

(2006) 11 CHH CK 0016

In the Chhattisgarh High Court

Case No : Misc. Criminal Case No. 2528 of 2006

Gyanchand Agrawal @ Gyani

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 420, 468, 469, 471

Citation : (2007) 1 CGLJ 307 : (2007) 5 RCR(Criminal) 702

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Rajeev Shrivastava, for the Appellant; Ashish Shukla, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—This is the second bail application filed u/s 439 of the Code of Criminal Procedure for grant of regular bail to the applicant who has been arrested in connection with Crime No. 77/2004, registered at Police Station Bhilaibhatti, District Durg (C.G.) for commission of the offence punishable under Sections 420, 468, 469 and 471 of the IPC.

2. The earlier bail application was dismissed on merits vide order dated 13.6.2006 passed in M. Cr.C. No. 1337/2006.

3. The brief facts are that the applicant namely Gyanchand Agrawal @ Gyani is the Managing Director of M/s Shiva Technomech Private Limited, Bhilai. This Company use to do awarded contract works for construction of high tension electrical lines through the Chhattisgarh State Electricity Board (CSEB). The practice is that when such a work is awarded to any Company or concern, the local office of the C.S.E.B. use to issue recommendation letters to the Branch Sales Office (BSO), Bhilai Steel Plant to supply requisite quantity of Steel to execute the work awarded to a particular contractor/concern. This is done on the requested of the Contractor because due to the excessive demand of steel in the

market, the price of steel in the open market remains much higher than the price of the Branch Sales Office, SAIL, Bhilai, which is otherwise also an agency to make supply of steel on concessional price for such work.

4. As per the prosecution, this applicant forged one recommendation letter dated 23.3.2004 shown to be issued by the Executing Engineer, EHT (C and M) Circle, CSEB, Bhilai, to the Branch manager, SAIL, Branch Sales Office, Bhilai, showing that M/s. Shiva Technomech Private Limited, has been awarded some work and the steel in quantity of 202 metric tonnes be supplied to the said Company.

5. The allegations are that this forged letter was handed over to one employee of the Company namely Madhav Ram Simkar for producing the same in the office of Steel Authority of India Limited, BSO. Bhilai and to take delivery of contained quantity of steel from the said office. This employee produced the same in the said office for the supply of steel. However, when in due course it was discovered that this letter was never issued by the C.S.E.B. and the letter as well as the signatures of the concerned Executive Engineer namely M.J. Prasad were forged, then on the allegations the offence was registered. On these facts, the complete merits of the case were argued by Learned Counsel for the applicant while hearing the previous bail application and this Court, after rejecting the contentions raised at the arguments, has dismissed the aforesaid application on merits holding that it comes in the statement of Madhav Ram Simkar that the letter dated 23.3.2004 was personally handed over to him by the applicant and he was directed to produce this letter to the Branch Sales Office (BSO), Bhilai Steel Plant, SAIL, and he had produced this letter to the BSO, Bhilai on the instructions of this applicant only, which he had issued in the capacity of the Managing Director of the aforesaid Company. It is also observed by this Court that in the Statement of M.J. Prasad, Executive Engineer, C.S.E.B., Bhilai, it has come that the signatures over the said letters were not his signatures and in fact, the contents as well as signatures of the letter were forged.

6. This time, Learned Counsel for the applicant argued that the charge sheet in the matter has already been filed in the concerned court and the expert report submitted to the Court shows that the signature over the letter dated 15.3.2004 were the signatures of the Executive Engineer, therefore, no forgery is apparent on the face of the record which entitles the applicant to be released on bail and these are the changed circumstances on which this second bail application should be entertained.

7. The arguments advanced by Learned Counsel for the applicant cannot be accepted. Merely filing of the charge sheet after rejection of the first bail application does not amount to a vital change in the circumstance. So far as the contents of the expert report is concerned, it is apparent that those relate to the letter dated 15.3.2004 and in fact whether it has to be given weightage or not on the face of statements of M.J. Prasad and Madhav Ram Simkar is an exercise of appreciation which, in the opinion of this Court, cannot be done by this Court in a petition filed u/s 439 Code of Criminal Procedure. The work of appreciation of

evidence cannot be undertaken by a bail Court while exercising jurisdiction u/s 439 Code of Criminal Procedure so as to find out the reliability of the witnesses or the documents and the reliability of a fact in issue.

8. What has to be seen at the time of bail has been said by the Apex Court in the matter of Jayendra Saraswathi Swamigal v. State of Tamil Nadu 2005 AIR SCW 323 that the considerations which normally weigh with the Court in granting bail in non-bailable offences are the nature and seriousness of offence; the character of evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.

9. It was again reiterated by the Apex Court in the matter of State Vs. Amarmani Tripathi, , that the law in relation to grant or refusal of bail is well settled and the matter to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger of course, of justice being thwarted by grant of bail. Also see Prahlad Singh Bhati Vs. N.C.T. Delhi and Another, and Gurcharan Singh and Others Vs. State (Delhi Administration), .

10. On the principles referred to above, and also on the basis of the material produced before me, without commenting on the merits of the case and further without appreciating the evidence, I am of the opinion that there appears to be a prima facie involvement of the applicant in commission of the aforesaid crime and in the said situation, this second bail application filed u/s 439 Code of Criminal Procedure has no merits and the same is also dismissed.