
(2019) 10 DEL CK 0400

In the Delhi High Court

Case No : Bail Application No. 2693 Of 2019

Prem Kumar Aggarwal

APPELLANT

Vs

Serious Fraud Investigation Office

RESPONDENT

Date of Decision : 23-10-2019

Acts Referred:

Companies Act, 2013 — Section 36(C), 89,90,128,129, 212(6), 229, 447, 448
Companies Act, 1956 — Section 209, 211, 628
Indian Penal Code, 1860 — Section 120B, 409, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 65, 438, 439

Citation : (2019) 10 DEL CK 0400

Hon'ble Judges : Brijesh Sethi, J

Bench : Single Bench

Advocate : Sidharth Luthra, Ranjana Roy, P.K.Dubey, Arshdeep Singh, Hitesh Rai, Himanshu Gupta, Manish Jha, Avinash Bhatia, Maninder Acharya, Anurag Ahluwalia, Abhigyan Siddhant, Viprav Acharya, P.C. Maurya, Madhur Bajaj

Final Decision : Disposed Of

Judgement

Brijesh Sethi, J

1. Vide this order, I shall dispose of an application filed by the petitioner Prem Kumar Aggarwal seeking anticipatory bail in the event of arrest in Complaint case no. 770/2019, titled "SFIO v. Bhushan steel Ltd. & Ors." Pending in the Court of Ms. Neelam Singh, Ld. ASJ/Special Judge (Companies Act), Dwarka Courts, New Delhi for offences under Section 36(C), 89,90,128,129, 229, 447, 448 of the Companies Act, 2013, Sections 209, 211 read with 628 of the Companies Act, 1956, and sections 409,467,468,471 read with 120-B of the Indian Penal Code, 1860.

2. Ld. Counsel for the petitioner has prayed for anticipatory bail on the ground that petitioner is 65 years old. The complaint is pending in the court of Ms. Neelam Singh, Ld. ASJ/Special Judge (Companies Act). As stated above, the offences alleged in the said complaint against the petitioner are under Section

128, 129, 447, 448 of the Companies Act, 2013, Section 209, 211 read with 628 of the Companies Act, 1956, and Section 467, 468, 471 read with Section 120-B IPC. It is further submitted that petitioner is suffering from following serious ailments:-

a. Chronic Diabetes,

b. Renal Cell Carcinoma (RCC-Kidney Tumor) - 2010

c. Incision Hernia since 2010

d. Post Right Radical Nephrectomy with Hillar Lymph Node, Lung Cancer with Enlarged Hypervascular Nodes in the right paratracheal region,

e. High blood Pressure due to which the Applicant is prone to Nasal bleeding. In March 2017 the applicant suffered to Nasal Bleeding due to which he admitted to Dr. Gyan Bhushan Nursing Home, Karnal, Haryana.

f. The Applicant has recently suffered a Heart Attack on 17.05.2019, wherein he has operated in Emergency for inducing stent to LAD for 2 (two) days with Sir Ganga Ram Hospital.

3. The petitioner is under continuous medical observation /treatment and follow ups with Dr. K.K.Sethi at Delhi Heart and Lungs Institute Super Specialty Hospital, New Delhi. Besides this, the petitioner in respect of his cancer treatment is undergoing regular Chemotherapy. The petitioner is praying for bail since the offences are non-bailable in nature. It is further stated that Designated Court of Ld. Sessions Court has issued NBWs against the petitioner vide order dated 14.08.2019 despite the fact that no summons were received by the petitioner. The petitioner has apprehension of his arrest pursuant to the issuance of NBWs issued against him and the next date of hearing is 11.11.2019.

4. Vide orders dated 03.05.2016, 18.01.2018 and 18.01.2019, the Ministry of Corporate Affairs had ordered an investigation into the affairs of various companies including BSL, by the Serious Fraud Investigation Officer. The petitioner had joined the investigation and after completion of investigation, the complaint was filed in the court of Ld. ASJ/Special Judge (Companies Act) naming 287 persons as accused. The petitioner has been named as accused no. 162 and has been described as whole time Director. The allegations against the petitioner are that he submitted false documents under his signature for discounting the LCs to avail illegitimate flow of funds from the banks which the company M/S BSL was not entitled to and the petitioner being a Director has failed to discharge his duties provided under the companies Act.

5. Vide order dated 16.08.2019, Ld. ASJ/Special Judge (Companies Act) had taken cognizance of the offences mentioned in the said complaint and directed issuance of summons for the offences under Section 128, 129, 447, 448 of the Companies Act, 2013, Section 209, 211 read with 628 of the Companies Act, 1956, and Section 467, 468, 471 read with Section 120-B IPC. Ld. ASJ/Special

Judge (Companies Act) had also directed appearance of petitioner for 14.10.2019. The petitioner had, however, gone to his relative's house at Bahadurgarh, Haryana on 10.10.2019. He had returned in the evening of 14.10.2019. He was not served with the summons issued against him directing him to appear before the Ld. ASJ/Special Judge (Companies Act) on 14.10.2019. One of his colleagues namely Sh. Ankur Aggarwal had, however, appeared in the court and informed the petitioner about the issuance of NBWs against him.

6. The petitioner had thereafter engaged a counsel who downloaded the order from the concerned internet portal of the District Court which confirmed the issuance of NBWs against him. Ld. Sr. counsel has submitted that the petitioner was not arrested during investigation and there is no legal justification for issuance of NBWs against him. The petitioner has apprehension that he will be sent to custody upon appearance before the Ld. ASJ/Special Judge (Companies Act). It is, therefore, submitted that NBWs issued vide order dated 14.10.2019 against the petitioner is unjustified and without any basis. The summons were never served upon the petitioner. Only a submission has been made by SFIO that the petitioner was aware about the development of the case and deliberately avoiding his appearance before the Ld. ASJ/Special Judge (Companies Act) on 14.10.2019. The same is without any basis and no material was placed before the Ld. ASJ/Special Judge (Companies Act). Even if Ld. ASJ/Special Judge (Companies Act) was of the opinion that petitioner was deliberately evading his appearance, the Ld. ASJ/Special Judge (Companies Act) ought to have issued bailable warrants in the first instance. Issuance of NBWs by the Ld. ASJ/Special Judge (Companies Act) is contrary to law laid down by the Hon'ble High Court. Ld. Counsel for the petitioner has relied upon "Inder Mohan Goswami & Anr. v State of Uttaranchal & Ors." reported in (2007) 12 SCC 1. It is further submitted that investigation in the instant case has already been completed. Since the petitioner was not arrested during investigation, there is no ground for the SFIO to oppose the bail or seek custody before the Ld. ASJ/Special Judge (Companies Act). Ld. Counsel for the petitioner has also relied upon "Court on its Own Motion v. CBI", reported in 109 (2003) DLT 494 and "Court on its Own Motion v. State", reported in 243 (2017) DLT 373(DB). It is submitted that petitioner is aged and needs constant medical support. It is further submitted that since the investigation is complete and no recovery is to be effected at the instance of the petitioner, no useful purpose would be served by sending the petitioner to jail. It is submitted that in similar circumstances, another Bench of this court has granted relief to similarly placed co-accused Sh. Brij Bhushan Singal in Bail Application No. 2454/2019 vide Order dt. 10.10.2019. It is submitted that there are 287 accused persons and prosecution has relied upon record running into several thousands of pages. Proceedings in such cases are likely to take time. The petitioner has never made any attempt to influence the witnesses, tamper with documentary evidence or in any other manner, hampered the investigation or judicial process. He has never evaded the process of law. He undertakes to be bound by the conditions imposed upon him by the court and he be, therefore,

released in the event of his arrest.

7. It is further argued by Ld. Sr. counsel that twin conditions for grant of bail described under Section 212(6) of the Companies Act, 2013 are not applicable for the purpose of adjudication of the anticipatory bail application. The said conditions are only applicable during regular bail proceedings of accused arrested by the SFIO under Section 439 Cr.P.C. In this regards, the petitioner has relied upon the following cases:-

(i) Nikesh Tarachand Saha Vs. Union of India, reported in (2008) 11 SCC 1 @ para 42;

(ii) Dalip Singh Man and Anr. vs. Niranjana Singh, DOE, GOI, CRM No. M-28490 of 2015, decided by Punjab & Haryana High Court (DB) on 01.10.2015 @ Para 5;

(iii) Arun Sharma vs. Union of India, CRWP No. 971 of 2016, decided by Punjab & Haryana High Court (DB) on 22.07.2016.

8. It is, therefore, prayed that petitioner be granted anticipatory bail in the event of his arrest in the complaint case in question pending before the court of Ld. ASJ/Special Judge (Companies Act).

9. The anticipatory bail application is opposed by Ms. Maninder Acharya, Ld. ASG for the State on the ground that the allegations against the petitioner are very serious in nature. A fraud has been committed to the tune of Rs. 45,818 Crores approximately. A complaint has been filed against the petitioner for the offences punishable under Section 128, 129, 447, 448 of the Companies Act, 2013, Section 209, 211 read with 628 of the Companies Act, 1956, and Section 467, 468, 471 read with Section 120-B IPC. Ld. ASG has further argued that High Court had granted bail to one co-accused Nitin Johri. However, the said bail order has been stayed by the Hon'ble Supreme Court. Ld. ASG has further argued that petitioner is supposed to approach the Ld. ASJ/Special Judge (Companies Act) for cancellation of NBWs as well as for grant of bail. All the submissions made by the Ld. Sr. Counsel before this Court should be made before the court of Ld. ASJ/Special Judge (Companies Act). She has, therefore prayed for dismissal of the bail application.

10. I have considered the rival submissions. The allegations levelled against the petitioner are prima facie serious in nature. The allegations are that petitioner was one of the signatories of the financials of 'A-1' company and Director in category 'C' Company. The details of the same have been described in the summoning order dated 16.08.2019 of the Ld. ASJ/Special Judge (Companies Act). It is alleged that petitioner has signed forged letter of credits and other documents for availing credit facility from the Bank on behalf of A-1 Company. Thus, prima facie there are serious allegations of fraud committed by the petitioner in conspiracy with other co-accuseds. Perusal of the ordersheet dated 14.10.2019 of Ld. Special Judge reveals that some co-accuseds have appeared before the Ld. ASJ/Special Judge and moved an application for seeking bail. Ld.

Counsel for the FSIO has accepted notice and sought time to file reply to the said bail application. So far as petitioner P. K. Aggarwal is concerned, as per report of the Process Server, he was not available at the given address. Ld. Counsel for the FSIO had submitted that petitioner/ accused was very well aware about the development of the case and was intentionally avoiding his appearance before the Court. In these circumstances, NBWs were issued against him.

11. Per contra, Ld. Counsel for the petitioner has argued that summons were not properly served upon the petitioner. According to the Ld. Counsel, service was to be effected upon some adult male member of the family of the petitioner. However, in the present case the service was not affected on any adult male member and in case the petitioner was not available, the service could have been affected by affixation as per Section 65 CrPC. Thus, the Ld. ASJ/Special Judge (Companies Act) has not followed the provisions of CrPC.

12. Perusal of para No. 8 (i) of the petition reveals that Ld. Counsel for the petitioner was not able to inspect the judicial record. It, therefore, cannot be said as to what was the report of process serving agency on the summons issued to the petitioner. Without seeing the copy of the report on summons, it cannot be said whether petitioner was properly served or not. This submission is, therefore, made without seeing the record. In case, the petitioner is correct to the extent that he was not duly served, the Ld. ASJ/ Special Judge after considering the submission of Ld. Counsel for petitioner and Ld. counsel for SFIO and perusal of report on summon can pass the appropriate order in accordance with law. In these circumstances, it will be appropriate for the petitioner to approach the Ld. ASJ/ Special Judge and make all his submissions made herein, before the Ld. Trial court as well. However, no doubt there is a reasonable apprehension that before the petitioner is able to approach the Ld. Special Court, he may be arrested by prosecuting agency in pursuance of NBWs issued against him. In the opinion of this Court, the petitioner need to be protected to that extent and it is, therefore, ordered that till next date of hearing i.e. 11.11.2019, the NBWs issued by Ld. ASJ/Special Judge be kept in abeyance.

13. Now coming to the question of grant of anticipatory bail, keeping in mind the serious nature of the offence where there are grave allegations of fraud involving huge amount of money running in crores of rupees, no grounds for anticipatory bail to the petitioner are made out.

14. It is a settled law that Section 438 CrPC being an extraordinary remedy has to be exercised sparingly and more so in cases of economic offences as these offences affect the economic fiber of the society. In "Directorate of Enforcement vs. Ankit Kumar Jain, 1988 (2) SCC 105", the Hon'ble Supreme Court has held that in economic offences, the accused is not entitled to anticipatory bail. The Hon'ble Supreme Court in "State of Gujrat vs. Mohanlal Jitmalji Porwal and Anr., (1987) 2 SCC 364" has held that economic offenders ruin the economy and has observed as under;

5. .The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest..

15. In view of the above law laid down by the Hon'ble Supreme Court and keeping in mind the facts and circumstances of the case and serious nature of offence and amount of cheating involved as well as allegation of forgery, no grounds for anticipatory bail are made out. The NBWs issued against the petitioner be, however, kept in abeyance till next date of hearing i.e. 11.11.2019 before the Ld. ASJ/Special Judge (Companies Act). Let the petitioner appear before the court concerned and move an application for cancellation of NBWs and grant of bail which will be considered by Ld. ASJ/Special Judge uninfluenced by the observations made by this Court.

16. The anticipatory bail application is disposed of accordingly.