
(2009) 02 DEL CK 0060

In the Delhi High Court

Case No : Bail Application 2016 of 2008

Ajay Verma

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Citation : (2009) 4 ILR Delhi 91

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Jayant Bhushan and Sudhir Makkar, Ajay Verma and Gaurav Bhattacharya, for the Appellant; M.N. Dudeja and Ashok Bhasin Sunil Fernandes and Rajat Jariwal, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—The petitioner seeks bail after a period of five months incarceration in a case registered against him initially under Sections 406/420/120 IPC for which he was subsequently charge-sheeted under Sections 406/420/465/468/471 IPC.

2. The background in which the case was registered against the petitioner is that the complainant M/s. Fabritex Exports Pvt. Ltd. had exported goods through this petitioner, who was operating as a buying agent and a middleman for bringing the manufacturers in contact with foreign importers. Sometime in the beginning of June, 2006, the petitioner contacted the complainant Company, which was facing a lean season and induced the complainant into entering into an export order for the export of cushion covers to Australia. Various meetings were held between the petitioner and the complainant at its office premises in which the petitioner impressed the complainant that not only was he in the business of acting as a buying agent, but he was also acting as a middleman facilitating export from India of several products, including garments to destinations all over the world and that he had a long standing and excellent relationship not only with foreign importers but also with banks and that, therefore, because of his

involvement in any deal, payments would not be a problem and the deal would go through smoothly. Based on these representations, the complainant was induced into entering into a Memorandum of Understanding (MOU), which was drawn up at Delhi on or about 10th June, 2006 and the said Memorandum of Understanding was drafted by the petitioner. As per the aforesaid MOU, the goods were to be exported by the complainant to a company by the name of NEGO C8, who were stated to be interested in importing cushion covers worth 1.5 million dollars. The petitioner also undertook to source the fabric on behalf of the complainant Company for which payment was to be made by the complainant in favour of the supplier before the opening of the Letter of Credit itself. It was also stipulated in the MOU that before the opening of the L/C, the complainant Company will get 4,600 mts of base fabric of cushion covers worth Rs. 10,70,788/- and 3,100 mts worth Rs. 9,25,970/- for border fabric of cushion covers and accessories. As a counter guarantee, cheque No. 482478 dated 30th June, 2006 amounting to Rs. 32,10,000/- of Punjab National Bank was issued in favour of M/s. Fabritex Exports Pvt. Ltd. (the complainant) with the understanding that if the L/C was not arranged from the buyer till 25th June, 2006, then the complainant would be at liberty to encash the said cheque and will give the manufactured items out of 1,250 sets of cushion covers to the petitioner. If and when the L/C was opened in favour of the complainant, the guarantee cheque of M/s. Sirdanwal Overseas, the sole proprietary concern of the petitioner, would be returned back by the complainant to the petitioner. Total shipment time in the L/C was stipulated as 55 days with a validity of 70 days. The petitioner priced the fabric at Rs. 200/- for each cushion cover, whereas the inherent price of the fabric of each cushion cover was Rs. 40/-, on the misrepresentation that this was the so-called scarcity value of the fabric and that unless the fabric was available, the complainant could not fulfil the order. As per the MOU, the petitioner issued a post-dated cheque as a guarantee till the opening of the L/C and upon the opening of the L/C on 28th June, 2006, the said cheque was duly returned to the petitioner.

3. It is the case of the complainant Company that they came to know that the fabric was to be supplied by Yogesh Trading Company and their apprehensions and fears were partly allayed by the said knowledge, as Yogesh Trading Company is a very well known name in the fabric trade enjoying excellent market reputation and goodwill, but subsequently they discovered that the Yogesh Trading Company to which they had paid by way of demand drafts for more than five times the market value of the fabric was an imposter and not the reputed Yogesh Trading Company which they were induced to believe it was. The Yogesh Trading Company, which supplied fabric, held out its premises to be at Nawab Sahib Katra, Delhi - 110 006 with its head office at New Cloth Market, Ahmedabad-2. When contacted, the genuine Yogesh Trading Company situate at 9/9 Main Road, Kailash Nagar, Gandhi Nagar, Delhi made it clear that they were not the fabric suppliers and that they were unaware that some other persons were using their name in this manner. Subsequently, on enquiry from the

addresses mentioned on the bills of Yogesh Trading Company at Nawab Sahib Katra, Delhi and New Cloth Market, Ahmedabad-2, the said addresses were found to be bogus addresses. After tracking the movement of the demand drafts issued to the Yogesh Trading Company and conducting an internet search for Yogesh Trading Company, the said Company was found to be located at 9/3422, Gali No. 8, Dharampura, Gandhi Nagar, New Delhi. The said address was also found to be a bogus one as B.V. Enterprises was found at that address.

4. It is also alleged that the petitioner got the L/C dated 28th June, 2006 opened by one Diversified Impex Corporation, 445 Fifth Avenue Suite # 30H New York Ny10016 USA issued by the First International Merchant Bank Ltd., Malta, Sliema for US \$ 3,88,800/- which was subsequently enhanced by way of amendment to US \$ 13,50,000/- on 14th July, 2006. By 30th June, 2006, the complainant Company had gone into production and the finished product was made available to the accused for inspection on 21st August, 2006. The complainant alleges that no defect was found in the goods at the time of inspection, but subsequently, after three days, on 24th August, 2006, some defects were pointed out. On the complainant Company taking up the matter strongly that the defects subsequently pointed out were not such as were contrary to the original product specification, however, the petitioner got the L/C amended with the delivery time extended from 20th August, 2006 to 5th September, 2006 and the L/C expiry time extended from 5th September, 2006 to 15th September, 2006. After that, on one pretext or the other, the petitioner kept delaying the inspection and finally inspected the goods, which were lying ready for re-inspection, between 28th August, 2006 and 1st September, 2006. On 15th September, 2006, again the goods were deliberately failed in inspection for no rhyme or reason. By this time, the L/C had already expired and the petitioner made it clear that he would not get the L/C extended and that the complainant would have to ship the goods on a credit period term of 120 days. The complainant Company thereupon approached the Export Credit Guarantee Corporation (ECGC) to obtain insurance cover for 120 days and was informed by ECGC that NEGO C8 had a bad history and hence they were not willing to give an insurance cover on NEGO C8. The matter was brought to the notice of the petitioner, who, in order to allay the suspicion of the complainant, informed the complainant that the Common Wealth Bank had agreed to handle collection bills on behalf of NEGO C8 and to endorse any shipment documents consigned to the said Bank by the suppliers of NEGO C8. Thereafter, the consignment was inspected and found "ok" between 30th September, 2006 and 27th November, 2006 and eventually the goods were shipped on 9th December, 2006. Confirmation was received by the bankers of the complainant Company regarding the due date of payment as 14.05.2007 in the sum of US \$ 13,24,560/-, but payment was never received. On verification, it was found by the complainant that the buyer had not taken possession of the goods and that the goods were still lying in the docks. Subsequently, the complainant Company received notice of voluntary liquidation of NEGO C8 dated 11.07.2007 calling a meeting of creditors of NEGO C8. It was also learnt by the

complainant that NEGO C8 had applied for de-registration as early as 5th April, 2007. It was also learnt by the complainant that a similar modus operandi of cheating had been adopted by the petitioner with various other similarly situated garment manufacturers and exporters, such as, SM Apparels, 45A Main Road, Velacheri, Chennai 600 032; DKA Exports, 9, Cathedral Road, Chennai - 600 086; R.K. Industries, Race Course Road, Guindy, Chennai - 600 032; Lakshmi Graha Apparels, SF No. 106/1, Arasur to Avinash NH 47 LPT Bus Stop Arsur, Coimbatore - 641 047 and Myco Pranave Creations, VSM Villa, 59 Appachi Nagar Main Road, Tirupur - 641 607.

5. Mr. Jayant Bhushan, the learned senior counsel for the petitioner strenuously urged that it was completely un-understandable as to why no complaint was made by M/s. Fabritex Exports Pvt. Ltd. till December, 2007 when the Letter of Credit itself had expired in September, 2006, and urged that the complainant had lodged a false complaint after one year and three months only with a view to covering up its own defaults and follies. The complainant could not comply with the time stipulation set out in the Letter of Credit though the deadline was extended by amending the Letter of Credit. The complainant admittedly had received an advance payment of US \$ 1,50,000/- (approximately Rs. 67 lakhs). The buyer had to make payment to the complainant upon timely delivery of the goods. The complainant could not meet the deadlines for delivery and the present false complaint against the petitioner was an attempt to arm twist the petitioner to make unlawful gains.

6. Mr. Bhushan, the learned senior counsel for the petitioner also submitted that though the present dispute arises out of a commercial transaction, it is with the ulterior motive of making good their loss suffered on account of their own tardiness that the complainant has set the criminal law machinery in motion. No culpability can be attached in the instant case as the petitioner was only facilitating the business transaction and taken at its very best it is a case of contractual breach. The fabric was supplied to the complainant on an agreed rate fixed in the MOU and till the FIR was registered, there was not even a whisper about the high value of the fabric. In any event, it is not disputed that the fabric was completely supplied by the fabric vendor to the complainant and it is, therefore, immaterial that the vendor was a bogus Company.

7. The learned senior counsel further contended that the L/C had expired in September, 2006. Admittedly, the complainant had not shipped the goods. Subsequently, they got in touch with the Australian buyer and shipped the goods on D/A basis. The buyer subsequently declared bankruptcy and the shipping agency sold the goods to meet the warehousing charges once they did not make the payment. When they came to know that other complainants had filed complaints, they got the idea of extorting money and filed a verbatim complaint.

8. Finally, it was urged that the petitioner has been in custody for more than five months after facing custodial interrogation from 1st September, 2008 till 6th September, 2008, during which period the petitioner fully cooperated with the

investigation. Charge-sheet has since been filed and there is no reason to deny bail to the petitioner. The petitioner's only son is suffering from thalasimia, a life threatening disease in which twice in a month blood transfusion has to be given. If the petitioner is denied bail, his family will be seriously affected as there is no other male member in his family to look after his son. There is also no likelihood of the petitioner absconding as the petitioner did not misuse the interim bail granted by the Hon''ble Supreme Court of India vide order dated 04.04.2008 and surrendered before the trial court in compliance with the order dated 26th August, 2008 passed by the Hon''ble Supreme Court in SLP (Crl.) 1791/2008. Reliance is sought to be placed upon the judgments of the Hon''ble Supreme Court in the cases of State of Rajasthan, Jaipur Vs. Balchand alias Baliay, and Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh, to urge that the basic rule is to grant bail except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences, or intimidating witnesses and the like.

9. Mr. M.N. Dudeja, the learned Counsel for the State, on the other hand, has urged that this is not a fit case for grant of bail keeping in view the guidelines laid down by the Supreme Court in State Vs. Amarmani Tripathi, wherein the Hon''ble Supreme Court has emphasized that the nature of accusations, the nature of evidence in support of the accusations, the larger interest of society and the propensity of the accused are to be examined before grant of bail. He urged that applying the aforesaid tests to the present case, the accusations against the petitioner are serious in nature as the petitioner is stated to have cheated the complainant of the sum of Rs. 4 crores. The nature of evidence, he urged, also pointed to the guilt of the petitioner, in that, the petitioner had not only supplied fabric to the complainant Company at highly inflated rates, but also under the misrepresentation that the same were being purchased from the reputed M/s. Yogesh Trading Company. It was only later on that the complainant realised that the Yogesh Trading Company known to the fabric trade had not supplied the fabric and the Yogesh Trading Company whose address was mentioned on the invoices was a fictitious one. Reliance was placed by Mr. Dudeja in this regard upon the statements of the proprietors of the original Yogesh Trading Company, recorded in the course of investigation, to the effect that the invoices were not of their Company and as a matter of fact they had been issuing computerised invoices since the year 2006. He further submitted that the profile of the foreign buyer NEGO C8, which was an Australian Company run by a husband and wife, who were Indians, was also under scrutiny with the INTERPOL. Thus, looking at the cumulative effect of all the accusations and the nature of the evidence on record, it was not a fit case for grant of bail.

10. Particular emphasis was laid by the learned Counsel for the State on the fact that grant of bail to the petitioner would militate against the larger interest of Society keeping in view the propensity of the petitioner, who was committing such kind of offences on a regular basis with a calculated mind, as was clear

from the fact that the modus operandi adopted by the petitioner to cheat innocent garment manufacturers was the same in all the cases in which the petitioner was involved. It was further highlighted that while the petitioner was granted interim bail in criminal cases registered against him in the year 2002, being FIR No. 98/02, Police Station Chittaranjan Park and FIR No. 241/02, Police Station Connaught Place both under Sections 420/406/120B IPC, the petitioner indulged in committing similar offences in the instant case as well as in three other cases registered against him. The particulars of the involvement of the petitioner in similar cases was given as follows:

S. No. FIR/POLICE STATION COMPLAINANT SO CALLED SO CALLED AMOUNT ACCUSED FOREIGN BUYER FABRIC SUPPLIER OF FRAUD

1. FIR No. 98/02 dated Joginder Kumar Unnamed M/s. Bajrang Rs. 80.50 Ajay Verma 06.04.02. PS Seth (M/s. EM Enterprises lakhs & Ors. Chittranjan Park, ESS Enterprises) Under Section 420/406/120B IPC

2. FIR No. 241/02 Lokesh Chopra Unnamed M/s. Bajrang Rs.15.40 Ajay Verma dated 20.04.02 (M/s. Lokesh Enterprises Lakhs & Ors. PS Connaught Place, Garments Pvt. u/s Ltd.) 420/406/120B IPC

3. FIR No. 268/2005 M/s. High Pl. Ref to N.A. N.A. Ajay Verma PS Tilak Nagar, Ami Exports Charge Sheet Delhi Under Section 467/471/ 477/420/406 IPC

4. FIR No. 773/07 Sudhir Sekri NEGOC8 M/s. Yogesh Rs.4.06 Ajay Verma dated 20.12.07 (M/s. Fabritex Trading Co. Crores PS Hauz Khas, Exports Pvt. u/s Ltd.) 420/406/120B IPC

5. FIR No. 139/08 M/S. DKA NEGOC8 M/s. Yogesh Rs.2.75 Ajay Verma dated 19.08.08 Exports Trading Co. Crores & Ors. PS Hauz Khas, (Chennai) Under Section 420/406/120B IPC

6. Complaint M/s. Lakshmi NEGOC8 M/s. Yogesh Rs. 4 Ajay Verma No. 2370/08 Graha Apparels Trading Co. Crores dated 21.04.08 Ltd. (Coimbatore)

11. It was submitted that the petitioner had already suffered a conviction in the last case while the remaining cases were still pending against him. It was also submitted, relying upon the judgment of the Hon"ble Supreme Court in Lalmuni Devi Vs. State of Bihar and Others, , that it is settled law that merely because a civil claim is maintainable it does not mean that the criminal complaint cannot be maintained. Finally, as regards the long incarceration of the petitioner in judicial custody, it was submitted that the fact that the petitioner was in jail for a long time though is germane in granting bail for offences of this nature, long detention in jail could not be the sole criteria for arriving at the conclusion that the grant of bail was merited.

12. Having heard the learned Counsel for the parties and examined the record, I have no hesitation in stating that though ordinarily, keeping in view the cumulative facts and circumstances of the case, I would have been inclined to

admit the petitioner to bail albeit on stringent terms and conditions, in the present case I am constrained to reject the prayer for bail for the reason that the petitioner appears to have a propensity for committing such like offences as in the instant case. The cases enumerated hereinabove in which the petitioner is involved are of like nature and clearly indicate his modus operandi. I find substance in the contention of the learned Counsel for the State that had the petitioner not been granted interim bail in FIR No. 98/02 and FIR No. 241/02, the present case bearing FIR No. 773/07, as well as two more cases of like nature, being FIR No. 268/05 and FIR No. 139/08 as well as Complaint No. 2370/08 dated 21st April, 2008 would not have been registered against the petitioner. In a sense, therefore, the petitioner abused the liberty of bail granted to him in the aforesaid cases and it cannot be lost sight of that once bail is granted to the petitioner, he may again trap unwary manufacturers into losing large sums of money. It is, therefore, considered expedient to reject the bail plea of the petitioner.

13. The present application is accordingly dismissed placing it on record that any observations made in the present case are solely for the purpose of consideration of the bail plea and will have no bearing on the merits of the case upon the trial of the petitioner.