(2016) 08 DEL CK 0132

In the Delhi High Court

Case No : Bail Appln. 1358 of 2016

Anil Kumar Bhadoria APPELLANT

Vs

State (NCT of Delhi) RESPONDENT

Date of Decision : 26-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 120B, 419, 420

Citation : (2016) 8 ADDelhi 37 : (2016) 3 JCC 2124

Hon'ble Judges : Mr. Vipin Sanghi, J.

Bench : Single Bench

Advocate : Mr. Manoj Ohri, Senior Advocate along with Mr. D.S. Kohli, Advocate, for the Petitioner; Ms. Anita Abraham, APP along with SI Ramkesh Meena, Parliament Street, for the State; Mr. Gurmeher Singh Sistani, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The applicant has preferred the present bail application u/s 438 Cr.P.C. apprehending arrest in case FIR No.229/2015 registered at PS Parliament Street u/s 419/420/120B IPC. A similar bail application moved by the applicant before the learned ASJ, Patiala House Courts, New Delhi has been dismissed on 13.06.2016.

2. The aforesaid case arises on the complaint of the complainant Ms. Indu Shukla. The case of the complainant is that in the month of October 2012, Anil Kumar Bhadoria ? the applicant/accused known to the family of the complainant, came to her along with one K.K. Sharma ? also co-accused. The said persons induced and allured the complainant that the wife of K.K. Sharma, namely, Tanisha Rani Sharma ? also an accused, is the daughter of a Minister of Uttarakhand and belongs to a royal family having good links with various ministers. The complainant was allured that if she arranges Rs. 1 crore, she would be made a Director in the Food Corporation of India (FCI). She was allured

that when she becomes a Director, she would get a salary of about Rs. 1 lakh, apart from a vehicle with red beacon and an accommodation to live in Delhi.

3. The complainant alleged that in the month of November 2012, a meeting was fixed at Janpath Hotel, Connaught Place, New Delhi, where, apart from Tanisha Rani Sharma, Harishanker Mishra and the applicant Anil Kumar Bhadoria again allured the complainant as aforesaid.

4. She further alleged that on false inducement and allurement, on 22.11.2012, all the accused persons, including the applicant, called the complainant at 9, Ferozshah Road, New Delhi for meeting with a Minister of the Government of India. She claimed that she went with her driver Dharamveer at the said place of meeting. The accused persons, including the applicant, were present and they introduced one H.R. Sharma - claimed to be the Private Secretary of the Minister, to the complainant. He also repeatedly gave assurances along with the accused persons to the complainant, as aforesaid. The complainant claimed that she gave Rs. 10 Lakhs in cash in the hands of Tanisha Rani Sharma and the applicant Anil Kumar Bhadoria at 9, Ferozshah Road, New Delhi along with her Resume (Bio data) and 9 passport size photographs.

5. The complainant further stated that on 06.01.2013, the accused Tanisha Rani Sharma, Harishanker Mishra and the applicant Anil Kumar Bhadoria called her up and allured that the Minister is ready to appoint her as Director of FCI, so she should immediately make the next payment of Rs. 20 Lakhs. She claimed that as per the said false promise, she immediately took an amount of Rs. 20 Lakhs from her brother Ashok Shukla on 11.01.2013, and handed over the same to the accused Tanisha Rani Sharma, Harishanker Mishra and the applicant Anil Kumar Bhadoria.

6. Again on 16.01.2013, the complainant withdrew an amount of Rs. 10 Lakhs from the account of M/s VJS Pharmaceutical Pvt. Ltd., and also borrowed Rs. 11,93,000/- from M/s Sadhna, and the amount of Rs. 21.93 Lakhs arranged by her in cash was given to Tanisha Rani Sharma at 9, Ferozshah Road, New Delhi. At that time, the applicant Anil Kumar Bhadoria and H.R. Sharma were also there, and they also assured that this money will be paid to the Minister for the complainant''s appointment as Director in FCI. She claimed that all the accused persons often visited her office and kept assuring her that the appointment letter would be given at the earliest.

7. She further stated that she called Tanisha Rani Sharma, Harishanker Mishra and the applicant Anil Kumar Bhadoria on several occasions and asked them about the progress of her appointment as Director in FCI but the said persons knowingly and deliberately made false promises that due to some Government policy, the appointment of Director of FCI is delayed.

8. In April 2013, the applicant Anil Kumar Bhadoria again called the complainant and told her to arrange Rs. 10 Lakhs immediately as the same was to be paid to the Gazette Officer to publish her appointment in the Government Gazette. The

applicant instructed the complainant to handover the said amount to the accused Tanisha Rani Sharma and Harishanker Mishra. She claimed that she could not pay the money immediately and the same was paid by her in instalments from April to June 2013 in cash to accused Tanisha Rani Sharma and Harishanker Mishra at 9, Ferozshah Road, New Delhi.

9. The complainant continuously kept asking regarding her appointment as Director, FCI but she was kept in the dark by the accused persons. She was told that it was not possible to get her appointed to the post of FCI Director, so they had spoken to the Minister to appoint her as a Director in Steel Ministry. She complained that she demanded her money back, and that the accused Tanisha Rani Sharma, Harishanker Mishra and the applicant Anil Kumar Bhadoria stated that they would help the complainant get a tender for Rs. 1 Crore. Under their assurance and guidance, the applicant floated a company and got the same registered under the name and style as Vimla Impex Pvt. Ltd. to get empanelment with Kendriya Bhandar, as she was given an assurance that in the beginning, she would get an initial tender for Rs. 1 Crore, and the second order would be for an amount of Rs. 5 Crores or more. She even sent the relevant documents to complete the registration formalities with Kendriya Bhandar through e-mail.

10. The complainant further stated that since the refund of her money was delayed, she spoke to the applicant when he came to Delhi from Lucknow and stayed at Delhi. A meeting was arranged by her with Anil Kumar Bhadoria the applicant, and Tanisha Rani Sharma, where the complainant recorded the conversation between them.

11. She further stated that in the month of October and November 2013, Tanisha Rani Sharma and the applicant Anil Kumar Bhadoria called her regarding the progress of the complainant''s appointment as Director in Steel Ministry. They sought more time for the complainant''s appointment. They also assured that they have managed all the things from the Minister, and again demanded Rs. 10 Lakhs. The complainant stated that on the false promise of Anil Kumar Bhadoria ? as he was well known to the complainant''s family, she gave Rs. 9 Lakhs in cash to the accused/ applicant Anil Kumar Bhadoria and Tanisha Rani Sharma in two instalments in the month of October and November 2013. The said amount was borrowed from M/s Sadhna Enterprises. She provided the details of withdrawal of the amount from the bank account. She also stated that on account of delay, she demanded her money back from the accused Tanisha Rani Sharma and the applicant Anil Kumar Bhadoria. She also sent text messages and called the accused several times, but the accused persons did not respond.

12. She states that when the applicant Anil Kumar Bhadoria visited Delhi, he stayed at her expense in hotels. In a span of two years, whenever the applicant visited Delhi, all his expenses such as hotel stay, boarding, lodging and food were borne by the complainant. She even purported to provide the hotel bills,

register entries and cash memos in this respect.

13. The complainant alleged that K.K. Sharma and Anil Kumar Bhadoria in connivance with each other, knowingly and deliberately introduced the complainant to Tanisha Rani Sharma for her appointment as a Director in FCI or Steel Ministry, and under that inducement and allurement, they cheated her and had taken Rs. 91 Lakhs approximately. Most of the amount was taken at 9, Ferozshah Road, New Delhi, where H.R. Sharma was introduced as Private Secretary of Central Minister and the false promise, as aforesaid, was made to the complainant.

14. The submission of Mr. Ohri, learned counsel for the petitioner is that the petitioner is an employee working as Project Engineer with U.P. Cooperative Construction Federation Ltd., a Government undertaking. He is an old acquaintance of the complainant, who approached him for guidance for UPSC examination. The petitioner recommended K.K. Sharma, the co-accused to her, as he used to undertake coaching for candidates appearing in the UPSC examination.

15. Mr. Ohri submits that, in fact, the complainant was in financial crunch and requested for financial assistance to the extent of Rs. 2 Lakhs to buy the requisite study materials, besides meeting her ancillary expenses. The applicant transferred the said amount in the name of the complainant''s firm M/s V.J.S. Pharmaceuticals Pvt. Ltd. The complainant appeared in the examination in May 2012. However, she failed to clear the examination. The petitioner approached the complainant for refund of his money, but to no avail. To keep the petitioner in good humour, complainant presented one mobile handset being Blackberry to the petitioner.

16. Mr. Ohri submits that on account of her acquaintance with K.K. Sharma, the complainant met his wife Mrs. Tanisha Rani Sharma. The applicant had absolutely no concern with the transaction which took place between the complainant and Tanisha Rani Sharma and the other accused. He submits that no part of the money, which was allegedly paid by the complainant, was received by him.

17. Mr. Ohri submits that the petitioner joined the investigation, and he even provided a copy of his complaint against the complainant herein with regard to non-refund of his Rs. 2 Lakhs. The petitioner realised that the statements made by the complainant in her complaint were at variance with the contents of the FIR, as registered.

18. The petitioner, apprehending victimisation and false implication, visited the office of the Commissioner of Police, Delhi on 12.01.2016. He again visited the office of the Commissioner of Police on 22.02.2016 and 30.05.2016. On the petitioner''s complaint, the Commissioner of Police directed a vigilance inquiry with regard to the registration of the First Information Report containing allegations at variance with those made in the complaint given by the complainant.

19. Mr. Ohri submits that a perusal of the FIR would show that the primary allegations are against the co-accused Tanisha Rani Sharma, as she is the person who allegedly received the monies as well as several articles claimed to have been purchased by the complainant and delivered at her residence.

20. Mr. Ohri has laid much stress on the audio/video recording claimed to have been made by the complainant in relation to the conversation held between the complainant, the petitioner and the co-accused Tanisha Rani Sharma. Mr. Ohri submits that the petitioner was not aware that such a recording was being made, however, the complainant was. From the said recording, it is clear that even the complainant did not accuse the petitioner Anil Kumar Bhadoria of receiving the money and that from the said recording, it is clear that the petitioner was trying to persuade Tanisha Rani Sharma to return the money to the complainant, implying thereby, that the money had been received by her and not by the petitioner. Even Tanisha Rani Sharma did not deny the fact that she had received the money and she did not claim during the said conversation that the petitioner had received any money and that he should be returning the same to the complainant. In the said conversation, the petitioner asked the co-accused Tanisha Rani Sharma as to how she would arrange the money in the next 3-4 days. In the conversation, Tanisha Rani Sharma states that presently she does not have the money and that the complainant should remain calm for the next 10, 12, 15 days. The petitioner again confronted Tanisha Rani Sharma that during his conversation with her on the previous day, Tanisha Rani Sharma had stated that in the next 3 to 4 days she would make some arrangement, to which Tanisha Rani Sharma responded that for 15 days the whole affair be forgotten. The petitioner then again confronted Tanisha Rani Sharma that supposing they were to forget about the matter for 15 days, then what? He asked whether the money would be returned on the 16th day.

21. Mr. Ohri submits that from the conversation, it is evident that the petitioner was not the recipient of the money and that the same was received by Tanisha Rani Sharma. Mr. Ohri submits that no useful purpose would be served in taking the petitioner into custody since the petitioner has already joined the investigation and is willing to cooperate in other manner. He further submits that in terms of the order dated 13.07.2016, without prejudice to his rights and contentions, the petitioner has already deposited Rs. 10 Lakhs in this Court and the Blackberry mobile phone instrument with the I.O.

22. On the other hand, the learned APP has sought to place reliance on the status reports. The status report discloses that during the investigation, notices were issued to the petitioner several times but he did not join investigation. Despite being a Government employee, he evaded to join the investigation whenever he was approached at his house and office. On 27.04.2016 and 26.05.2016, NBWs were issued against him by the learned MM, Patiala House Courts, New Delhi. Raids to apprehend him were futile, as he fled. Process under Section 82 Cr.P.C. has been obtained from the concerned Court on 31.05.2016.

23. It is also pointed out that the petitioner was a link between the complainant on the one hand, and K.K. Sharma and his wife Tanisha Rani Sharma, on the other hand. Though the petitioner claimed that he had no role to play in the entire episode, as a matter of fact, he was always present whenever the meetings took place between the complainant, Tanisha Rani Sharma and others at the residence of a Central Minister at 9, Ferozshah Road, New Delhi when the monies were handed over.

24. It is also pointed out that after the passing of the order dated 13.07.2016, the petitioner joined the investigation on 15.07.2016 and 19.07.2016 to 21.07.2016. His attitude was not cooperative and he did not give satisfactory reply to the questions. Even though the petitioner was asked as to who is the mantri in the conversation, he denied by stating that he did not know anything. In the recorded conversation he also, inter alia, stated that "morally dabaw to hai hi jab hune paisa dena hai".

25. The further status report discloses that the complainant had handed over hotel bills pertaining to the petitioner''s stay at Delhi, which have been accepted by the petitioner on 19.07.2016. He also admitted receipt of SMS and Whats-app messages from the complainant demanding the money. It is pointed out that the petitioner, however, took an opposite stand while responding to the complainant''s complaint dated 22.05.2015. In his reply dated 30.07.2015 sent to the SHO, he stated that he never met the complainant Indu Shukla with respect to any transaction, and he never visited hotel Janpath with her, and he also did not go to 9, Ferozshah Road, New Delhi with the complainant. His replies given during investigation on 15.07.2016 are, however, to the contrary. On that day, he admitted visiting 9, Ferozshah Road, New Delhi and also having visited Janpath hotel with complainant in November 2012.

26. The application is also opposed by learned counsel for the complainant, who has submitted that it was the petitioner who introduced Tanisha Rani Sharma to the complainant as the daughter of a Minister in Uttarakhand belonging to a royal family. It was the petitioner who misled the complainant that Tanisha Rani Sharma had contacts with a Central Minister, and she could get the complainant appointed as a Director in FCI, if Rs. 1 Crore is arranged and paid. Thus, it is the petitioner, who got the complainant entrapped. Moreover, the Petitioner on the basis of the false hopes and representations as aforesaid, made the complainant pay for his lodging, and boarding while in Delhi and also buy a mobile phone for him.

27. Vide judgment dated 03.08.2016, the anticipatory bail application of the co-accused Tanisha Rani Sharma, has been dismissed by this Court. The petitioner has sought to distinguish the role of the petitioner from that of Tanisha Rani Sharma by claiming that the money has been paid by the complainant to Tanisha Rani Sharma and not to the petitioner. He has claimed that he is not part of the conspiracy. No doubt, from the audio/ video conversation relied upon by the petitioner, it appears that the prime accused in the case is Tanisha Rani Sharma,

however, the role of the petitioner in the whole affair cannot be minimalised. Though the petitioner claims that he had introduced the complainant only to Sh. K.K. Sharma for the purpose of UPSC examination coaching, and the complainant got acquainted to Tanisha Rani Sharma through K.K. Sharma - her husband, one cannot lose sight of the fact that the petitioner was invariably present when the complainant allegedly held meetings with and made payment to Tanisha Rani Sharma for getting her appointed as a Director in FCI. Pertinently, the complainant chased not only Tanisha Rani Sharma, but even the petitioner for return of her money. The stand of the petitioner was not that he had no concern with the said transaction. He did not express any surprise about the said transaction. Apparently, the transaction took place because of him and in his presence. It is also the petitioner''s case that he was an old acquaintance of the complainant''s family. Thus, the allegation of the complainant that she was misled and entrapped into paying large amounts of money to Tanisha Rani Sharma on the basis of the representations held out by the petitioner qua the background, potentiality and resourcefulness of Tanisha Rani Sharma cannot be brushed aside.

28. I am conscious of the law laid down by the Supreme Court in Gurbaksh Singh Sibbia v. State of Punjab, 1989 SCC (Cri) 465, and Siddharam Satlingappa Mhetre v. State of Maharashtra and Others, (2011) 1 SCC 694, with regard to the approach that the Court should adopt while considering a petition seeking protection against arrest in anticipation. It is well-settled that the grant or refusal of anticipatory bail should depend on facts and circumstances of each case, and the jurisdiction to grant or refuse relief under Section 438 Cr.P.C. has be to be exercised wisely and by careful use of the discretion by the Judge. Arrest by the police during investigation of a case, no doubt, results in harassment and humiliation to the accused. However, if the grant of relief under Section 438 Cr.P.C. to the accused mars in a free, fair and full investigation of the case, the same may not be granted by the Court.

29. The nature and gravity of accusations against the petitioner are serious. In the present case, the versions adopted by the petitioner with regard to his acquaintance with the complainant and with regard to his presence when the transaction in question was taking place, are contradictory. Moreover, considering the nature of the alleged involvement of the petitioner, it may be necessary to confront the petitioner and the other co-accused, particularly, Tanisha Rani Sharma simultaneously.

30. It is a well recognised fact that custodial interrogation is more effective than that undertaken when the accused has an order of protection against arrest in his pocket. In State of A.P. v. Bimal Krishna Kundu and Another, (1997) 8 SCC 104, the Supreme Court had, inter alia, observed:

12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when

they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order."

(emphasis supplied)

31. In the aforesaid background, I am not inclined to grant anticipatory bail to the petitioner. The petition is, accordingly, dismissed. It is made clear that the observations made herein above have been made only for the purpose of consideration of the present application and shall in no way reflect upon the merits of the case/defence of any of the parties to the case.