(2021) 11 DEL CK 0129

In the Delhi High Court

Case No : Bail Application No. 3504 Of 2021

Bijender Kumar APPELLANT

Vs

State RESPONDENT

Date of Decision : 22-11-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 409, 420, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 41(a)

Citation : (2021) 11 DEL CK 0129

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Judgement

Anu Malhotra, J

1. The applicant, vide the present application seeks the grant of anticipatory bail in relation to FIR No. 139/2021 Police Station EOW, Delhi, registered under Sections 409/420/467/468/471/120B of the Indian Penal Code, 1860, submitting to the effect that he has been falsely implicated in the instant case and that he is ready to join the investigation as and when directed by the Court and that though the allegations in the instant case relate to an embezzlement of approximately Rs.14 crores of institutional funds of Dr. Rajendra Prasad Eye Centre of AIIMS, the applicant is only a Junior Administrative Assistant (Lower Division Clerk) and could not have in any manner embezzled any such massive amount. The applicant has further submitted that pursuant to the directions dated 22.9.2021 in the present bail application, the applicant has joined the investigation and has cooperated in the same.

2. The FIR in the instant case has been registered on the complaint of Dr. Anoop Kumar Daga, Medical Superintendent (Acting) of the Dr. Rajendra Prasad Centre, AIIMS, on 6.9.2021 in relation to alleged commission of the offence of embezzlement and cheating and forgery and breach of trust by the personnel of the AIIMS during the period 1.8.2019 to 6.9.2021 submitting to the effect that: there had been an embezzlement of government funds detected in the

procurement of store items at the Dr. Rajendra Prasad Centre, AIIMS, New Delhi; that at the said centre, gross irregularities were noticed and as per the FIR the estimated embezzlement was more than Rs.5 crores as per a rough estimate.

3. Along with the FIR was annexed the inquiry report of the internal committee of the Dr. Rajendra Prasad Centre, AIIMS, with the Minutes of the Investigation Committee constituted by the Chief of RPC held on 16.08.2021 regarding irregularities observed in General, Linen & Stationery Store (RPC) wherein it was stated that the Assistant Store Officer (ASO) of the RPC had informed the internal inquiry committee that he had noticed some entries in the E-Hospital software for purchase of different linen items in the General Store in a very high quantity, which did not seem to be as per the consumption pattern in Dr. Rajendra Prasad Centre, AIIMS (Stock receipt from 1.4.2021 to 14.8.2021) and as per the transaction report downloaded from inventory e-hospital, different linen items like O.T.Gowns, bed sheets, draw sheets, woolen Blankets, D.L.Wrapper, window curtain etc. were issued to the Establishment Section, Room No. 485, Unit 2 Office etc. where generally these items are not issued and that the supply order mentioned in the transaction report qua the items purchased were not ordered in the supply order register maintained in the store section of the RPC for allotting the supply order numbers. The Assistant Store Officer of the RPC had further informed that he had not signed the purchase proformas uploaded in the Inventory Management Software maintained at the Dr. Rajendra Prasad Centre, AIIMS, for the items to be procured through R/C.

4. The Inquiry Committee members are indicated to have perused the documents produced by the Assistant Store Officer of the RPC and observed that a very high number of linen articles had been issued to the areas, i.e., Establishment Section, Room No.485, Unit 2 Office and that the Committee called the Administrative Officer Mrs. Saroj Pant (Establishment) to verify the indent No. 195 dated 18.6.2021 pertaining to the Establishment Section and she denied issuance of any such indent number from the Establishment Section.

5. As per the inquiry, Sh. Naveen Kumar Personal Assistant posted at Room No. 485 & Unit 2 is also stated to have been called to ascertain the genuineness of indent No. 513, 797,862, 1058, 1078, 288 and he too denied raising those indents. The applicant herein posted as a Junior Administrative Assistant posted in the General, Linen & Stationery store was called to produce the original purchase order files but the applicant could not produce the required documents. Sh. Bharat Kumar (the contractual staff and attendant to the applicant) was telephonically called to produce the original purchase orders but he did not appear before the Committee. Sh. Khazan Singh Bisht was called from the Accounts Department to show bills , documents based on which the payments were released to only one firm namely M/s Sneh Enterprises and was also told to make a detailed list of orders but he did not submit the detailed list and while verifying the billing documents, the Assistant Store Officer of RPC & Medical Superintendent (RPC) informed the Committee that the signatures and the date

inscribed under signatures in the documents available in the Accounts Section seem to be forged and as a consequence thereof the FIR was registered under Sections 409/420/467/468/471/120B of the Indian Penal Code, 1860.

6. Vide the status report dated 27.9.2021 submitted under signatures of the ACP EOW it has been submitted that during the investigation of the case Sh. Rampal, Assistant Store Officer, Dr. Rajendra Prasad Centre, AIIMS, had been examined who stated that he had observed many such transactions (purchase and issuance) in the report generated through the E-hospital Software, which were neither as per consumption pattern nor were in his knowledge and these transactions though were supposed to be forwarded from him and the entries were not found in the Supply Order Register and all purchasing documents were found initiated by the applicant.

7. As per the status report Dr. Anoop Daga (M.S.), Dr. Shikha Gupta (Officer Incharge General Store), Rakesh Sharma (Senior Store Officer) who were in the chain for purchasing goods and sending files to the accounts section were also examined and all these persons denied their signatures on the billing files, and the supply order numbers and the firm's name were not matching with the Supply Order Register of the General Store. As per the status report, the original files of the supply order of all the disputed transactions were also not provided by the petitioner which were in his custody and the Store Officer was served a notice for providing the original supply order files and demand/indent slips against the alleged files and as per the reply received the original supply order files and original indent slips against the alleged billing files were not found in the General Store.

8. The status report further disclosed that the allegedly disputed payments files i.e., the supply order and the firm name did not match with the supply order register of the General Store, which were collected from the accounts section and it was revealed that the embezzled amount reached approximately Rs.14 Crores and the entries of the alleged stock against which false payments were released was not found entered in the supply order register and daily receipt register.

9. As per the status report dated 27.9.2021 during investigation seven out of 56 original supply order files having forged signatures of the staff in chain were recovered from the petitioner's office and remaining 49 files were yet to be recovered from the applicant. As per the status report 4 blank acknowledgment slips having forged signatures of the Assistant Store Officer-Rampal Singh who used to forward bills from the Store to the Accounts Section had also been recovered from the applicant's office.

10. Inter alia, it is submitted through the status report dated 27.9.2021 that in compliance of the directions of this Court the applicant joined the investigation on 23.9.2021 and during interrogation, the applicant admitted his signatures on the documents of the alleged supply order file i.e. inspection notes, which is prepared by the Inspection Committee after physical delivery of goods, such

signatures thereon were disputed by other staff and that the applicant did not state as to who had forged the signatures of the Store Officer, Store Incharge and Medical Superintendent and on a query about receiving of goods against the false supply orders shown to him the applicant replied that he could not remember it and on asking about the original supply order files and indent slips, it was told that all those were in the General Store while as per the reply received from the Store Officer, AIIMS, the same were not in the general store and were in possession of the applicant.

11. Inter alia, it was submitted by the State through the status report that during interrogation, the petitioner was totally non-cooperative and did not inform about the original supply order files, indent slips against the forged billing files nor about the persons who had forged the signatures of the Store Officers and MS despite the fact that all these documents were initiated by the applicant though the applicant admitted his signatures on the documents.

12. During the course of proceedings in the instant application on 7.10.2021 in view of the reiterated submission on behalf of the applicant that the applicant had been made scapegoat in the matter and he was only an LDC and the averments in para 7 of the status report dated 27.9.2021 that all the purchasing documents were found initiated by the applicant, it having been submitted on behalf of the applicant that the applicant was not so posted that he could initiate any file and if any file had been initiated, it was only on directions, the State was directed to produce the copies of the documents which are the purchasing documents stated to be initiated by the applicant.

13. On 21.10.2021 on behalf of the State in terms of order dated 7.10.2021, the copies of the purchase documents stated to have been initiated by the petitioner had been produced and the same were directed to be placed on record along with the copies of the interrogation proceedings, with the copies being supplied to the applicant pursuant to which the State submitted a status report dated 23.10.2021 stating that the copy of the purchase proforma orders and the inspection notes initiated by the applicant stated to have been annexed and it has been submitted that as per the Accounts Wing of the Dr. Rajendra Prasad Centre, AIIMS, they were given 56 original files regarding embezzled amount of Rs.13,85,53,684/- wherein the supply orders were allotted by the petitioner to M/s Sneh Enterprises even after the same were previously allotted to other firms from the office of Store Officer and that the Supply Order Register was not in custody of the applicant and he initially prepared the forged purchase proformas as established from his interrogation and from the statements of other staff whose forged signatures were made on the purchase proformas and thereafter the forged supply order was prepared and the number was given by the applicant randomly in air irrespective of the fact that the same had already been given to some other firms and the inspection notes were also initiated by the applicant by forging signatures of other staff.

14. It has been submitted through the status report further that the alleged

beneficiary firm owner was also interrogated as per which it was the applicant who gave them supply orders and even the receiving of the goods was also given by the applicant on the delivery challans. The copy of the interrogation report was also submitted by the State. Inter alia it was submitted through the status report that Shyam Lal, the office boy of this firm, who was engaged in giving and taking of supply order/invoices/delivery challans from RPC Store, AIIMS, also confirmed in his statement that it was the applicant who gave the supply orders and receiving on the delivery challans to the firm. Inter alia, the State submitted that as per the interrogation report of the applicant which is in his handwriting, the applicant admits vide answer to Question No.19 that all the files shown to him vide Supply Order No. 76-82 were signed by the Store Officer, M.S. and the Chief of RPC, AIIMS after his signatures and that as per the reply of the Store Officer, the alleged original indent slips and original supply order files were in possession of the applicant.

15. Inter alia, it has been stated through the status report that Bharat, the contractual staff and attendant to the applicant in General Store, had also stated in his statement that it was Bijender, i.e., the applicant who prepared the purchase proformas, got approval from Committees and also prepared the supply orders. It has thus been submitted on behalf of the State that apart from the signatures of the applicant on the purchasing proformas and the inspection notes as the initiator, the statements of witnesses and the absence of corresponding entry of goods/orders in other registers Supply Order Registers, Inspection Note registers, Daily receipt register) of RPC Store AIIMS, all indicated that it was the applicant who had hatched and executed the whole conspiracy with the help of other accomplices. It has thus been submitted on behalf of the State that from the statements of the witnesses Rakesh Sharma and Rampal Singh (Store Officer), Dr. Anoop Daga (Medical Superintendent), Dr.Sakshi Gupta (Store Incharge), Shyam Lal and Bharat contractual staff and attendant to the applicant and interrogation from alleged firm owner Sneh Rani Gupta, it has been well established that the petitioner is not only the originator of the crime but also the main kingpin of the case who knows the complete conspiracy of the offence. The State thus submitted that the custodial interrogation of the applicant was required for the reasons:

? to know about the accomplices involved in the embezzlement and forgery.

? to know the end use of money and disposal of money with connivance of alleged firm.

? to recover the original Supply order files of all 49 forged supply orders.

? to recover original indent files against which the goods were shown supplied from the store without the receipt of the same and

? to unearth whole conspiracy as embezzlement amount involved in the case is Rs 13.85 Crore.

16. On behalf of the applicant learned counsel for the applicant submitted that though there does appear to be a scam in the instant case, the applicant has no role to play in it as he being an LDC could not have initiated any such fraudulent activity with it having been submitted on behalf of the applicant that the signatures at page 5 of the status report dated 23.10.2021, i.e. the purchase proforma of the Store Keeper which are attributed to the applicant and those on the inspection note in relation thereto were different, to which it was submitted on behalf of the State that the applicant has in his interrogation admitted his signatures thereon.

17. During the course of the submissions that were made on behalf of the State on 12.11.2021, reliance was also sought to be placed on the Register of the year 2021-2022 of the AIIMS and also on the interrogation conducted of Sneh Rani Gupta who is stated to have since been arrested on 29.10.2021 and the State was directed to place the same on record which has been submitted vide the report dated 12.11.2021 which annexed the copy of the supply order for the year 2021 -2022 with entries from 76-82 as per which supply order registers none of the orders 76-82 were made in favour of M/s Sneh Enterprises whereas the petitioner gave supply orders numbers on fictitious orders allegedly and sent the same to the firm of M/s Sneh Enterprises. The disclosure statement of Sneh Rani Gupta dated 29.10.2021 has also been submitted by the State.

18. It has been submitted on behalf of the applicant that he has already joined the investigation and that the Investigating Agency has deliberately involved Section 467 of the Indian Penal Code, 1860, to take the case out of the ambit of Section 41(a) of the Cr.P.C., 1973 as the other offences punishable under Sections 420/468/471/120B of the Indian Penal Code, 1860 are punishable only to the extent upto 7 years and reliance was thus sought to be placed on behalf of the applicant on the verdict of this Court in Rajesh Dua V. State, Bail Appln 778/2017 a verdict dated 9.8.2017 to submit that in the absence of documents, the mere allegation of an offence punishable under Section 467 of the Indian Penal Code, 1860 is not sufficient to take the case out of the ambit of Section 41(a) of the Cr.P.C., 1973, where other offences involved are punishable with imprisonment of less than seven years.

19. Qua the reliance that has been placed on behalf of the petitioner on the verdict in Rajesh Dua (supra), it is essential to observe that in the instant case the FIR was registered at the time of registration itself inter alia under Section 409 of the Indian Penal Code, 1860 apart from Sections 420/467/468/471/120B of the Indian Penal Code, 1860. The offence punishable under Section 409 of the Indian Penal Code, 1860 relates to an alleged criminal breach of trust by a person in dominion over property in his capacity as a public servant or in the way of his business as a banker, banker, merchant, factor, broker, attorney or agent, which offence is punishable for imprisonment for life or with imprisonment of either description for a term which may extend to ten years, with also a liability of a fine that may be imposed. Thus, the reliance placed on behalf of the

applicant on the said verdict is wholly misplaced.

20. Without any observations on the merits or demerits of the trial that may take place in the instant case, the factum that the investigation conducted by the Investigating Agency indicates to the effect that the purchase proforma orders and inspection notes in relation to supplies made in the absence of corresponding entry of goods/orders in the Supply Orders Registers, Inspection Notes Registers and Daily Receipt Registers of the RPC Store, AIIMS, are those allegedly of the applicant as per the interrogation conducted of the applicant as also the statement made by Bharat, the contractual staff and attendant to the applicant at the General Store as also the statement made by the alleged beneficiary firm owner Ms. Sneh Rani Gupta as per her interrogation conducted on 30.9.2021 prior to her arrest that the supplies orders were given by Bijender, i.e., the applicant, who also used to put the receiving stamp on the delivery challans which was done through Shyam Lal, the employee of her firm coupled with the statement of Shyam Lal, the office boy of that firm engaged in giving and taking of supply orders of the linen woolens from the RPC Store, AIIMS who in his statement also stated that it was the applicant who gave supply orders, receipt on the delivery challans to the firm coupled with the information given by the Assistant Store Officer of the Dr. Rajendra Prasad Centre, AIIMS, Ophthalmic Sciences, that the original supply order files whereby orders were placed from the General & Linen Store in favour of M/s Sneh Enterprises from 1.12.2020 to 31.8.2021 were maintained by Bijender Kumar, i.e., the applicant who was working in the General Store and it was in his knowledge and possession, coupled with the factum that 7 out of the 56 original supplies orders files with forged signatures of staff in the chain were allegedly recovered from the applicant's office with four blank acknowledgement slips with forged signatures of the Assistant Store Officer Rampal Singh who used to forward bills from the store to the Accounts Section having also been allegedly recovered from the applicant's office, taking into account the magnitude of the embezzlement of public funds to the tune of Rs.13,85,53,684/- allegedly at the initiation of the applicant coupled with the submission made by the State that the custodial interrogation of the applicant is required for the recovery of the original supply orders files of all 49 forged supply orders that still remain to be recovered as well as to recover the original Indent Files against which the goods were shown and supplied from the Store without receipt of the same apart from also to unearth the whole conspiracy in relation to embezzled amount and to ascertain the accomplices of the applicant involved in the embezzlement forgery, the Court does not find it a fit case for the grant of anticipatory bail to the applicant and thus the application filed by the applicant Bail Appln. No. 3504/2021 seeking the grant of anticipatory bail is dismissed and the interim protection granted vide order dated 22.9.2021 as extended vide orders dated 29.9.2021, 7.10.2021, 12.10.2021, 21.10.2021, 26.10.2021 and 12.11.2021 is thus withdrawn.

