(2022) 02 DEL CK 0039

In the Delhi High Court

Case No : Bail Application No. 1108 Of 2021

Rajeev Suri APPELLANT

Vs

State Of Nct Of Delhi RESPONDENT

Date of Decision : 07-02-2022

Acts Referred:

Indian Penal Code, 1860 — Section 420
Code Of Criminal Procedure, 1973 — Section 41A, 91

Citation : (2022) 02 DEL CK 0039

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Sidharth Aggarwal, Rohitt Kr.Yadav, Ankit Sibbal, Udit Arora, Rishab Nagar, Gaurav Sarkar, Ankit Rao, Ravi Nayak, Anunaya Mehta, Vinayak Thakur

Final Decision : Dismissed

Judgement

Mukta Gupta, J

1. By this petition, petitioner seeks anticipatory bail in FIR No.1052/2020 under Section 420 IPC registered at PS Rajouri Garden, New Delhi.

2. Learned counsel for the petitioner states that the FIR does not disclose the commission of an offence punishable under Section 420 IPC. Despite

the alleged offence having been committed in 2018 and the complainant having issued a legal notice on 5th March, 2019, the FIR was lodged in

December, 2020 after a delay of more than 20 months. Complainant is a resident of UK and he entered into a transaction with one Anil, Director of

Global Ent. Corporation (in short â??Global Ent.â??) based in New York, USA and the goods which were funded were allegedly transferred from

South Africa to Netherlands however, to create a cause of action in India, it is alleged that the complainant met the petitioner in Delhi at the latter's residence at Rajouri Garden where the complainant was induced to invest. No recourse to civil proceedings for recovery of money has been taken

and to twist the arm of the petitioner, the FIR in question has been lodged.

3. Learned counsel for the petitioner further states that the when the complainant issued the legal notice, the alleged main accused i.e. Anil offered to

come to India on 10th March, 2019 to sort out the matters however, the complainant vide his email dated 11th March, 2019 stated that he could not

come to India. Now during the course of arguments, the complainant without any basis takes the plea that the petitioner impersonated as Anil on the

basis of one email which was sent by Anil from Thailand at the time when the petitioner was also at Thailand ignoring that all other emails of Anil

were generated from USA when the petitioner was in India. The petitioner is at best a facilitator between the complainant and Anil. Further the best

case of the complainant is that the petitioner was a guarantor, even than an offence under Section 420 IPC is not made out. In any case the petitioner

has joined the investigation nine times prior to the filing of this petition and eight times after filing of the petition. The petitionerâ??s passport is lying

seized with the Investigating Officer and he has always made himself available for the investigation. Further the mobile phone and the laptop of the

petitioner have also been seized and thus no recoveries are required to be made from the petitioner. Hence anticipatory bail be granted to the

petitioner.

4. Learned APP for the State submits that the FIR was registered on an online complaint dated 29th December, 2020 received relating to online

financial fraud. However, prior thereto the petitioner had given a written complaint on 1st December, 2020 addressed to the Commissioner of Police,

the DCP, West and the SHO. Despite the fact that the petitioner has given the mobile phone number and the email address of Anil however, Anil

could not be contacted. The whereabouts of Anil are not known and the petitioner is the only person who knows the whereabouts of Anil in case such

a person exists as the complainant has never met this Anil. He further states that during the investigation, foreign departure and arrival details of the

petitioner were collected from FRRO and his bank statements were also collected from different banks which reveal that the petitioner had money

transaction with Global Ent. Though the petitioner claimed that he had forwarded invoices and emails to the complainant which he had received from

Anil/Global Ent. however, the petitioner refused to show the original emails and invoices received from Anil/Global Ent. and thus he did not fully

cooperate and did not provide any details of the co-accused Anil and the alleged company Global Ent. Further the mobile phone given by the petitioner

to the investigating officer is not the one used by the petitioner at the time when the alleged offence was committed. Thus custodial interrogation of

the petitioner is necessary to unearth the facts.

5. Learned counsel for the complainant submits that the investigating agency did not register the FIR on the detailed complaint of the complainant

which detailed complaint dated 1st December, 2020 has been annexed as Annexure R-1 to the written submissions. It is stated that on the assurance

of the petitioner who induced the complainant, the complainant invested in Global Ent in two transactions that is, HMS-1 & 2 and SS 304. Qua the

product HMS-1 & 2, the complainant transferred a total sum of USD 69,000 and qua the product SS-304 the complainant transferred a total sum of

USD 1,85,227.50 out of which USD 4,000 were transferred from the complainant's company AG Global, whereas USD 41,600 were transferred from

NBNH, Hong Kong and 1,03,627.50 USD from Union King, Hong Kong, which amount was taken on loan by the complainant from his brother-in-law

who is in Hong Kong. Further the petitioner is the one who sent the proposal, the petitioner had been sending the invoices and adjusted accounts; the

petitioner gave his guarantee as is evident from the transcript of the conversation dated 18th January, 2019 when the complainant was pursuing his

money. The petitioner had been sending emails, bills of ladings and thus the petitioner cannot claim that he had no interest in the transaction and he

was a mere facilitator. The complainant has been in touch only with the petitioner. The surreptitious manner in which the petitioner has conducted

himself by luring the complainant to invest, clearly evidences that Anil is a non-existent person and the petitioner himself is doing the business under

the garb of an assumed name Anil at USA. It is thus prayed that the petition be dismissed.

6. In the online complaint sent by the complainant on which the FIR was registered it is stated by the complainant that the complainant was a Director

of AG Global Trading Limited (in short â??AG Globalâ??) having its office at

Athlon Road, Wembley, United Kingdom and the petitioner is having

his office at 5, Stutee Building, Bank Street, Karol Bagh, Delhi and is a resident of A-2/87, Rajouri Garden, Delhi. It is alleged that the petitioner in

conspiracy with his friend Mr.Anil based in USA, defrauded the complainant for a sum USD 2,18,500/- on two cases during the period from July, 2018

to October, 2018. Complainant knew the petitioner for the last few years due to his presence in metal industry and through his uncles who are based in

UK. The complainant met Rajeev Suri in August, 2018 at his residence at Rajouri Garden where he gave few business proposals in relation to scrap

metal business and told that he had good contacts in USA. He stated that Global Ent. can supply material to Netherlands and the complainant can

make reasonable profits. The petitioner further stated that he does not deal in international trades from his USA and Dubai companies due to taxation

complications/evasion in India and thus he convinced the complainant to transfer the money to his USA company and thereby cheated him by neither

returning the money nor the assured profit.

7. In the detailed complaint submitted by the complainant on 1st December, 2020, the allegations in nutshell are that the complainant knew the

petitioner for past few years due to his presence in the metal industry and through his uncles based in UK and then as business associates while the

complainant was associated with M/s Asha Exports Company Limited (in short â?? M/s Ashaâ??) as its Director/Shareholder. The petitioner

represented himself to be the owner alongwith his cousin Anil of M/s Global Ent. Corporation, USA which carried on the business of trading in metals,

scrap material and various items. Certain international trading transactions were thus executed between M/s Asha as part of the business relationship

in June-July, 2018. The petitioner during his visit to UK met the complainant while the complainant was still associated with M/s Asha and was about

to exit the same and start his own business under the name of AG Global Trading Limited (in short â??AG Globalâ??). The petitioner made a

proposal to the complainant to personally invest in trading through M/s Global Ent and sent an email dated 15th July, 2018 containing business

proposals. Pursuant thereto the complainant visited India in August, 2018 and during this visit met the petitioner at his residence at Rajouri Garden on

11th August, 2018 and thereafter at his office at Karol Bagh, Vasant Vihar and

Gurgaon as well as again at his residence in Rajouri Garden. During

the meetings, petitioner represented that he had expertise in international export and import business including in sourcing and procurement of

materials and their pricing. He thus offered lucrative business proposals to the complainant to invest in international export and import through M/s

Global Ent and that the investment made by the complainant will be a safe investment and would reap good returns. The petitioner gave guarantee in

his personal capacity as also on behalf of Anil in relation to the money invested by the complainant. Trusting the petitioner, the complainant invested

the money.

8. In the detailed complaint, it is further alleged that in the first instance parties agreed for sale of the product HMS 1 & 2 and as per the agreement

the complainant was to pay to M/s Global Ent and the material was to be shipped directly by M/s Global Ent to the complainantâ??s customer who

would in turn pay the complainant. The complainant thus invested as noted above. Petitioner promptly got cleared the shipments under HMS 1& 2 so

as to gain trust and confidence. After supplying the product HMS 1 & 2, the petitioner represented that he had the supplier for the material SS 304

which was ready to be dispatched and a buyer based in Netherlands who wanted to purchase the said material however, he did not have funds to

invest in the said deal. The petitioner further represented that the buyer makes 90% of the payment upon providing copy of the bills of lading, that is, at

the time of loading of the goods and the balance 10% on delivery. The petitioner also stated that the said payment terms would be available only if the

transaction is executed through M/s Gloabl Ent. Hence the complainant agreed to fund the said transaction and it was assured that not only the

amount invested but 50% of the profit @ USD50 per metric ton would also be paid to the complainant. On the assurance the petitioner, the

complainant invested a total sum of USD 1,85,227.50 in SS 304 after borrowing substantial sum from his brother-in-law. Thereafter though the

petitioner continued assuring that he will pay the money, however, no money was received by the complainant, resulting in the complainant issuing a

legal notice dated 5th March, 2019 and lodging of the FIR.

9. The complainant further alleged that to conceal the actual transaction, the petitioner neither provided the correct bill of lading which was approved

by the claimant and even the weights and port of discharge were incorrect. Further the weight of the material was wrongly mentioned at the port of

delivery. Further in the email conversation, petitioner acknowledged the payment made by the complainant and in the voice recording done by the

complainant, the petitioner also assured return of his amount which mobile phone has been duly seized by the investigating agency.

10. As per the status report filed by the State, during investigation notices have been sent through Ministry of External Affairs to get the details of

Directors banks statements of Global Ent and the reply in this regard is still awaited. Notice has also been sent to Google to get the details of the email

IDs and IP addresses of Anil and email globaentcorp@ gmail.com. Pursuant to notice under Section 41A Cr.P.C. the petitioner has joined the

investigation, submitted his bank statement from different bank accounts. The analysis of the bank statements reveal money transactions with Global

Ent. During the course of investigation, the complainant provided the documents including the business proposal sent by the petitioner through email

dated 15th July, 2018 and whatsapp messages wherein the petitioner is demanding money from the complainant asking him to sent money to USA

based account of M/s Global Ent. Copy of the letter to borrow money from bank to repay loan taken by the complainant from his brother-in-law has

also been submitted.

11. The main investigation from the overseas is yet to be carried out and the replies would take some time. Main grievance of the investigating agency

is that the petitioner forwarded the invoices and emails confirming advances by the complainant which the petitioner claims to have received from

Global Ent but the petitioner is not providing the complete trails of such received emails from Global Ent which could facilitate tracing of Anil and

Global Ent. IP address of one of the email sent to the complainant from M/s Global Ent was traced to Thailand and from the passport of the petitioner

it was evident that the petitioner was in Thailand on the said day i.e. 1st February, 2019.

12. From the acts of the petitioner of first inducing for the transaction to be made through Global Ent, making the complainant invest in the transaction,

sending the business proposals as also demanding money including sharing of the invoice, photos of the containers wherein purportedly incorrect place of delivery and weight is mentioned, it is evident that the petitioner was fully involved in the entire transaction and was not a mere facilitator, who

merely introduced the complainant to M/s Global Ent. The petitioner further claims that even taking the case of the complainant at its best, the

petitioner is a guarantor. This contention of the petitioner is based on the petitioners own whatsapp message between the petitioner and complainant

wherein the petitioner stated â??paisa apaka kahin nahi jaa raha he, ye meri guarantee he....first day se bola thaâ??.

13. Despite the fact that the petitioner claims that he has given his mobile phone and laptop, the mobile phone has not been sent to FSL because the

mobile phone handed over to the investigating agency was not the one used at the relevant time. The petitioner has since been given a notice under

Section 91 Cr.P.C. dated 10th January, 2022 for depositing I-phone 7 which was used by him during the relevant period, however he has failed to

produce the same.

14. Considering the fact that the petitioner is an active participant in inducing the complainant to invest as also in the entire transaction and is not

coming forthwith by providing the necessary material including the email trails received from Global Ent and mobile phone for the relevant period, this

Court finds no ground to grant anticipatory bail to the petitioner.

15. Petition is dismissed.

16. Order be uploaded on the website of the Court.

