2024:DHC:6767

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

Reserved on: 14th August, 2024

% ***Pronounced on:3rd September, 2024***

\+ **BAIL APPLN. 1167/2024 & CRL.M.(BAIL) 1097/2024**

BHAGWAN PRASAD BARANWAL
S/o Mathura Prasad Baranwal,
R/o H. No. 39, 2nd Floor, near Ram Mandir,
Mohammadpur, R.K. Puram, South West,
New Delhi-110066 ..... Petitioner

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. H.S. Bhullar, Ms. Sarabjeet Kaur, Ms. Gareema Agarwal, Mr. Aditya Raj, Mr. Aditya Singh & Mr. Fateh Singh Bhullar, Advocates.

versus

STATE (N.C.T.) DELHI
Through the SHO,
R.K. Puram, PS,
New Delhi ..... Respondent

Through: Ms. Richa Dhawan, APP for State with Insp. Virender Singh & Insp. Ranbir Sharma, PS R.K. Puram, Delhi.
Counsel for the complainant (appearance not given).

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

Signature Not Verified
Digitally Signed By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

1. The present Petition under Section 439 of the Code of Criminal Procedure, 1973 *(hereinafter referred to as* "Cr.P.C., 1973"*)* has been filed on behalf of the petitioner seeking regular bail in the FIR No. 0164/2023 registered under Sections 420/468/471/120B of the Indian Penal Code, 1860 *(hereinafter referred to as* "IPC, 1860"*)* at Police Station R.K. Puram, Delhi.

2. The petitioner, aged about 60 years, is a practising Chartered Accountant *(hereinafter referred to as* "CA"*)* for more than 30 years in this field. The petitioner has worked for various Companies to provide Management Consultancy to their clients.

3. The petitioner has further asserted that the complainant was introduced to him through Sourabh Kumar whose name has been removed from the Chargesheet. The complainant needed professional services for LC, BG, loan and other professional services. The petitioner is not an expert for BGs and thus, he introduced accused No. 2-Banwari Chaturvedi who had previously claimed that he was an expert in financial matters. The accused No. 2-Banwari Chaturvedi was known to the petitioner for a long time, however, this is the first instance when he reached out to him for these matters as the petitioner does not provide any such service of BGs and LCs.

4. The petitioner also submits that the complainant has availed number of services of his as a CA, including availing cheque-based unsecured loan even after knowing about the forged BGs. The fee has been paid by the complainant to the petitioner as his professional fee.

5. Pertinently, even after coming to know about the forged BGs, the complainant has continued to avail his services in the nature of availing of loan of Rs. 2,00,00,000/- with respect to the completing the P.O. awarded by the Central Electronics Limited *(hereinafter referred to as* "CEL"*)* only.

Signature Not Verified
DigitallySigned By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

6. The petitioner has detailed the various services for which he has charged the professional fee of Rs. 1,11,96,912/- minus Rs. 50,00,000/- which has been paid to the accused No. 2-Banwari Chaturvedi.

7. The petitioner has explained that two LCs of Rs. 6,50,00,000/- each had been procured by the petitioner for the complainant which were genuine and a false allegation has been made that the said LCs were also forged and with *mala fide* intention lodged a false complaint against the petitioner by the complainant on 13.07.2022 i.e., almost after a delay of more than 8 months of coming to know about the alleged forged BGs.

8. It is claimed that on the complaint of complainant dated 13.07.2022, an FIR No. 0164/2023 was registered in regard to the furnishing of forged Bank Guarantees *(hereinafter referred to as* "BGs"*)* and Letter of Credit *(hereinafter referred to as* "LC"*)* on 12.05.2023.

9. Thereafter, the petitioner was arrested on 19.09.2023 and he has been in the custody since then.

10. The Chargesheet in the present FIR has been filed on 15.12.2023.

11. The petitioner has asserted that there was no *prima facie* case made out against him and the *mala fide* of the complainant is writ large on the complaint itself. The *mala fide* of the complainant is evident from the fact that after enjoying all the amount, she has abused the law by framing the petitioner in this case. The complainant has been continuously harassing the petitioner and trying to extort money from him, for which he has filed a Criminal Complaint dated 01.09.2023 before Tamil Nadu Police bearing Reference No. EAB23162827. Thereafter, on 14.09.2023, an online complaint had been sent by him to Delhi Police, highlighting how the complainant his intending to extort money unlawfully by falsely implicating

Signature Not Verified
Digitally Signed By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

him who had merely given professional advice as a practising CA.

12. Furthermore, it is evident that the complainant has *mala fide* intent, not to pay back the loan amount which the petitioner helped in procuring for her business requirements because of which the complaint has proceeded with intentional abuse of process of law.

13. The petitioner has claimed that he was arrested from his office, without any Arrest Warrants. The petitioner has always co-operated in the investigations even prior to the registration of present FIR.

14. It is submitted that the Police had not seized any Computer or IT devices, except two mobile phones of the petitioner as the Police knew that the petitioner had no role to play in the forgery of the BGs. The two mobile phones that were seized, have no connection with any act of forgery of the BGs or any other alleged offence. Out of the two mobile phones, one was used by him for official purpose, while the other was only to remain in touch with his handicapped daughter and to be available when she required.

15. The Regular Bail Application filed on behalf of the petitioner before the learned Trial Court has been dismissed by the learned Additional Chief Metropolitan Magistrate *vide* Order dated 07.10.2023 by observing that the petitioner was instrumental in the offence of huge cheated amount which got transferred by the complainant to his account, upon the instructions of the petitioner.

16. Thereafter, another Bail Application has been filed on behalf of the petitioner before the learned Trial Court; however, the same has been dismissed by the learned District and Sessions Judge, Patiala House Court, New Delhi *vide* Order dated 16.11.2023.

17. It is submitted that the learned Additional Sessions Judge *vide* its

Signature Not Verified
DigitallySigned By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

Order dated 30.11.2023 granted bail to accused No. 3-Rizwan by observing that in the whole investigation, there was nothing on record to show that the other accused persons who got the money transferred in their account, stated anything about the accused No. 3-Rizwan and the fact that the investigation *qua* involvement of any bank official was pending and the amount was released by Canara Bank on those BGs after verification through SFMS Channel.

18. The petitioner has asserted that on the same grounds of parity, he is entitled to bail as there is nothing on record to show that the petitioner was in any manner involved in the forgery. The allegations made against accused No. 3-Rizwan Sheikh were much more serious, while the petitioner had merely introduced the complainant to the accused No. 2-Banwari Chaturvedi.

19. Furthermore, the complainant in her Statement under Section 161 of Cr.P.C., 1973 specified that the petitioner did not know that the BGs were forged until the last moment and that is why he tried to reassure that they were correct.

20. A similar Statement under Section 161 of Cr.P.C., 1973 was given by Nirav Kumar, who was a Director of the Company at I-Cube Technologies and Services Pvt. Ltd., stating that the petitioner kept on saying that the BGs were correct until the very end.

21. Similarly, ASI Desh Raj and Head Constable Manoj Kumar in their respective Statement under Section 161 of Cr.P.C., 1973 have stated that the BGs were forged by Abhimanyu Das in conjunction with Jayanta Das, Anant Kulkarni and Rizwan Sheikh. The petitioner has no connection with them. Moreover, ASI Desh Raj in his Statement under Section 161 of

Signature Not Verified
Digitally Signed By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

Cr.P.C., 1973 clearly specified that it was Rizwan Sheikh who led them to the actual culprits of the case.

22. It is submitted that the Disclosure Statement of the petitioner clearly mentions that he referred the complainant to accused No. 2-Banwari Chaturvedi to procure the BGs.

23. Further, the Disclosure Statements of the co-accused, Banwari Chaturvedi and Rizwan Sheikh clarified through their statements that the accused No. 2-Banwari Chaturvedi had engaged accused No. 3-Rizwan Sheikh for procuring the BGs and did not mention the name of the petitioner in their Disclosure Statements.

24. It is asserted that the learned Additional Sessions Judge while dismissing the Regular Bail Application of the petitioner *vide* Order dated 06.01.2024 observed that the petitioner had failed to satisfy the Court that such huge amount in his bank account was towards the professional fees. However, it was not considered that no *prima facie* case was made out against him. It is claimed that the learned Additional Sessions Judge erred in its observations because despite knowing that no recovery of cheated amount was effected from the petitioner, learned Additional Sessions Judge still dismissed his Regular Bail Application.

25. The petitioner then applied for a Regular Bail after the Chargesheet got filed before the learned Additional Chief Metropolitan Magistrate which was again dismissed *vide* Order dated 08.02.2024 by observing that there was no change of circumstance when, in fact, the Chargesheet had been filed.

26. Therefore, the petitioner has filed the present petition seeking regular bail on the grounds that he belongs to a well-respected family with deep

Signature Not Verified
DigitallySigned By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

roots in the society and that he is a professionally qualified CA, practising since 1994 with a substantial client base.

27. The petitioner has no prior criminal antecedents and has contributed by mentoring more than 40 students. He has been rendering professional services to more than 70 Firms/Companies. The petitioner has already suffered huge financial losses and reputational damage in his professional practice.

28. It is submitted that the petitioner is known for his integrity, dedication and impeccable track record. He had been engaged by the Complainant for utilising his professional services which were rendered in the most honest and transparent manner. However, to his utter shock, the complainant has made absolutely false allegations against him in order to extort money from him by involving him in a crime which was never committed by him.

29. Further ground has been pleaded that the petitioner, that he is about 60 years old, suffers from chronic diabetes and other medical conditions and is not maintaining good health of late. The petitioner had to be admitted in the hospital for serious medical conditions just prior to his arrest. The petitioner's health has deteriorated further while in jail. It is very difficult for the petitioner to ensure proper diet and medication. He has not been able to procure his medicines timely and an Application is required to be filed before the learned Metropolitan Magistrate for directions to the respondent to allow him to have access to his medicines as per the prescription.

30. Furthermore, the petitioner in his family has wife, son and a physically disabled daughter who is now aged 25 years and is suffering from permanent physical impairment. The petitioner's son, who is aged 29 years, is a CA, working with the multinational company in Gurugram, Haryana.

Signature Not Verified
Digitally Signed By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

31. It is submitted that the petitioner's daughter requires utmost care and assistance of both the parents for a considerable amount of time in a day. Therefore, the physical presence of the petitioner as a father is necessary and his absence has been further affecting her daughter's health.

32. The petitioner has claimed that he has no criminal antecedents and it has been falsely asserted that he was imprisoned in Deoghar, Jharkhand in G.R. No. 470/1983 arising out of P.S. Case No. 80/1983. It is an allegation made by the complainant simply to tarnish his image. The Investigating Officer without verifying the contents of the Complaint and considering the statement of the petitioner on the basis of the false information, has made it one of the grounds for registering the present FIR. There is a grave and serious error on the part of Investigating Officer in carrying out the investigation process.

33. It is also submitted that the Chief Judicial Magistrate convicted unknown accused persons in the case bearing G.R. No. 470/1983, Deoghar Police Station. The name of one of the unknown persons matches with that of the petitioner, however, the names of their father are different. He has never been involved in any criminal case.

34. The petitioner has submitted that he is not a *flight risk* and that his family is based in Mumbai, Maharashtra and he is having his professional practice from Mumbai, Maharashtra. Also, he is not required for further investigations, nor his custodial interrogation required. The petitioner has a permanent residence in Delhi and there are no chances of him absconding. Also, the petitioner undertakes to remain bound by any conditions that may be imposed at the time of grant of bail.

35. It is, therefore, submitted that the petitioner be granted regular bail in

Signature Not Verified
Digitally Signed By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

the present FIR.

36. **The Status Report** has been filed on behalf of the State, wherein it is submitted that the complainant is in the business of developing smart classes, supplying and erecting equipment for establishing smart classes in schools and colleges across India in furtherance of work contracts/orders issued by the Public Sector Undertakings of the Central Government and various State Governments. The complainant was awarded the Work Contract for CEL and she required money for complying with the conditions of LC and BGs. Thus, the complainant had talked to one Sourabh Kumar, who was known to her for the past 4-5 years, who introduced the complainant to his uncle i.e., the petitioner herein.

37. It is further submitted that the petitioner offered assistance and Consultancy Services to the complainant and against the Consultancy services, he first demanded 20% of the amount of BG as commission/fee which was unilaterally increased to 21%.He demanded 2% of the amount in upfront advance and remaining 19% after he got the BGs issued and delivered to CEL. Against the issue of third-party LC, the accused persons asked for 12% of the amount of credit as their commission/fee.

38. It is also submitted that after receiving huge money from the complainant in advance, the petitioner introduced the accused No. 2-Banwari Chaturvedi to the complainant who represented himself as a Proprietor of Shreeji Enterprises and claimed to be an expert in the field of providing Consultancy for trade finance services.

39. It is stated that the accused persons provided three BGs forged on documents, Letterheads of Union Bank of India, Kharghar Sector-7 Branch, Navi Mumbai, Maharashtra, which were then submitted to CEL as the

Signature Not Verified
Digitally Signed By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

beneficiary. The details of the Company and requisite documents were sent by the complainant from time to time *via* e-mail and WhatsApp and phone numbers of the alleged persons. Moreover, there was a WhatsApp group where the accused persons had asked the complainant to share formats of LC, BGs, extension of BGs etc. as were requisitioned by CEL.

40. The complainant claimed that she had been cheated of Rs. 2,93,46,500/- on the pretext of providing Consultancy Services for obtaining LC and BGs from a Nationalised bank, but instead the forged BGs from a Nationalised bank were submitted.

41. It is stated that a conspiracy was hatched by the petitioner along with his associates, to fabricate the forged documents i.e., Performance Bank Guarantee, Advance Bank Guarantee and LC by using counterfeit seal, stamp and signatures of officials of Union Bank of India, Kharghar Sector-7 Branch, Mumbai, Maharashtra.

42. It is further submitted that the CEL, the beneficiary, addressed a Letter dated 27.11.2021 to the Union Bank of India calling upon it to confirm on Stamp Paper the fact of extension of BGs bearing Nos. 911607BG0088251 dated 15.07.2021 and 911607BG0088251 dated 05.07.2021 for Rs. 3,80,00,000/- and Rs. 5,00,00,000/- respectively. When the CEL received a Letter dated 07.12.2021 from the Union Bank of India informing that the BGs had not been issued by it.

43. It is also submitted that the accused persons duped the complainant of Rs. 65,57,000/- for getting the LC for the same Project during the same period.

44. During the course of investigations, bank account details of the complainant and her Company had been obtained from the concerned banks.

Signature Not Verified
Digitally Signed By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

The flow of money from the complainant's Company Account has been ascertained. The laptop for forging BGs was seized from the possession of the co-accused Abhimanyu Das, who is absconding. The other two co-associates of Banwari Chaturvedi are on conditional bail granted by the learned Sessions Court and the other three associates have been declared Proclaimed Offender.

45. It is submitted that the case is pending at the stage of framing of Charge, which has been fixed for 25.09.2024.

46. The role of the petitioner has been explained stating that he had hatched the conspiracy with other accused persons, to cheat the complainant for forging valuable documents. Two mobile phones have been seized from the possession of the petitioner on 19.09.2023 which have various chats and communications with other accused persons in regard to the BGs/LC. The entire cheated money was transferred to various accounts of other co-conspirators on the directions of the petitioner.

47. The present bail petition has been opposed on the ground that the petitioner is the main conspirator. The two mobile phones were seized from the possession of the petitioner containing the chats done between him and the co-accused persons in regard to the BGs/LC.

48. The present bail petition has been further opposed on the ground that the money has been transferred by the complainant to various co-conspirators, on his directions. Moreover, a cheated amount of Rs. 1.11 crore was found in his bank account.

49. Moreover, the petitioner may influence the witnesses and also distort the evidence of the present case with the help of absconding accused persons, if he is granted bail. The petitioner may also be involved in such

Signature Not Verified
DigitallySigned By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

criminal activity again if he is released on bail.

50. **Submissions heard.**

51. On the complaint of complainant the present FIR has been registered. Briefly stated ,the Complainant was awarded the work contract under Tender issued by the CEL. In furtherance thereof, the complainant had to submit the LC and BGs along with advance Payment Guarantees for ensuring performance/execution of the work Contract. She had contacted and talked to her one known person i.e., Sourabh Kumar who was known to her for the past 4-5 years, for the purpose of arranging requisite documents. He introduced the complainant to his uncle i.e., the petitioner herein who represented himself as Proprietor of of Shreeji Enterprises and claimed to be an expert in the field of providing consultancy for trade finance services. The petitioner, on commission basis, got the BGs issued and delivered the same to CEL. The proof of delivery of BGs was known to the complainant.

52. After the issuance of LC, the petitioner introduced another accused i.e., Banwari Chaturvedi claiming himself to be an expert in trade and finance services, for the purpose of arranging the BGs. The commission amount was ascertained and the complainant transferred the amount to the account of accused Banwari Chaturvedi from time to time and an amount of Rs. Rs. 1,11,96,912/- in the bank account of the petitioner, which the petitioner claims to be towards his professional Services.

53. The BGs were got prepared by the co-accused persons and was submitted by the complainant to CEL which were accepted by it. Subsequently, it was revealed that BGs were forged which got revealed only when CEL wrote a Letter dated 27.11.2021 to the Union Bank of India calling upon it to confirm on stamp paper the fact of extension of BGs

Signature Not Verified
DigitallySigned By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

bearing Nos. 911607BG0088251 dated 15.07.2021 and 911607BG0088251 dated 05.07.2021 for Rs. 3,80,00,000/- and Rs. 5,00,00,000/- respectively. When the CEL received a Letter dated 07.12.2021 from the Union Bank of India informing that the BGs had not been issued by it.

54. Essentially, the allegations made against the petitioner are that he is CA who in turn, had arranged for the other co-accused persons for the purpose of obtaining the BGs which ultimately were found to have been forged.

55. The petitioner essentially is a CA by profession whose services had been availed by the complainant for arranging BGs. According to him, the money recovered from his account, was his professional fees. The petitioner, who did not have the domain expertise got the complainant introduced to the other two co-accused persons who were instrumental in preparing BGs. These co-accused have already been admitted to the bail by the learned Sessions Court.

56. Moreover, the investigations are complete and the Chargesheet has also been filed before the learned Trial Court. The petitioner is in judicial custody from 19.09.2023 and has his wife, son and a disabled daughter. The petitioner has no previous criminal antecedent. He is a professional and cannot be termed that there is a *Flight Risk.*

57. Considering the totality of the circumstances as narrated above, the petitioner is admitted to regular bail upon his furnishing a personal bond in the sum of Rs. 1,00,000/- and one surety of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions: -

a) Petitioner shall not leave Delhi/NCR without prior permission of the Court;

Signature Not Verified
Digitally Signed By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50

b) Petitioner shall appear before the Court as and when the matter is taken up for hearing;

c) Petitioner shall provide his mobile number and also the mobile number of their wife/surety to the IO concerned, both of which shall be kept in working condition at all times and they shall not change the mobile numbers without prior intimation to the Investigating Officer concerned;

d) Petitioner shall inform the IO and the Jail Superintendent the address where he shall be available in Delhi;

e) Petitioner shall remain 100 meters away from the complainant;

f) Petitioner shall not leave the country without prior permission of the learned Trial Court and shall surrender their passport, if any, before the learned Trial Court;

g) Petitioner shall not try to contact, threaten or influence any of the witnesses of this case; and

h) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

58. The Registry is directed to communicate this Order to the learned Trial Court and as well as to the concerned Jail Superintendent.

59. Accordingly, the present petition along with pending application is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 3, 2024
S.Sharma

Signature Not Verified
Digitally Signed By:SAHIL SHARMA
Signing Date:04.09.2024 16:24:50