

(1999) 02 DEL CK 0007
In the Delhi High Court
Case No : Criminal M. (M) No.2832/98

Gurpal Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-02-1999

Acts Referred:

Citation : (1999) 2 AD 576 : (1999) 78 DLT 820 : (1999) 49 DRJ 193

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Mr. R.K. Anand and Mr. Lovkesh Sawhney, for the Appellant; Mr. A.K. Dutt, for the Respondent

Judgement

J.B. Goel, J.—This is an application for anticipatory bail u/s 438 of the Code of Criminal Procedure (for short the "Code"). Similar application of the petitioner was dismissed by the learned Addl. Session Judge on 19.9.1998.

2. Briefly the facts are :

A secret information was received by the CBI to the effect that Shri K. S. Bains (A1), Chairman cum Managing Director of Punjab & Sind Bank along with Shri Gurpal Singh, General Manager (A2) and Shri H. S. Pal, Branch Manager, Bori Bunder Branch, Bombay (A3) along with Shri Abhijit Singh Roy, Managing Director of M/s. Jayanti Business Machines Ltd. (A4), M/s. Prasad & Co. (Share Broker) (A5), M/s. Jayanti Business Machines Ltd. (A6) had entered into conspiracy to cheat Punjab & Sind Bank in the matter of purchase of shares of M/s. Jayanti Business Machines Ltd. (for short "JBML") and in pursuance of this conspiracy 2.5 lakh shares of JBML were purchased at a premium of Rs.70/ per share as against 60,000 shares offered by the company at a premium of Rs.70/ per share on firm allotment basis and another 14,46,000 shares at a premium of Rs.50/ per share, at the instance of Shri K. S. Bains (A1) who was the Chairman cum Managing Director (CMD) of the said Bank besides other financial irregularities committed to help JBML and thereby deriving personal financial

benefits by Shri K. S. Bains of Rs.10.40 lakhs were made. On the basis of this, RC SIA 1998 E 0003 was registered by the CBI on 27.7.1998 and investigation was taken up.

3. During investigation, it has been found that Shri K. S. Bains had visited Mumbai on 21.12.1994 where he met Shri Abhijit Singh Roy, Managing Director of JBML and the latter had offered him the shares of the said JBML company on firm allotment basis vide a letter dated 21.12.1994.

4. On this, Shri Bains passed an order dated 23.12.1994 reading that : "Shri Roy met me at Bombay on 21.12.1994. We may apply/purchase in this issue for about Rs. 2.00 crores".

5. As per RBI guidelines, the Bank could invest in shares/debentures only up to 5% of its incremental deposits which worked out to Rs.31.81 crores for the financial year 1994-95. The bank had already exceeded this limit having invested Rs.36.00 crores.

6. The Funds Management Department of the bank was the concerned department who had to process and initiate such proposal. At that time, Shri G. S. Vedi, AGM was heading that department. Despite the fact that the investment had already exceeded the prescribed limit, Shri Bains, without consulting the Funds Management Department, had passed the aforesaid order and is alleged to have instructed Shri Gurpal Singh to process the same. It appears that Shri Gurpal Singh (A2) who was General Manager (Operations) of the bank had called said Shri G. S. Vedi and instructed him to prepare a note for purchase of 2.5 lakhs shares of JBML on firm allotment basis and in fact a note dated 9.1.1995 was prepared and placed before the Investment Committee who had to approve such proposal. The said Committee declined the proposal in its meeting on 9.1.1995 on the ground that the transaction was not likely to book profits up to 31.3.1995. In this meeting the petitioner was not present and was out of station. On return to the Headquarters, the petitioner had called Shri G. S. Vedi and enquired about the aforesaid proposal and on being informed that Investment Committee had declined the proposal, the petitioner told him that he would see.

7. Subsequently, the petitioner prepared another note dated 18.1.1995 recommending purchase of 2.5 lakhs shares of the said company at a premium of Rs.70/ per share, i.e., @ Rs.80/ per share without mentioning about the rejection of the proposal earlier without the concurrence of Fund Management Department. During the course of the meeting, the petitioner is alleged to have informed the members of the Investment Committee that he had discussed the matter with CMD (Mr. K. S. Bains) and JBML and that transaction will definitely book profits for the bank and on this, the proposal was approved by the Investment Committee on 20.1.1995 and by Shri K. S. Bains, CMD on 21.1.1995.

8. These shares are alleged to have been purchased through M/s. Prasad & Co. However, the relevant documents to this effect were not supplied to the bank nor the bank was informed about the purchase for a long time. Later on the said

broker had represented that the shares were sold to the following two companies :

1. M/s. Prism Mills Limited, Mumbai.

2. M/s. Bharakia Assets & Capital Management Pvt. Ltd.

9. But, Shri Navneet Mohan Lal Parikh who is Director in both these companies during investigation and also Shri Prem Prakash Somdutt Tyagi, another Director of M/s. Prism Mills Limited have denied having purchased the shares from Punjab & Sind Bank. Even the sale proceeds of the shares were not remitted by the share broker to the bank for a long time and thereby depriving the bank of its funds.

10. The petitioner is also alleged to have extended enhanced financial limits to the following companies unauthorisedly and to help them wrongfully:

1. M/s. Jayanti Business Machines Limited.

2. M/s. Unicorn Mercantile Pvt. Ltd.

causing a loss of more than Rs. 5.00 crores to the bank.

11. Lapses in the sale of aforesaid shares were noticed by the Board of the Bank in its meeting held on 20.4.1996 and at their instance the Chief Vigilance Officer of the bank conducted an enquiry into various transactions and he has reported serious irregularities on the part of the petitioner.

12. The investigation made by the CBI so far has revealed inter se relationship of following companies and their Directors etc. as under :

1. M/s. Jayanti Business Machines Limited, Mumbai

(a) Shri Abhijit Singh Roy, Managing Director

(b) Mr. S. N. Pushkarma, Chairman.

2. M/s. Unicorn Mercantile Pvt. Ltd., Bombay.

(a) Mr. B. B. Pushkarma, brother-in-law of

Shri S.N. Pushkarma: Managing Director.

(b) Mrs. Gopal Singh Roy, mother of Shri Abhijit

Singh Roy: Director.

3. M/s. Gurkripa Developers Pvt. Ltd.

(a) Mr. M. R. Gurprasad.] (Employees of

(b) Ms. Elvina Colaso.] JBML) as Directors

4. M/s. Vihinga Finance Pvt. Ltd.

(a) Ms. Neena Pushkarma, wife) of Shri S. N. Pushkarma.)) (b) Ms. Sujata Singh Roy, wife) of Shri Abhijit Singh Roy.) Directors) (c) Shri B. B. Pushkarma) (brother-in-law of) Shri S. N. Pushkarma).) 13. The investigation made by the CBI has also discovered that Shri K. S. Bains had received Rs.10.40 lakhs by means of three demand drafts from M/s. Gurkripa Developers Pvt. Ltd. on 1.6.1995 and the said drafts were deposited in his name with the Bank of Maharashtra, Patel Nagar, New Delhi. It has further been revealed that Ms. Ranjeet K. Singh, daughter of the petitioner was also paid a sum of Rs.11.50 lakhs on 21.10.1994 and another Rs.12.90 lakhs on 16.12.1994 by M/s. Vihinga Finance Pvt. Ltd.

14. Learned counsel for the petitioner has contended that the petitioner was not aware about the proposal, if any, rejected on 9.1.1995; in any case the proposal put by the petitioner on 18.1.1995 was considered and approved by the same Investment Committee who is alleged to have rejected it on 9.1.1995 and in this deal the bank is not a loser but in fact has benefited and derived profit. It thus cannot be said that the petitioner has acted against the interest of the bank. He has also contended that the petitioner's daughter Ranjeet K. Singh had accumulations to her account on account of deposits made since her birth in 1976 and besides this, the deposits pertain to the sale proceeds of the shares which she held from time to time and the amounts alleged to have been paid are her own funds.

15. During arguments, learned counsel placed on record an additional affidavit, a statement of account issued by Citibank in the name of Ms. Ranjeet K. Singh and some other documents and relying on these he has contended that in the facts and circumstances, no prima facie case is made out showing that there was any conspiracy or his being a party to any conspiracy or his having derived any financial benefit for himself or rendered any benefits to Shri K. S. Bains nor any wrongful financial help has been extended either to JBML or any other companies or any loss has been caused to the bank. He contends that the petitioner is entitled to anticipatory bail and otherwise it will cause great loss and harm to him if bail is not granted as being an employee his career will be spoiled.

16. Whereas, learned counsel for the CBI has contended that the case is at investigation stage, financial irregularities have been committed by the petitioner in conspiracy with Shri K. S. Bains, CMD and other persons concerned, thereby personal financial benefits have been derived by Shri K. S. Bains to the extent of Rs.10.40 lakhs and also by the petitioner through his daughter to the extent of more than Rs.24.00 lakhs by showing undue favours to the aforesaid companies and at the cost of the bank; the matter is still under investigation custodial interrogation of the petitioner is required, and it would prejudice the investigation if anticipatory bail is granted, the Addl. Session Judge in exercise of discretion has not found it a fit case for anticipatory bail and there is no infirmity or illegality requiring any interference by this Court. He has further contended that the ex parte interim bail was obtained by the petitioner on 22.9.1998 by

making misrepresentation before this Court, inasmuch as, it was misrepresented that the papers relating to the proposal rejected on 9.1.1995 were available with the Law Department of the Bank whereas that file was called by the petitioner and he had not returned the same to the department concerned and still that file is not available to the bank.

17. I have considered the circumstances, material and the contentions advanced by the learned counsel. It appears that a proposal for the purchase of 2.5 lakhs shares of JBML was mooted by Shri K. S. Bains through the petitioner which was considered by the Investment Committee on 9.1.1995 but was rejected. This proposal had not originated from the concerned agency, i.e., Funds Management Department of the Bank. The relevant file of that proposal and minutes of the meeting is missing and it has been found during investigation that that file was summoned by the petitioner and the same has not been returned by him so far to the concerned department. Apparently, someone is interested in withholding that file. When the bail application came up before me on 22.9.1998, it was represented that that file was lying with the Manager (Law & Recovery) of the Bank and was still available with that department. This does not seem to be a correct statement made as the file is reported to be still not available and the investigation has revealed that the file was summoned from Shri G. S. VEDI, Asstt. General Manager of the Funds Management Committee and has not been returned to him.

18. Without going further in this respect, the fact remains that the proposal for the purchase of 2.5 lakhs shares of JBML was processed at the initiative of Shri Bains. This was neither initiated nor processed through a proper channel nor it was permissible under RBI guidelines as investment under this head had already exceeded the prescribed limit. It is alleged that Shri K. S. Bains and the petitioner had done so to render unwarranted financial help to JBML, to derive personal benefits for themselves and in fact investigation has also revealed that a sum of Rs.10.40 lakhs was paid by M/s. Gurkripa Developers Pvt. Ltd., a company which is alleged to be a dummy concern of JBML, to Shri Bains, CMD by means of three demand drafts credited in his account in Bank of Maharashtra, Patel Nagar, New Delhi. Also two amounts of Rs.11.50 lakhs and Rs.12.90 lakhs had been paid by M/s. Vihinga Finance Pvt. Ltd. to Ms. Ranjeet K. Singh, daughter of the petitioner alleged to be by way of quid pro quo. As noticed above, wives of Mr. Abhijit Singh Roy and Mr. S. N. Pushkarma are the Directors of M/s. Vihinga Finance Pvt. Ltd. Whether these amounts are the accumulations of the deposits made by her or are quid pro quo could be found out if investigation is carried out further.

19. The statement of account issued by Citibank in the name of Ms. Ranjeet K. Singh filed on behalf of the petitioner also shows credit of substantial amounts of more than Rs.15.00 lakhs during 20.10.1994 to 22.12.1994 and a withdrawal of Rs.11.50 lakhs on 24.10.1994. These transactions have not been explained on the record. These facts would be ascertained if investigation is carried out

unhampered.

20. Legal position concerning the grant of anticipatory bail has been considered in judicial pronouncements.

21. In *V. Nandanan Vs. DIG of Police (Crime), Hyderabad & another* 1986 Cri.L.J. 1052, the Kerala High Court has held as under:

"Anticipatory bail is not to be granted as a matter of course in all cases where the applicant has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. Grant or refusal of such bail must depend upon variety of circumstances, the cumulative effect of which must enter the judicial verdict. The power under the Section has to be exercised sparingly and in exceptional cases using the discretion on the facts of each case. An order u/s 438 being an exceptional type there must be a special case made out for passing such an order. It should not be allowed to circumvent the normal procedure of arrest and investigation or to prejudice the investigation. Ulterior motives of harassment and reasonable possibility of the accused not absconding are only some of the considerations. Some little facts may be necessary in the exercise of the discretion to grant or refuse the prayer.

.....In exercising the judicial discretion in granting anticipatory bail the court should not be unmindful of the difficulties likely to be faced by the investigating agency and the public interest likely to be affected thereby."

22. In *Pokar Ram Vs. State of Rajasthan and Others*, regarding the scope of Section 438 it was observed as under :

"Relevant considerations governing the court's decision in granting anticipatory bail u/s 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal."

23. Again in *State Rep. by the C.B.I. Vs. Anil Sharma*, it has been observed as under :

"We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order u/s 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a prearrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual."

24. Again in *State of Andhra Pradesh Vs. Bimal Krishna Kundu and another*, disapproving the order of the High Court granting anticipatory bail in a case

involving conspiracy, the Hon^{ble} Supreme Court has observed that :

"... It is disquieting that implications of arming respondents, when they are pitted against this sort of allegations involving well orchestrated conspiracy, with a prearrest 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 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"

25. In the present case, allegations of conspiracy and financial irregularities involving the funds of the bank have been made. The petitioner in collusion with Mr. K. S. Bains and some other persons is alleged to have or is suspected, which cannot be said at this stage to be wholly baseless or motivated, to have derived personal benefits for himself and also for Mr. K. S. Bains by committing financial irregularities and to helping JBML etc. wrongfully and causing loss to the bank. Public interest is involved. In these circumstances, if anticipatory bail is granted, it will thwart investigation and thereby prejudice the case of the prosecution and it may not be possible to unearth fully the gravity of the conspiracy, resultant financial loss to the bank, financial gains, if any, derived by the bank's officers and other companies involved. It will hamper investigation and thereby public interest will suffer if anticipatory bail is granted. The learned Addl. Session Judge has not found it a fit and proper case for granting anticipatory bail.

26. In the facts and circumstances, in my view, it is neither just and proper nor in larger public interest to admit the petitioner to anticipatory bail. This petition is accordingly dismissed.