(2015) 09 DEL CK 0308

In the Delhi High Court

Case No : Bail Appln. 1705, 1712 and 1716/2015

Preeti Wadhwan and Others — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:
Penal Code, 1860 (IPC) — Section 120-B, 34, 406, 420, 467

Citation : (2015) 09 DEL CK 0308

Hon'ble Judges : Indermeet Kaur, J.

Bench : Single Bench

Advocate : Vijay Aggarwal, Ashok Malhotra and Neeraj Kumar Jha, Advocates, for the Appellant; Kewal Singh Ahuja, Vikram Singh, SI, Sandeep Sethi, Senior Advocate, Shailendra Babbar, Joginder Sukhija and Karuna Chhatwal, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—There are three petitioners before this Court namely Preeti Wadhwan, Taranpal Wadhwan and Nirupama Wadhwan. Preeti Wadhwan is the wife of Satwinder Singh. Nirupama Wadhwan is the wife of Inder Pal Singh. Taranpal Wadhwan is the son of Satwinder Singh.

2. The present FIR (FIR No. 635/2015) has been registered under Sections 420 /506 /406 /467 /468 /34 read with Section 120-B of the IPC on the complaint of Rajesh Gullah.

3. The contents of the FIR disclose that the three petitioners along with Satwinder Singh and Inder Pal Singh had in a criminal conspiracy cheated the complainant; they were guilty of criminal breach of trust, deceit and forgery pursuant to which a wrongful loss had been accrued to the complainant and a wrongful gain had been made by the accused including the present petitioners.

4. The FIR discloses that Rachna Gullah (the wife of the complainant) had 31% share in the property bearing No. 17-A, Road No. 77, North West Avenue Road,

Punjabi Bagh (West), New Delhi (hereinafter referred to as the said property). She had purchased this vide sale deed dated 17.09.2009. This is an admitted fact. Qua the superstructure Rajesh Gullah was the owner of 1/16th share and the balance was owned by M/s. ISR Exim Private Limited in which Rajesh Gullah was a shareholder to the extent of 31%.

5. The company by the name of M/s. ISR Exim Private Limited had been incorporated in the year 2007 of whom Satwinder Singh, Inder Pal Singh and Rajesh Gullah were its directors. In the course of filing his income tax return, the complainant learnt sometime around 26.05.2014 that a lien/charge had been created on the aforenoted said property; Inder Pal Singh and Satwinder Singh had illegally transferred the rights in the superstructure of the said property to West Face Hospitality sometime around 07.05.2010. M/s. ISR Exports Private Limited, M/s. West Face Hospitality (in which Satwinder Singh and Inder Pal Singh are directors) and Wadhwan Designs (in which Taranpal Wadhwan had a 50% shareholding) had taken loans against this property from Bank of India as also the Indian Overseas Bank. Nirupma Wadhawan and Preeti Wadhawan are guarantors to the loan offered to Wadhawan Designers.

6. The said property stood mortgaged and this was without the information and without the consent of the complainant. These loans which were obtained on the strength of this property were thereafter disbursed into the private accounts of Satwinder Singh and Inder Pal Singh and this was in connivance with the present petitioners and in fact the modus operandi was that that the amounts received on the strength of these loans were transferred into the saving bank accounts of the present petitioners and thereafter there were corresponding transfers made into the accounts of Satwinder Singh and Inder Pal Singh.

7. Learned counsel for the petitioners submits that there is no evidence whatsoever with the investigating agency to substantiate these averments. Certificates from the Chartered Accountant have been placed on record; submission being that even assuming that loans had been taken by Satwinder Singh and Inder Pal Singh, these loans were export based and not fund based and the utilization of the loan was only for the purpose of export and not a single paisa of the loan could have been diverted for any other purpose. Bank entries relied upon by the investigating agency do not disclose that this money which had been transacted into the account of the present petitioners was through the loans which had been obtained by Satwinder Singh, Inder Pal Singh and M/s. ISR Exim Private Limited.

8. The last status report filed by the investigating agency discloses that loans were taken from the Bank of India and in the name of various companies including M/s. ISR Exports Private Limited. Rs. 8.86 crores were transferred to the account of Preeti Wadhwan and this were w.e.f. 02.02.2011 to 26.03.2013. A sum of approximately Rs. 3.70 crores was transferred in the name of Nirupma Wadhwan which was during the intervening period of 02.02.2011 to 11.09.2012. Rs. 76 lacs were transferred in the name of Taran Pal Wadhwan and this was

w.e.f. 28.03.2011 to 27.11.2013. The bank statements annexed along with the status report have been perused. They show entries of various dates showing transfer of amounts in the accounts of the three petitioners.

9. In the account of Preeti Wadhwan (maintained with the Bank of India), there are various entries showing deposits from M/s. ISR Exports Private Limited into the account of Preeti Wadhwan. One such entry is dated 05.02.2011, showing a sum of Rs. 1 crore having been transferred from the current account of M/s. ISR Exports Private Limited to the account of Preeti Wadhwan and on the same day there is a corresponding entry of debit showing that this amount has been transferred from the account of Preeti Wadhwan into the account of her husband i.e. Satwinder Singh. There are several such entries.

10. In the account of Taranpal Wadhwan (maintained with the Indian Overseas Bank) there are various entries reflecting amounts having received from the current account of M/s. ISR Exports Private Limited and M/s. Transitions (in which Taranpal Wadhwan and Preeti Wadhwan are directors).

11. Similarly in the account of Nirupama Wadhwan, there are several transactions showing credit from M/s. ISR Exports Private Limited and M/s. Transitions. One such entry dated 03.07.2012 reflects that Rs. 50 lacs was credited into the account of Nirupama Wadhwan through the account of M/s. ISR Export Private Limited and thereafter on the same date, there were two separate debit entries of Rs. 25 lacs and Rs. 25 lacs each reflecting that these amounts had been transferred through the RTGS mode. Into whose account, they had been transferred is the investigation which is still going on. This is only one such example. There are several other entries running into several lacs i.e. the entries dated 17.10.2012 and 07.12.2012 wherein amounts had been credited into the Saving Bank Account of Nirupama Wadhwan and on the same day itself, these amounts had been transferred. The entry of 07.12.2012 reflects that Rs. 25 lacs which was credited into the account of Nirupama Wadhwan was thereafter transferred on the same day to M/s. Uppal Housing Limited.

12. Submission of the complainant that these persons have been directly benefited from the loans obtained on the strength of the property of the complainant without the complainant having any knowledge of the same, stands by and large substantiated.

13. The second submission of the learned counsel for the complainant is that in the course of proceedings, a property bearing No. 6/80, West Punjabi Bagh, New Delhi had been offered by the petitioners for settlement of accounts with the complainant but in the course of investigation it has been revealed that this property had been mortgaged by Inder Pal Singh with a Bank and that account having been declared NPA, the Bank has auctioned this property in the year 2006 itself. This fact had been concealed and on this ground alone, the prayer made by the petitioners is liable to be declined.

14. On this count, learned counsel for the complainant admits that proceedings

under the SARFAESI Act are pending qua this property; his submission is that although the account on this property had been declared NPA yet this property (bearing No. 6/80, West Punjabi Bagh) has not been auctioned; additional submission being that the petitioner had thought that after settling the account with the bank, they would have offered this property in the course of negotiations to the complainant and there is no falsity in this offer.

15. This submission of the learned counsel for the complainant is belied. At the time when this property had been offered for the purpose of negotiations it had not been informed to the complainant that proceedings under the SARFAESI Act were pending qua the said property. This fact was never disclosed.

16. That apart, the transactions involve huge crores of money; Satwinder Singh and Inder Pal Singh were the kingpins of the transactions and the petitioners also being beneficiaries of the loans which had been obtained on the property of the complainant (without the knowledge and consent of the complainant) custodial interrogation of the petitioners would be imminent as in the absence of the same, the documents which have to be unearthed and for which purpose the investigating agency is yet groping in the dark would not be able to be gathered.

17. Inderpal Singh and Satwinder Singh are also reportedly absconding. On a specific query put to the learned counsel for petitioners, he states that he has no knowledge about the whereabouts of Satwinder Singh and Inder Pal Singh; he does not know where they are. This Court finds it difficult to digest this submission; the parties i.e. Satwinder Singh being the husband of Preeti Wadhwan and Taranpal Wadhwan being her son and Nirupama Wadhwan who in turn is the wife of Inderpal Singh; this submission is again an attempt to derail the investigation.

18. Reliance by the learned counsel for the petitioners upon the judgments reported as Criminal Appeal Nos. 1134-35/2015 Dhadresh Bipinbhai Sheth Vs. State of Gujarat and Another, Neelu Chopra and Another Vs. Bharti, and Md. Ibrahim and Others Vs. State of Bihar and Another, is misplaced. There is no doubt to the legal proposition that unless the role of an accused is defined, he should not be arrested. There is also no dispute to the proposition that mere making of a section and its language would not by itself be the end of the matter and unless the allegations are particularly described against a particular party, the arrest of such a person would not be proper.

19. In the background of the instant factual matrix no ground is made out for anticipatory protection. Petitions are accordingly dismissed.

