2025:DHC:3612

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

Reserved on: 05.05.2025
Pronounced on: 13.05.2025

\+ BAIL APPLN. 271/2024

HITESH KUMAR .....Petitioner

Through: Mr. Pritish Sabharwal with Mr. Savjeet Kumar & Ms. Shweta Singh, Advs.

versus

STATE .....Respondent

Through: Mr. Tarang Srivastava, APP for State.
SI Pankaj Parashar, EOW.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. By way of the present petition under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) , the petitioner seeks Regular Bail in FIR No.144/2020 dated 28.09.2020 for the offences punishable under Sections 406,420,467,468,471,120B and 34 of the Indian Penal Code, 1860 (IPC) registered at Police Station Economic Offences Wing (EOW), South East, Delhi.

PROSECUTION'S CASE

2. The case finds its genesis in a complaint lodged by Mr. Jocku P. Joseph, Senior Manager of Federal Bank Ltd., Nehru Place Branch,

Delhi, alleging grave acts of deception and criminal misappropriation by the accused company M/s Successpath Marketing Pvt. Ltd., and its directors, Mr. Anurag Sharma and Mr. Hitesh Kumar (petitioner).

3. The complainant bank stated that the accused company, for its business purposes, had availed credit facilities to the tune of ₹2,50,00,000 from the Federal Bank on 11.03.2016. These facilities were secured by way of an Agreement of Cash Credit and Guarantee dated 14.03.2016, executed by its Directors Anurag Sharma and Hitesh Kumar, and were further supported by the mortgage of two immovable properties: (i) Plot No. 1/4732, Gali No. 5, Village Ziauddinpur, Balbir Nagar Extension, Shahdara, Delhi, and (ii) House No. 1/4991, 1st Floor, Village Sikdarpur, 60 Ft Road, Shahdara, Delhi.

4. Following defaults in repayment of EMIs, the account of the borrower company was classified as a Non-Performing Asset (NPA) on 29.03.2018. Consequently, proceedings under Sections 13(2) and 13(4) of the SARFAESI Act, 2002 were initiated by the bank. It was at this juncture that the bank, while attempting to take possession of the mortgaged properties, discovered that the very same properties had also been mortgaged with multiple other financial institutions such as Dena Bank (now Bank of Baroda), Indiabulls Housing Finance Ltd., and Dewan Housing Finance Ltd.

5. Moreover, the bank was met with resistance from one Mr. Dincur Bajaj, who claimed to have purchased both mortgaged properties through registered sale deeds dated 04.08.2017, i.e., after

the creation of the mortgage in favour of the Federal Bank. He claimed to be in possession of the original title documents and also initiated proceedings against the Federal Bank and other entities before the Delhi Recovery Tribunal-II, Delhi (S.A. Nos. 189/2018 and 247/2018).

6. The investigation revealed that while availing the ₹2,50,00,000 credit facility from the Federal Bank, the accused had submitted sale deeds purporting to show ownership over the aforementioned properties. However, further inquiry unearthed that the original sale deeds used for mortgaging the properties with Dena Bank and Indiabulls were different from the ones submitted to Federal Bank, implying duplication of title documents.

7. In furtherance of the investigation, certified records and loan documentation were obtained from multiple institutions including Federal Bank, Bank of Baroda (formerly Dena Bank), Indiabulls, and Kotak Mahindra Bank. A forensic audit of the relevant bank accounts and transactional data was initiated to trace the utilization and movement of the loan proceeds.

8. During the course of the investigation, the investigating agency seized the original sale deeds submitted to various institutions and subjected them to expert analysis. With the leave of the Court, specimen signatures, thumb and finger impressions of the accused and relevant witnesses were obtained under Section 311A of the Cr.P.C. and examined by the Fingerprint Bureau.

9. The Fingerprint Bureau's exhaustive report disclosed that:

- The sale deed dated 19.03.2015 used to mortgage property no. 1/4991 with Indiabulls was genuine.
- The same sale deed, when submitted to Federal Bank, was a forged and fabricated document, bearing thumb impressions fraudulently replicated by Hitesh Kumar.
- Likewise, the sale deed dated 22.06.2012 submitted to Federal Bank, purportedly executed by Usha Goel in favour of Anurag Sharma, was discovered to be forged. The thumb impressions of all signatories and witnesses on this document were found to have been fabricated, most of them being impersonated by Anurag Sharma himself.
- Contrarily, the version of this sale deed seized from Dena Bank was found to be genuine.
- Additionally, two further sets of forged sale deeds were used to convey the same properties to Mr. Dincur Bajaj, again employing fabricated thumb and finger impressions of ostensible vendors and witnesses.

10. The supplementary charge sheet filed under Section 173(8) of the Cr.P.C. confirmed that multiple chains of sale deeds were fabricated and employed simultaneously by the accused to secure financial advantages from various banks and to create third-party rights in favour of unsuspecting purchasers.

11. The statements of witnesses to the execution of various sale deeds and alleged attesting witnesses were recorded under Section 161 of the Cr.P.C. Most of them categorically denied execution or

attestation of the documents relied upon by the accused and identified only a single, original version of the relevant sale deed.

12. The fingerprint analysis further revealed that thumb impressions attributed to witnesses such as Mukesh Yadav and Anurag Aggarwal on the documents submitted to Federal Bank were in fact fabricated by petitioner, thereby confirming their impersonation. Similar impersonations were traced to Anurag Sharma in respect of documents involving property No. 1/4732.

13. From the foregoing, the investigating agency has found that the accused persons, acting in concert and with common intention, systematically fabricated documents, impersonated parties to the sale deeds, and fraudulently mortgaged the same set of properties with different financial institutions, thereby causing substantial wrongful loss to the complainant bank and other entities.

14. Based on these findings, the charge sheet has been filed against the accused Anurag Sharma, petitioner, and M/s Successpath Marketing Pvt. Ltd. under Sections 406, 420, 467, 468, 471, 120-B and 34 of the IPC, with investigation ongoing under Section 173(8) of the Cr.P.C. in respect of certain residual aspects, including money trail, possible internal collusion with bank officials, and obtaining handwriting expert's opinion.

SUBMISSIONS OF THE PARTIES

15. The learned counsel for the petitioner submitted that the petitioner, of his own volition, surrendered before the learned Trial Court on 28.07.2023 and has remained in judicial custody since then.

It is contended that the petitioner has extended full cooperation during the course of investigation and that his surrender was a voluntary step to demonstrate his *bona fides* and willingness to assist the investigating agency. The said act, it is submitted, negates any apprehension regarding the petitioner being a flight risk or evading the process of law.

16. It is further urged that the investigation *qua* the petitioner stands concluded and the Charge Sheet has already been filed before the competent court. It is contended that the case is primarily based on documentary evidence, all of which is already in the possession of the investigating agency. As such, there is no possibility of the petitioner tampering with evidence or influencing any witness.

17. The petitioner, it is submitted, is a Director in the accused company but is not alleged to be the principal architect of the impugned transactions. It is urged that the petitioner's array as an accused rests solely upon his official designation, without any substantive or incriminating material linking him directly to the acts of forgery or cheating. The learned counsel further submitted that the petitioner has clean antecedents, and has never been involved in any criminal offence.

18. While concluding his submissions, the learned counsel for the petitioner submitted that two FIR's have been registered have been registered for the same offence, which cannot be sustained in the eyes of the law.

19. Opposing the bail application, the learned APP for the State as also the learned counsel for the complainant submitted that the allegations against the petitioner are grave and serious, involving a well-orchestrated conspiracy to defraud multiple financial institutions by fabricating and utilizing forged documents.

20. It is submitted that the accused, in his capacity as Director of M/s Successpath Marketing Pvt. Ltd., fraudulently obtained a loan from India Bulls Housing Pvt. Ltd. by mortgaging property bearing No. 1/4991, Balbir Nagar, 60 Ft. Road, Shahdara, Delhi. Thereafter, the same property was used to obtain additional loans from Tata Finance Ltd. and Federal Bank Ltd. by once again pledging forged title documents.

21. The learned APP further submitted that the accused subsequently sold the same property to one Dincur Bajaj on the basis of forged documents. During the course of investigation, witnesses associated with the execution and attestation of the sale deed have categorically stated that their signatures were forged.

22. It is submitted that through the repeated use of forged property documents, the accused succeeded in cheating financial institutions to the tune of approximately ₹5 crores. The learned APP submitted that the accused is the authorized signatory of the bank account of the said company, in which the defrauded amounts were deposited and utilized, and a forensic audit of the said account is currently underway to trace the flow of funds and identify other beneficiaries.

23. This Court's attention was also drawn to the conduct of the accused post commission of the alleged offence. It is submitted that the accused remained absconding for a considerable period and could only be apprehended after he surrendered before the Court. During investigation, he failed to disclose any permanent address of his own, stating instead that he had no house and had remained in hiding as a vagabond. Even during interrogation, he only disclosed the address of a relative as a "care of" address.

24. The learned APP submitted that the accused had earlier been declared a proclaimed offender in FIR No. 43/2019 registered at P.S. Shahdara, on the complaint of the same purchaser, Sh. Dincur Bajaj. Given this background, it is urged that there exists a serious apprehension that the accused, if enlarged on bail, may again abscond and evade trial.

25. It is submitted that the accused is not merely a passive participant but a key operator in a fraudulent syndicate, he alongwith co-accused is involved in financial offences with respect to two properties, one of which he is an owner and the other is under the ownership of co-accused Anurag Sharma. He submits further, that present FIR was lodged by the complainant Bank and the subsequent FIR was lodged by the innocent purchaser, who was not even aware of the fraud committed upon him by the petitioner.

26. To conclude, the learned APP submitted that keeping in view the gravity of the offence, coupled with the accused's conduct and antecedents, disentitles him from any discretionary relief at this stage.

ANALYSIS AND FINDINGS

27. Having considered the material placed on record, the rival submissions addressed at the Bar, the nature and gravity of the allegations against the petitioner, this Court may begin by noting that The subject FIR has been registered on the basis allegations pertaining to the fraudulent mortgaging and repeated conveyance of immovable properties by the petitioner and his co-accused, to different financial institutions and a third-party private purchaser, using forged and fabricated sale deeds.

28. From a perusal of the record, it is apparent that the petitioner acquired property bearing no. 1/4991, 1st Floor, Village Sikdarpur, 60 Ft. Road, Shahdara, Delhi, from one Mr. Yatender Garg. The said property was thereafter mortgaged with Federal Bank Ltd. on 11.03.2016 to secure a credit facility of ₹2,50,00,000 in favour of the accused company, M/s Successpath Marketing Pvt. Ltd., of which the petitioner is one of the Directors. However, the sale deed relied upon by the petitioner while creating the mortgage has been found, during the course of investigation, to be a forged and fabricated document.

29. Subsequent events reveal that despite being aware that the said property already stood mortgaged with Federal Bank, the petitioner proceeded to convey the same to a private purchaser, one Mr. Dincur Bajaj, *vide* the sale deed dated 04.08.2017. This transaction too was undertaken on the strength of forged title documents, which have been subjected to forensic analysis and found to contain impersonated thumb impressions and forged signatures.

30. Notably, the said property was earlier mortgaged with Dena Bank on 22.06.2012 and Indiabulls Housing Finance Ltd. on 19.03.2015. Additionally, the property was mortgaged to Dewan Housing Finance Ltd. on 05.06.2017. The second property in question, i.e., 1/4732, Gali No. 5, Balbir Nagar Extension, was similarly mortgaged to Dena Bank on 15.03.2014, Indiabulls on 20.04.2015, Federal Bank on 14.03.2016, and to DHFL on 18.07.2017. Thus, a pattern emerges of the same properties being repeatedly pledged, despite prior encumbrances, in favour of different lenders on the basis of fabricated documentation.

31. The offence in question came to light when the account of the borrower company was classified as a NPA on 29.03.2018, and proceedings were initiated by Federal Bank under Sections 13(2) and 13(4) of the SARFAESI Act. It was at this stage, while attempting to take possession of the mortgaged property, that objections were raised by the said third-party purchaser, Mr. Dincur Bajaj. The Federal Bank, upon discovering the fraudulent nature of the title deed, filed the subject FIR. Mr. Bajaj also lodged an FIR when he came to know that the property he had purchased, believing it to be free from encumbrance, had already been mortgaged on multiple occasions.

32. The investigation has revealed that the documents submitted to Federal Bank, Indiabulls, DHFL, and Dena Bank were not only inconsistent but were in some instances, found to have been forged.

33. It has further been brought to the Court's attention that the petitioner did not join investigation when initially summoned and had

to be declared a Proclaimed Offender in a separate FIR (No. 43/2019) arising out of a complaint filed by the same private purchaser, Mr. Dincur Bajaj. The petitioner did not furnish any permanent address and remained untraceable for a considerable period, before surrendering before the learned Trial Court on 28.07.2023. Although it is the petitioner's case that he surrendered voluntarily and has remained in custody since then, his previous conduct of abscondence cannot be lightly brushed aside.

34. Considering the seriousness of the offence, the conduct of the petitioner during the course of investigation, the nature of the material collected, and the stage of proceedings, this Court does not find it appropriate to exercise its discretion in favour of the petitioner at this stage.

35. It is made clear that no observations made above shall tantamount to be an expression on the merits of the Petitioner's case and they have been made for the purpose of consideration of Bail alone.

36. Needless to state, if there is a material change in the circumstances surrounding the case, the petitioner is at liberty to move a successive bail application.

37. Accordingly, the present application is dismissed.

SHALINDER KAUR, J

MAY 13, 2025/frk

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