

(2021) 12 DEL CK 0004

In the Delhi High Court

Case No : Bail Application No. 2173 Of 2020

Bindu Jha

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-12-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438, 482
Indian Penal Code, 1860 — Section 120B, 406, 420

Citation : (2021) 12 DEL CK 0004

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Mohit Mathur, Vipul Wadhwa, Rajni Gupta, Chirag Mudgal

Final Decision : Disposed Of

Judgement

Rajnish Bhatnagar, J

1. The present bail application has been filed by the petitioner under Section 438 read with Section 482 Cr.P.C. seeking anticipatory bail in case FIR No. 141/2018 under Sections 420/406/120-B IPC registered at P.S. E.O.W.

2. In brief, the facts of the case are that a complaint was lodged by one Laxman Dass Bhardwaj, aged around 90 years against the petitioner and her husband alleging that he practices Vaidacharya and runs a manufacturing unit of some Ayurvedic medicines. It is alleged by the complainant that he used to propagate his advice about benefit of Ayurveda on various TV channels. He came in contact with co-accused Sunil Kumar Jha, who introduced himself as channel head of Katyani Devotional TV channel and complainant started telecasting his programs on the said channel in the year 2010-2011.

3. It is alleged by the complainant that said Sunil Kumar Jha introduced the petitioner as his wife by saying that she is an expert having all technical knowledge to run TV channel, broadcasting etc. The husband/co-accused of the petitioner also apprised the complainant that he had worked in Doordarshan and

he alongwith the petitioner is the Director of a company namely M/s Viceroy Engineering Pvt. Ltd. It is alleged that after gaining the trust of the complainant, both the accused persons i.e. the present petitioner and her husband gave a proposal about establishing his own TV channel by purchasing majority shares of M/s Express Broadcasting Pvt. Ltd., which runs a channel namely "Zonet Zawlbuk" (earlier ENTV) and assured the complainant to create all the required infrastructure for establishment of TV channel.

4. It is alleged that accused persons trapped the complainant in the year 2016-17 and the complainant thereafter transferred 2.21 Crores to the bank account of M/s Viceroy Engineering (proprietorship firm of the present petitioner) and also gave cash of Rs. 25 Lacs. It is alleged that on 08.02.2017, the accused persons started promotion/advertisement of complainant's programme on a channel namely "Sanskriti TV" on which accused persons used content/programme of complainant and sometimes it was live and sometimes recorded tapes were played.

5. It is further alleged that the telecast of the programme of the complainant was stopped on 06.09.2017. It is alleged that the complainant was neither given payment for telecasting his programme nor he was returned the amount given for the purchase of channel. It is alleged that the complainant at the instance of the accused persons as an authorized distributor executed "Distribution Agreement" dated 03.03.2017 on behalf of M/s Express Broadcasting Pvt. Ltd. with Dish TV India Ltd.

6. It is alleged that on the advice of the accused persons, the complainant through bank transferred Rs. 19,83,375/- to AV Edit Solution, Rs. 27,01,542/- to Planet Cast Media Services Ltd. and Rs. 1,50,50,000/- to Dish TV India Ltd. but lateron the complainant came to know that the accused persons have purchased the channel Sanskriti TV through shareholding of M/s Express Broadcasting Pvt. Ltd. in the name of Bindu Jha (petitioner herein) and not in the name of complainant as promised. It is alleged that the complainant has paid a total sum of Rs. 4,18,34,917/- through bank transfers to accused persons namely the petitioner and her co-accused Sunil Kumar Jha and the above mentioned companies for establishing a TV channel in the name of the complainant and in addition to the above amount, it is alleged by the complainant that he had paid a sum of Rs. 1.50 Crore in cash additionally for development of studio in the premises of the accused persons situated at Chander Nagar, Ghaziabad.

7. It is alleged that complainant came to know that accused Sunil Kumar Jha made his wife Bindu Jha (petitioner herein) Director of the said channel and complainant was not appointed as Director-cum-owner of the said channel as per the promise. It is alleged that the staff of Sanskriti TV in their statement confirmed that the accused persons had told them that the complainant was one of the partner of Sanskriti channel. It is alleged that the statement of account of the complainant's bank account was scrutinized which reflected transfer of Rs. 2.21 Crores to the account of M/s Viceroy Engineering which is the proprietorship

firm of the petitioner and Rs. 2 Crores to the account of the above named three companies.

8. The petitioner has given all authorities in regard to signing of cheques, orders and communication in regard to the account of M/s Viceroy Engineering to her husband (co-accused) Sunil Kumar Jha.

9. The agreement dated 11.01.2017, was produced during the investigation by the accused persons purportedly executed between M/s Viceroy Engineering through the petitioner and M/s Laxman Dass & Co. through the complainant for transmission of audio-video programme of the complainant on the Sanskriti TV channel. It is alleged that on scrutiny it was revealed that the agreement was executed at stamp paper No. BN 928551 of Rs. 50/-. and it bears the stamp of Bablu Bharti, Stamp Vendor. Since the complainant was denying about the execution of any such agreement, stamp paper was got verified and it was revealed that it was issued on 11.09.2017 to stamp vendor Bablu Bharti which shows that agreement dated 11.01.2017 is forged.

10. I have heard the Ld. Sr. counsel for the petitioner, Ld. APP for the State, Ld. counsel for the complainant who assisted the Ld. APP for the State and also perused the Status Report and the records of this case.

11. It is submitted by the Ld. Sr. counsel for the petitioner that the matter is entirely a civil matter and in order to arm twist the petitioner and her husband, the present FIR has been registered. It is further submitted by the Ld. Sr. counsel for the petitioner that the complainant in the year 2015 had approached the husband of the petitioner for using the services of M/s Viceroy Engineering for production of half an hour audio-video promotion material for broadcasting on TV channels and the complainant had agreed to pay Rs. 5000/- for each episode. It is further submitted that the complainant has even requested the applicant/petitioner and her husband to use their good will and expertise in the TV media industries for his promotional clips, so following the business understanding, the petitioner and her husband provided services to the complainant between December 2015 till December 2017 and recorded and produced over 400 episodes which were handed over to the complainant. He further submitted that for broadcasting the episodes of the complainant, the co-accused contacted many TV channels but no channel was willing to run the episodes of the complainant for a 24 hour long cycle. He further submitted that the husband of the petitioner came across certain shareholders of TV channel companies, who were willing to upload their stocks. So, the petitioner and her husband purchased all the shares of M/s Express Broadcasting Pvt. Ltd. vide M.O.U. dated 17.08.2016. Thereafter, the complainant came to know about the offer to purchase the share of Sanskriti TV and it was mutually agreed between the petitioner's husband and the complainant that the complainant would subscribe for 47 slots of half an hour telecast per month on Sanskriti TV and for the same the complainant would pay Rs. 47 Lakh per month i.e. Rs.1,00,000/- each for every half an hour slot. The complainant was to pay advance payment of six

months for telecast which came to around Rs. 2,82,00,000/- excluding all taxes which were to be further born by the complainant. The advance payment in part i.e. Rs. 2,21,00,000/- was made by the complainant between 24.08.2016 till 07.10.2016 but the complainant failed to make the balance payment which is still due and outstanding. It is further submitted by the Ld. Sr. counsel for the petitioner that it was only on the basis of the assurances of the complainant that the petitioner and her husband engaged another company for linking up the satellite services for the programs on Sanskriti TV channel for proper broadcast of the episodes of the complainant. It is further submitted by the Ld. Sr. counsel for the petitioner that despite balance of Rs. 61,00,000/- out of the advance payment which is still due from the complainant, the complainant in order to gain the trust and confidence of the petitioner and her husband made an undertaking/ confirmation for making all payments towards up-linking of TV channel "Sanskriti TV". He further submitted that in this regard, the complainant has even given one post dated cheque No. 000338 dated 05.01.2017 in favour of M/s Planet Cast Media Services Limited on 27.12.2016.

12. It is further submitted by the Ld. Sr. counsel for the petitioner that the petitioner and her husband fulfilled their part of the business with the complainant and started with the broadcast of the complainant's episodes and for the same the petitioner and her husband raised two invoices amounting to Rs.1,08,10,000/- and Rs. 2,16,20,000/- for the services rendered to the complainant from 06.02.2017 till 05.04.2017 and from 06.04.2017 till 05.08.2017 but the complainant after making the aforesaid payment failed to make any further payment to Sanskriti TV or M/s Planet Cast Media Services Limited. It is further submitted by the Ld. Sr. counsel for the petitioner that the complainant is liable to make a total payment of Rs. 1,28,00,000/- for the services rendered by the petitioner and her husband. It is further submitted by the Ld. Sr. counsel for the petitioner that the petitioner has also paid applicable taxes for the aforesaid services. He further submitted that due to the non-payment of dues and repeated false assurances of the complainant, the petitioner and her husband were constrained to institute a suit for recovery against the complainant on 21.05.2018

13. It is further submitted by the Ld. Sr. counsel for the petitioner that the complainant started to broadcast his episodes on other TV channel i.e. Prerna TV Channel and the petitioner on enquiries came to know about the agreement dated 03.03.2017 between the complainant and Dish TV wherein the complainant dishonestly represented himself to be an authorized representative of M/s Express Broadcasting Pvt. Ltd. which is the company of the petitioner. He further submitted that when this fact came to the knowledge of the petitioner, two separate complaints dated 14.05.2018 were made to the police for investigation of the agreement dated 03.03.2017. He further submitted that on coming to know about the civil suit and criminal complaints filed by the petitioner and her husband, the complainant has filed the present FIR as a counter blast to the legal actions taken by the petitioner.

14. It is further submitted by the Ld. Sr. counsel for the petitioner that the petitioner has joined the investigation as and when required by the IO. He further submitted that there is not even an iota of admissible evidence against the petitioner and she has been falsely implicated. He further submitted that the petitioner was not involved in day to day operations of the business and even as per the stand of the IO, the petitioner did not have any criminal intent and all the relevant documents have been given to the investigating officer and now the charge sheet stands filed, so there is no requirement of any sort of custody or custodial interrogation of the petitioner. It is further submitted by the Ld. Sr. counsel for the petitioner that the matter was sent for amicable settlement but the same could not be settled amicably. He further submitted that the charge sheet has been filed without the arrest of the petitioner and the petitioner has also not misused the interim protection granted to her by the Court.

15. On the other hand, it is submitted by the Ld. APP for the State assisted by the Ld. counsel for the complainant that the petitioner has actively participated in the entire conspiracy with her husband accused Sunil Kumar Jha. She further submitted that petitioner is the sole proprietor of firm. M/s. Viceroy Engineering and she is also the authorized signatory of the bank account of the firm and money from the complainant's account received in this account and siphoned into her personal account and cheated money was used for purchasing the channel in her own name. She further submitted that accused Sunil Jha in his reply dated 01.05.2018, stated that they convinced the Directors/Representative of M/s Express Broadcasting Pvt. Ltd to telecast 47 time slots of half an hour daily but the Director of Express Broadcasting Pvt. Ltd., in his reply dated 11.05.2018 confirmed that he sold the channel to the accused on 01.02.2017. All the programmes were telecasted by the accused persons.

16. It is further submitted by the Ld. APP for the state that according to the petitioner agreement dated 11.01.2017 purportedly signed between M/S Viceroy Engineering (signatory present petitioner) and the complainant, but on enquiry it was found that the stamp paper on which the agreement was written, was issued on 11.09.2017 i.e. after 8 months of the date of signing of the agreement and the forged agreement dated 11.01.2017 was also used by petitioner Bindu Jha against the complainant in the Civil Suit vide no. CS-472/18 at Karkardooma Courts.

17. It is further submitted by the Ld. APP for the state that the petitioner in conspiracy with her husband co-accused Sunil Kumar Jha took undue advantage of vulnerable age and trust of the complainant and cheated his entire life saving. It is further submitted by the Ld. APP for the state that the petitioner is also backing out from the undertaking given in the Court with regard to securing the entire amount of Rs. 2.25 Crores by depositing the same with the Registrar General of this Court. Ld. Sr. counsel appearing for the petitioner submitted that the complainant as well as the petitioner and co-accused were ready to settle the matter and they had shown their willingness in this regard but the matter could

not be settled as the parties could not arrive at a common platform. He further submitted that the petitioner and co-accused were willing to settle the matter with the complainant and they had even shown their willingness to secure the amount but no consensus could be reached.

18. In the instant case, the matter was sent for mediation for settlement but the same could not be settled between the parties. There are claims and counter claims raised by the petitioner and co-accused on one side and the complainant on the other side and even a civil suit is pending between the parties but the dispute in this regard cannot be adjudicated upon at this stage in this bail application and the respective claims will be decided in the civil proceedings.

19. The charge sheet has already been filed and the same has been filed without the arrest of the petitioner. As far as the question of forged agreement dated 11.01.2017, is concerned, it has been alleged that the agreement is antedated. However, what would be the effect of this agreement on the case of the prosecution would be considered during the course of trial and this is not the stage to comment on this agreement or to reach at any conclusion in favour or against any of the parties.

20. As of now, since the charge sheet has been filed without the arrest of the petitioner, all the material evidence and documents have been collected, the petitioner was also granted interim protection and there are no allegations that during the period of interim protection she ever tried to influence the witnesses or tamper with the evidence, in these circumstances, the bail application is allowed and the petitioner is admitted to bail on her furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the concerned trial Court. The bail application is disposed of accordingly.

21. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.