2024:DHC:5924

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

%   ***Reserved on: 1st August, 2024***
                                                    Pronounced on: 7th August 2024

+   **BAIL APPLN. 333/2024**

AMIT KATHURIA
S/o Sh. Tek Chand Kathuria
R/O A-210, Sector-43, Noida,
U.P.   .....Petitioner

Through: Mr. Rakesh Malhotra, Mr. Bharat Malhotra and Mr. Anish Dewan, Advocates.

versus

1. THE STATE of (NCT OF DELHI)   ....Respondent No.1

2. MRS. ANITA KATHURIA
W/o Sh. Suresh Kumar Kathuria
R/o A-57, Sect-36, Noida
U.P. Gautam Budh Nagar,
Uttar Pradesh,
India   .....Respondent No. 2

Through: Ms. Richa Dhawan, APP for the State with SI Ravi Yadav, PS Lajpat Nagar.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Petition under Section 438 read with Section 482 of the Code of Criminal Procedure *(hereinafter referred to as 'Cr.P.C, 1973')* has been filed on behalf of the petitioner, for grant of Anticipatory Bail in FIR

bearing No. 0098/2023 under Section 420/468/471/506/120-B of the Indian Penal Code (*hereinafter referred to 'IPC, 1908'*), registered at Police Station Lajpat Nagar.

2. The ***first Bail Application*** filed by the petitioner, before the learned Sessions Judge, Saket, has been declined *vide* Order dated 22.12.2023.

3. The *facts in brief,* are the complainant *Ms. Anita Kathuria*, Director of M/s A.K. Furniture Pvt. Ltd., filed a complaint stating that allegedly in or around 2015, a loan of Rs. 1.70 Crores, by mortgaging Property No. 088, Block-H, Sector-9, Noida *(hereinafter referred to as 'property in question'*), was taken by the petitioner from TATA Capital, without her knowledge or signatures. He was the sole beneficiary of the loan, but the property mortgaged was owned by their Company M/s A.K. Furniture Pvt. Ltd., in which she was a 33% shareholder. She has alleged that she never signed or consented for any loan and her consent was never taken for being a co-borrower of the loan as she is 33% shareholder in the company. It is alleged that her signature had also been forged by the petitioner and other co-accused in conspiracy with TATA Capital. She came to know about this loan when she was served with the summons of the case under SARFAESI Act filed by TATA Capital for taking away the possession of the property in question.

4. The ***petitioner has claimed that true facts are t***hat in the year 2013-14, Mr. Surendra Raheja and Mr. Amit Kathuria, had 50% each shareholding in the Company, M/s A.K. Furniture Pvt. Ltd. The property in question belonged to the Company and the loan was taken by the shareholders by mortgaging the property in question to third party, M/s Satkartar Webtech Pvt. Ltd., in 2013-2014. The entire loan was repaid in the

year 2014-2015 and thereafter, loan was taken from 'Capri Financial', in the name of Tungnath Educational Society and the shareholding was transferred in the following manner: -

Mr. Amit Kathuria transferred 33% of his share to Mr. Om Prakash Kathuria and 16.7% to Ms. Nidhi Raheja.

Mr. Surendra Raheja transferred his 33% share to the complainant, Ms. Anita Kathuria and remaining 16.7% to Ms. Nidhi Raheja.

5. At the time when the shareholding was transferred in the name of the complainant, the loan was prevailing from Capri Finance, for a sum of Rs.1.44 Crore at the rate of 16.5%.

6. In August 2015, the loan was taken from M/s Religare Finance Ltd., on the basis of a guarantee provided by Mr. Om Kathuria and M/s Modern Timber and Plywood, owned by Mr. Amit Kathuria and from the said loan amount Rs.1.41 Crores, was paid to M/s Capri Finance, as interest of 16.5% that was payable was high.

7. Thereafter, the loan was taken from TATA Capital @12.5% p.a. As per the Loan Agreement, the loan was taken by Mr. Amit Kathuria and the Agreement was signed by him as a Proprietor of M/s Modern Timber and Plywood. Mr. Om Prakash Kathuria, as Director of M/s A.K. Furniture Pvt. Ltd., Ms. Nidhi Raheja, authorized signatory of M/s Tunganath Educational Society, as a borrower/guarantor.

8. Mr. Amit Kathuria and Ms. Nidhi Raheja, who had a shareholding of 67%, mortgaged the property in question to M/s TATA Capital Housing Finance Ltd. The taking of the loan and execution of the documents was well within the knowledge of the complainant, which is evident from the creation of first charge on the subject property by Noida Authorities, which

was updated with the ROC, on the portal of Ministry of Corporate Affairs. Therefore, denying the knowledge of the loan taken, is baseless.

9. In the meanwhile, to pay the loan against the property in question, Mr. Om Prakash Kathuria sold 20% shares to Ms. Anita Kathuria in the year 2016, for a consideration of Rs.1,30,00,000/-, which were supposedly paid by Ms. Anita Kathuria to Mr. Om Prakash. On the basis of same, an OTS was executed with M/s TATA Capital Housing Finance Ltd., in the year 2018 and the loan was settled for a sum of Rs.1,60,00,000/- out of which Rs.1,20,00,000/- was paid by Mr. Amit Kathuria, leaving a balance of Rs.40,00,000/-.

10. It was an understanding between Mr. Om Prakash Kathuria and Ms. Anita Kathuria that against the payment of the shares purchased by Ms. Anita Kathuria from Mr. Om Prakash, for a sum of Rs.1,30,00,000/-, Ms. Anita Kathuria would make the payment of remaining Rs.40,00,000/- directly to M/s TATA Capital Housing Finance Ltd. Pertinently, a sum of Rs.24,00,000/- was given by the complainant, Ms. Anita Kathuria, to Mr. Om Prakash Kathuria, against the executed Transfer Deeds of 10% of shareholding in favour of Ms. Anita Kathuria.

11. However, Ms. Anita Kathuria, the complainant, thereafter, defaulted in making the balance amount of Rs.40,00,000/- to M/s TATA Capital Housing Finance Ltd., which resulted in a dispute between Ms. Anita Kathuria and Mr. Om Prakash as well as the petitioner, Mr. Amit Kathuria. Mr. Om Prakash lodged a complaint with the Police Station Noida, informing about the Transfer Deed of 10% of shareholding in M/s A.K. Furniture Pvt. Ltd. on 21.09.2021, in favour of the complainant. However, there is no proof of any payment of 33.3% made by her against the purchase

of said shareholding. She removed Mr. Om Prakash Kathuria as a Director of M/s A.K. Furniture Pvt. Ltd. in March 2022 even though he had not resigned. The complainant also submitted a Letter with the ADM, Noida on 10.12.2021, wherefrom it is evident that she was having knowledge as well as had consented for taking the loan by mortgaging the property in question, which belonged to M/s A.K. Furniture Pvt. Ltd., even though, she is now denying the letter.

12. The factum of this Letter is also evident from her statement given to Police officials of Noida, in response to the complaint of the petitioner. Further, transfer of Rs.24,00,000/- against the shares of Mr. Om Prakash for loan, also demonstrates her knowledge as well as consent. Further, issue of various Notices by TATA Capital Housing Finance Ltd. under the SARFAESI Act or otherwise served at her residential address as well as the property in question, again suggest her knowledge and consent to the loan transaction.

13. The dispute *per se* is of non-payment of share consideration price by a complainant to Mr. Om Prakash, which was in fact to be paid to M/s TATA Capital Housing Finance Ltd., against the balance loan amount of Rs. 40,00,000/-. It is asserted that the actual dispute is *inter se* the complainant and Mr. Om Prakash Kathuria, one of the Director of M/s A.K. Timber P Limited, though the FIR has been lodged by the complainant only to exert pressure upon Mr. Om Prakash Kathuria, to withdraw his complaint made by him against the complainant in regard to the disputes arising out of share transactions. The petitioner, Mr. Amit Kathuria has claimed that he has been falsely implicated and has been victimised in this case.

14. It is submitted that the learned ASJ has dismissed his Bail by observing that the accused had taken the loan for his personal use by mortgaging the share of the complainant, without her knowledge and information. The loans were taken by the accused *prima facie* by forging loan documents. He was the beneficiary of the loan amount, which was transferred to his bank account. The Investigating Officer sought custodial interrogation of the accused, in order to ascertain the role played by the accused and to unearth the complicity of the officials of TATA Capital Housing Finance Ltd. and the role of other people involved namely, Ms. Nidhi and Mr. Om Kathuria. It was also stated that Section 467 of IPC, would also be invoked as the documents were forged for the purpose of cheating. The investigations were claimed to be at nascent stage.

15. The petitioner has alleged that there is no record to show that he has committed an illegal act. This is a case of abuse of law and malice prosecution. The intention or knowledge required under 420 IPC and forgery, are not present.

16. The TATA Capital being one of the co-accused in the present FIR, have also filed a petition for quashing vide W.P.(Crl.) 603/2023, in this Court, in which *vide* Order dated 02.03.2023, the officials of TATA Capital have been given protection from coercive action, since the matter pertains to recovery of defaulted loan and the dispute appears to be of civil nature.

17. The petitioner has relied upon *Sidharth vs. State of U.P*. in Criminal Appeal No.838/2021, *Joginder Kumar vs. State of U.P. & Ors*., (1994) 4 SCC 260; *Satender Antil vs. CBI*, SLP (Crl.) No. 5191/2021, wherein it has been emphasized that the Investigating Officer should be slow to arrest the accused during investigations unless it is absolutely necessary. Similarly,

reliance has been placed on *Arnesh Kumar vs. State of Bihar*, (2014) 8 SCC 273, wherein it has been observed by the Apex Court that the provisions of Section 41 CrPC, which authorised the police officers to arrest a person without warrants, must be scrupulously enforced and any wrong committed by the Police Officers intentionally or unwittingly, would be reversed. The mechanical reproducing in the case diary of all or most of the reasons contained in Section 41 CrPC, for effecting arrest was discouraged and directed to be discontinued.

18. The petitioner has thus, submitted that he has no relation with the crime as he is not involved in any manner and has been falsely implicated in this case. He is, however, willing to abide by any conditions, which may be imposed while granting Anticipatory Bail.

19. ***Learned Public Prosecutor for the State***, has vehemently opposed the Anticipatory Bail on the ground that there is a serious fraud, which has been committed by the petitioner, who had forged the signatures of the complainant on various loan documents and had availed the benefit of Rs.1.70 Crores, by mortgaging the property of the Company, from which he had already resigned and has siphoned of Rs.1.70 Crores. His custodial interrogation is required to ascertain his role and also to establish the complicity of the other accused persons as well as to trace the money. It is thus, contended that the petitioner be not granted Anticipatory Bail.

20. **Learned counsel appearing on behalf of the complainant,** has equally vociferously submitted that the petitioner despite having resigned from the Company on 01.06.2015, subsequently took the loan from TATA Capital, by forging the signatures of the complainant, on the loan documents. He despite not being a Director in the Company, took the loan in

the name of the Company and the entire loan amount was pocketed by him. The complainant, who was a shareholder had no clue about this loan transaction, about which she came to know only when she was served with the SARFAESI Notice. It is further claimed that the alleged acts of forgery and fraud, did not end here because subsequently the petitioner has filed Applications and *vakalatnama* with the forged signatures of the complainant presenting the applications purportedly to have been filed by her, even though she neither moved any Application nor engaged any Advocate to appear in DRT. It is claimed that there is huge amount, which has been embezzled and serious offence of forgery and cheating have been committed. Considering the gravity and seriousness of the offence, the role of the petitioner in the entire transaction and siphoned off money which is yet to be recovered from him, the bail be not granted.

21. **Submissions heard.**

22. According to the petitioner, to which there is no serious denial initially Mr. Surendra Raheja and Ms. Amit Kathuria, were 50% share holding each in A.K. Furniture Pvt. Ltd. which was the owner of the property in question. The Company had been taking loan from one Agency and repaying it by taking the loan from the next Agency. It is further not in dispute that the petitioner transferred his 33.3% shares to Mr. Om Prakash Kathuria and 16.7% to Ms. Nidhi Raheja. Mr. Surendra Raheja, the other Director in the Company, transferred his 33% in favour of Ms. Anita Kathuria, the Complainant and 16.7% in favour of Ms. Nidhi Raheja. It is asserted that the Loan application was signed by the Directors and the said transaction also got reflected in the Income tax Returns filed in the corresponding financial years. There were disputes which arose between Mr.

Om Prakash and the complainant in regard to the sale of shares by Mr. Om Prakash to the complainant, which has become a bone of contention amongst them all and they have started levelling allegations against each other.

23. From the web of facts, as narrated above, it is evident that in fact, the disputes are essentially in regard to the sale purchase of the shareholding in M/s A.K. Furniture Ltd. These disputes had arisen in 2021 and have been going on since then. There are proceedings in SARFAESI and DRI which are well within the knowledge of all the parties, and they are defending or contesting the same in their respective capacities.

24. The custodial interrogation is sought to recover the alleged money siphoned off by the petitioner while it is the contention of the accused that in One Time Settlement with the Bank, Rs. 1,20,00,000/- was paid, while the balance amount of Rs. 40,00,000/- was to be paid by the complainant for which she has defaulted. It is essentially a long-drawn dispute which has shades of civil disputes; the prosecution has not been able to give any cogent reason for custodial interrogation.

25. In the entire circumstances as discussed above, the Application for Anticipatory Bail is allowed. It is directed that in the event of his arrest, the petitioner shall be released forthwith, with the following conditions: -

a) The petitioner shall furnish a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the Investigating Officer/Arresting Officer.

b) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

c) The applicant shall join the investigations as and when directed by the IO.

d) The applicant shall produce all the requisite information, documents in his power and possession, as and when directed by the Investigating Officer.

e) The petitioner will intimate about his mobile number and his residential address to the Investigating Officer and in case of change of mobile number or residential address, the same will be intimated to the Investigating Officer.

26. The Petition is disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 07, 2024/RS