FIR No. 23/2022 registered on 09.02.2022 at PS Economic Offences Wing, Mandir Marg under Sections 406/420/120B IPC.

2. Learned counsel for the complainant has predominantly opposed the grant of anticipatory bail on the following grounds. Firstly, the alleged company was not an approved company of National Highways and Infrastructure Development Corporation Limited (NHIDCL, a government agency), and therefore, the sub-contract awarded to the complainant company, M/s Prachi Infra and Roads Private Limited, to the petitioner company, was entirely illegal and beyond the terms and conditions of the contract. Secondly, even under the contract, the alleged company could not have awarded more than 49% of the awarded contract, whereas the alleged company awarded more than 95% of it. Learned counsel submits that by doing this, the alleged company took money from the sub-contractor and illegally siphoned it off. Thirdly, the alleged company forged the test reports. Learned counsel further submits that the alleged company illegally foreclosed the contract of the petitioner company on the grounds of substandard work. Learned counsel argues that to cover up this illegal foreclosure,

the test reports were forged and fabricated, and the alleged company used fake stamps for this purpose. It has further been submitted that the accused company has filed false claims by way of a civil suit before this court and is still relying upon those forged and fabricated reports. Learned counsel submits that custodial interrogation of the petitioner is therefore necessary.

3. Ms. Priyanka Dalal, learned APP for the State, has opposed the bail application and submits that the present case was lodged on the complaint of M/s Prachi Infra & Roads Pvt. Ltd. Learned APP submits that the case revolves around the awarding of work for the four-laning of the Jhanji to Demow Section of NH-37 from 491.050 km to 535.250 km in the state of Assam. Learned APP submitted that GDCL was awarded the work for the four-laning of the Jhanji to Demow Section of NH-37 from 491.050 kms to 535.250 kms in the state of Assam by NHIDCL. Learned APP further submits that M/s Ganon Dunkerley and Company Ltd. (GDCL) subcontracted this work to the alleged company, M/s VSD Infracon LLP. Learned APP submits that the alleged company subcontracted a substantial part of the work to the complainant company in violation of the terms and conditions.

4. Learned APP submits that as per the terms and conditions of the contract, not more than 49% of the work could have been subcontracted. However, the alleged company awarded more than 90% of the work. Learned APP submitted that the work was foreclosed between the complainant and the alleged company via MOU dated 15.03.2021, and it was agreed between the complainant company and the alleged company that the complainant company would make the

payment, for which cheques were issued but were dishonored.

5. Learned APP submits that during the course of the investigation, it was revealed that the alleged company, now known as M/s Kapasi Infracon LLP, prepared 11 fake test reports showing poor quality work and also filed a civil suit to deprive the complainant of their rightful dues. The learned APP further submits that the investigation revealed that at the instance of Mr. Sanjay Kumar, the petitioner, Mr. Ranbir Singh, sent a backdated letter along with the forged reports. It has been submitted that when the reports were sent to NHIDCL for verification, they were found to be neither genuine nor on record.

6. Learned APP further submits that although NHIDCL released the payment, the alleged company did not release the payment to the complainant company. Learned APP submits that the fact that NHIDCL released the payment indicates that the work met the required quality standards. Learned APP further submitted that M/s Voyants Solutions Pvt. Ltd. (VSPL) was appointed by NHIDCL as the authority's engineer for this project to ensure that the contractor met the required quality standards. Although some defects were indicated, during scrutiny it was found that only a few of the stretches mentioned in the 11 forged reports were common.

7. Learned APP further submitted that the petitioners have been evasive during the investigation and have not provided complete responses. It has been submitted that since this is a case involving cheating, forgery, and a large sum of money, the petitioners are not entitled to anticipatory bail. Learned APP also submits that custodial interrogation is necessary for the investigating agency to ascertain the author of those

fake reports.

8. Sh. N. Hari Haran, learned senior counsel for the petitioner, submitted that the case as presented by the learned APP is not correct. Learned senior counsel submits that National Highways and Infrastructure Development Corporation Limited (NHIDCL, a government agency) actually awarded the work order for the completion of the project in Assam to GDCL. Learned senior counsel submits that further, GDCL issued the contract to VSD Infracon LLP via agreement dated 20.08.2019.

9. Learned senior counsel submits that the argument made by the learned APP for the State and learned counsel for the complainant, that the alleged company awarded subcontract to complainant exceeding the percentage provided for in the contract/agreement, is incorrect on the face of it. Learned senior counsel submits that as per the contracts/agreements on record, GDCL could not have awarded more than 49% of the contract, but this condition was not applicable to the alleged company. Learned senior counsel submits that if there is any violation, for the sake of argument, it would only be valid against M/s GDCL and not the alleged company.

10. Learned senior counsel further submitted that the work order awarded to the complainant company via agreement dated 25.12.2019 was terminated by "Memorandum of Mutual Understanding under mutual consent for foreclosure" dated 15.03.2021. Learned senior counsel admits that certain cheques were issued as per the MOU, but all the cheques except for one amounting to Rupees Fifty Lakhs were dishonored. Learned senior counsel submits that the amount was

withheld due to inferior quality work, and the complainant was asked to rectify the defects.

11. Learned senior counsel submits that there was a defect liability clause. It has further been submitted that arbitration between GDCL and the alleged company is ongoing. Learned senior counsel further submitted that as per the status report dated 29.04.2024, the payment was released by NHIDCL to GDCL and not to the alleged company. Learned senior counsel submits that in fact, all through the process, it was the petitioner company that committed the defaults. Learned senior counsel also submits that on record, this is purely a commercial dispute with ongoing arbitration, which has been falsely given the colour of criminal proceedings. Learned senior counsel also submits that the petitioners have already filed a civil suit and deny any forgery on the part of the petitioner.

12. The jurisdiction for granting anticipatory bail is well established. The court, when considering anticipatory bail, must exercise this power sparingly and with caution. At this stage, the court needs to assess whether the petitioner is facing a genuine risk of false implication or potential harassment by the investigating agencies.

13. In ***Savitri Agarwal v. State of Maharashtra*** (2009) 8 SCC 325, the Constitution Bench of the Supreme Court highlighted that anticipatory bail under Section 438 should not be unduly restricted, as it serves to protect personal liberty under Article 21.

14. In the present case, it has been submitted before the court that a contract was awarded by NHIDCL to GDCL, which was subsequently subcontracted to the alleged company and the complainant company.

During the execution of the contract, certain differences arose regarding payment, leading to a dispute between the parties. The core allegation raised by the complainant company concerns the forgery of test reports. The forgery of these letters must be proven in accordance with the law during the trial. This is not a case where the petitioner's admitted signatures would be unavailable for comparison. In any event, if required, the petitioners would need to provide their admitted signatures to the investigating agency. The facts as presented predominantly, present a civil dispute in nature. The arbitration between the alleged company and GDCL is in progress, and the alleged company has also filed civil suits against the complainant company.

15. I consider that keeping in view the facts and circumstances of the case and without making any further deliberation on the facts of the case that this may prejudice the party. The petitioners are admitted to anticipatory bail on furnishing a personal bond of Rs. 1,00,000/- with one surety of the like amount subject to the satisfaction of Learned Trial Court subject to following conditions:

a) the petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;

b) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;

c) the petitioner shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;

d) In case of change of residential address and/or mobile number, the petitioner shall intimate the same to the Investigating Officer/Court concerned by way of an affidavit.

e) the petitioner shall also inform the investigation officer about any change in his/her address.

16. Hence, the present petition along with pending application is disposed of.

DINESH KUMAR SHARMA, J

AUGUST 7, 2024/AR/NA..