
(2012) 06 DEL CK 0046

In the Delhi High Court

Case No : Bail Application No. 760 of 2012 and Criminal M.A. No. 6904 of 2012

Dr. Sarbesh Bhattacharjee

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2012) 3 JCC 1599

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Siddharth Luthra with Ms. Arundhati Katju and Mr. Kunal Sood, for the Appellant; Mukesh Gupta, APP with DCP Sahdev Singh, Anti Corruption for the State, for the Respondent

Final Decision : Disposed Off

Judgement

Hon'ble Ms. Justice Mukta Gupta

1. By this petition, the Petitioner seeks bail in case FIR No. 1/2012 under Sections 13(1)(d)/13(2) Prevention of Corruption Act, 1988 read with Sections 420/120B IPC registered at PS Anti Corruption Branch, Government of NCT of Delhi. Learned counsel for the Petitioner contends that the Petitioner was working as Director Health Services (DHS) at the relevant time and the FIR has been registered in retaliation to the contempt petition filed by the Petitioner against the senior officers of Government of NCT of Delhi. The Petitioner was suspended from service on 2nd November, 2011, just 3 months before he was due to retire. On an original application being filed by the Petitioner before the Central Administrative Tribunal, the suspension was quashed with liberty to the Central Government to consider the matter afresh. However, the order dated 23rd December, 2011 of the Central Administrative Tribunal was not implemented and thus, the Petitioner was constrained to file the contempt petition. Thus, as a counter blast the abovementioned FIR was registered. The

allegations against the Petitioner are vague in nature as the work contract for supply of sterile gloves was with M/s MRK Healthcare, who thereafter wrote to the Department of Health, Delhi Government vide their letter dated 20th October, 2010 that M/s Pharmatek (India) had ceased to be their distributor with immediate effect and thus, supply of the order should be given to it directly. The contract of M/s MRK Healthcare was cancelled by co-accused Dr. D.S. Rao and the security deposit of Rs.3 lakhs was forfeited. The Petitioner had no role in the cancellation of the said contract. Further thereafter, the hospitals purchased sterile gloves from the open market including from M/s MRK Healthcare. The alleged loss to the Government exchequer is not on account of the act of the Petitioner. In the entire FIR, no role has been attributed to the Petitioner. The Petitioner has retired from service on 31st January, 2012 and after retirement he has settled in Kolkatta with his wife and widowed mother. The only allegation against the Petitioner is that the Petitioner did not raise the issue before the higher authorities before taking decision of cancellation of the contract. The Petitioner is no more required for investigation and thus he be granted bail.

2. Learned APP for the State on the other hand contends that Dr. D.S. Rao had sent a letter on 28th October, 2010 to all the Directors/Medical Superintendents/CMO I/c to state that M/s Pharmatak (India) ceased to be the authorized distributor of M/s MRK Healthcare on 28th October, 2010 though the letter of M/s MRK Healthcare was forwarded to Dr. D.S. Rao on 29th October, 2010. Further thereafter on 8th November, 2010 M/s MRK Healthcare stated that they had received excess order than committed quantity and thus, no further orders be placed for the first year supply. Further the co-accused cancelled the rate contract of M/s MRK Healthcare on receipt of its letter dated 8th November, 2010 without giving the contract to L2 resulting in the Medical Superintendents of the Hospitals purchasing the sterile gloves on their own through open market. Thus, the misconduct of the Petitioner has caused huge loss to the Government Exchequer. Hence, no case for bail is made out.

3. I have heard learned counsels for the parties. Briefly the case of the prosecution in the abovementioned FIR on the basis of an enquiry report on the complaint dated 6th July, 2011 regarding cheating by M/s MRK Healthcare and its distributor M/s Pharamatek (India) are that the rate contract was awarded to M/s MRK Healthcare for a period of two years from 9th April, 2010 to 8th April, 2012 for supply of sterile surgical gloves @ Rs. 6.49/- per pair in the Hospitals of Delhi Government. It is stated that the rate contract was cancelled vide note sheet on 1st December, 2010 by the Petitioner in a haste and calculated manner without anticipating the loss to the Government Exchequer pursuant to cancellation of the rate contract. The Petitioner neither considered L2 for this contract nor issued fresh proposal for re-tendering of the supply and left the Hospitals on their own sweet will. Further the Petitioner did not inform the senior authorities before taking the decision of cancelling the rate contract of M/s MRK Healthcare. Since the Hospitals procured sterile gloves from open market, the rate given by the Hospitals was higher than the CPA rates thus causing loss of about Rs. 98 lakhs

to the Government exchequer.

4. Thus, primarily the allegation against the Petitioner are that after the rate contract of M/s MRK Healthcare was cancelled, no efforts were made to give the tender to L2 or retender the same. Therefore, whether this negligence on the part of the Petitioner will amount to criminal misconduct would be an issue to be decided during the trial. However, in the facts and circumstances of the case, I deem it fit to grant bail to the Petitioner. It is therefore directed that the Petitioner be released on bail on his furnishing a personal bond in the sum of Rs.2 lakhs with two sureties of the like amount subject to the satisfaction of the learned Trial Court/CMM/Duty Magistrate. The Petitioner will deposit his passport to the Investigating Officer, who in turn would deposit the same with the learned Trial Court on filing of the charge-sheet. Further in case the Petitioner changes his address, he will intimate the same to both the learned Trial Court and the Investigating Officer. The Petition and application are disposed of accordingly. Order dasti.