(2011) 12 AHC CK 0198

In the Allahabad High Court

Rajendra Pal Pathak APPELLANT

Vs

State of U.P.and Another RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Citation : (2011) 12 AHC CK 0198

Hon'ble Judges : Naheed Ara Moonis, J

Final Decision : Dismissed

Judgement

Naheed Ara Moonis, J.—The instant bail application has been filed on behalf of Rajendra Pal Pathak with a prayer that the applicant may be released on bail in Case Crime No. CBI/EOUII of 2010 RC 07/2010 (E) 00002 under sections 120B/420/477A/511 IPC read with section 13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act 1988, Police Station C.B.I. /EOUII New Delhi.

2. The facts in a nutshell emanated from the prosecution is that a first information report was lodged against the applicant and other accused persons on 20.1.2010 by the Central Bureau of Investigation Police Station CBI/EOUII New Delhi. The applicant is the Branch Manager , Central Bank of India , LPRG College Branch Shyam Park , Sahibabad District Ghaziabad . Other accused persons Shagun Malhotra and Smt. Shuchi Duggal are Directors of M/s S & S. Converges Pvt. Limited 5, Rajasthani Udyog Nagar, G.T. Karnal Road, Delhi . The applicant entered into a criminal conspiracy with the accused persons , and the unknown officials of New India Assurance Company Ltd. and due to the said conspiracy accused persons obtained an antedated insurance cover of Rs.3.40 Crore for the assets and stocks of the factory lying therein after a fire broke out in the factory premises on 31.7.2009. It is further alleged that the applicant who is the Branch Manager of the Central Bank of India informed the New India Assurance Company to obtain the above mentioned insurance cover ante dated i.e., 30.7.2009, while knowing the fact that the said existing policy had already expired on 30.4.2009. This act was done only for the purpose to generate the claim in respect of the loss occurred in the factory due to the fire which took

place in the morning of 31.7.2009. In this regard the applicant issued a pay order No. 500507 dated 30.7.2009 of Rs. 2,28,036/ of the Bank in favour of New India Insurance Company towards the payment of premium for issuance of insurance /cover. The concerned officials of the Company issued a fake insurance cover /policy by antedating as 30.7.2009 thereby causing substantial loss to the New India Insurance Company. Pursuant to the first information report, various persons of the company as well as other officials were interrogated . On the basis of the first information report , investigation was done and the charge sheet was submitted against the applicant and other accused persons . Cognizance was taken by the court below pursuant to the charge sheet and the applicant and other accused persons were summoned to face trial . After submission of the charge sheet , the applicant approached before another Bench of this Court by means of Criminal Misc. Application No. 1682 of 2011 (Rajendra Pal Pathak Vs. State of U.P. and others), . The Hon''ble Single Judge while refusing to grant indulgence to the applicant directed the applicant to appear and surrender before the court below and the prayer of bail of the applicant may be considered in the light of the decision of Hon''ble Apex Court in the case of Amarawati and another Vs. State of U.P. 2004 (57) ALR 290 and the recent decision of the Supreme Court in the case of Lal Kamlendra Pratap Singh Vs. State of U.P. 2009 (4) S.C.C. 437. The applicant could not comply with the order dated 21.1.2011 . The applicant filed another application with a prayer to grant extension of time to appear/surrender before the court below. It appears from the record that pursuant to the order of this Court , the applicant surrendered before the court below and filed an application for bail . The court below rejected the bail application of the applicant vide order dated 6.4.2011.

3. Heard Sri V.P.Srivastava ,learned Senior Advocate assisted by Sri R.K.Gupta learned counsel for the applicant and Sri N.I.Jafri, learned counsel appearing on behalf of the C.B.I. and learned AGA appearing on behalf of the State and also have been taken through the record.

4. It was vehemently argued by Sri V.P.Srivastava learned Senior Advocate appearing on behalf of the applicant that the fire broke out in Ms/ S.S.Convergers Pvt. Ltd. on 31.7.2009 at 9.20 p.m. In this regard the company lodged a claim in which insurance company made an enquiry declining the claim on the ground that the pay order of the premium is received in the insurance company on 31.7.2009 and the fire had already broken out in the said factory as such the pay order was prepared on 30.7.2009 for Rs. 1,33,132/. The composite cheque was issued by the Manager in favour of Insurance Company purported to be 30.7.2009 towards the insurance/coverage . The applicant who is merely a Branch Manager on the relevant point of time has counter signed . The pay order which was prepared at the instance of D.D.Balihar, Administrative Officer New India Insurance Company. The applicant is not at all involved in any criminal conspiracy in preparing the cheque. The allegation made in the first information report that the cheque was deliberately prepared in order to cause wrongful gain to the company and wrongful loss to the Insurance Company is merely an

inference and is not established from the materials placed on record. It was further argued by the learned counsel for the applicant that alleged preparation of the document in the bank is totally related to the bank officials.Merely the applicant is the Branch Manager cannot be held solely responsible for the issuance of the said pay order. Vikas Shukla and K.K.Malhotra who were alleged to have been involved in preparing the pay orders were granted bail by this Hon''ble Court therefore, the applicant who is languishing in jail since 21.4.2011 may be released on bail during the pendency of trial.

5. Per contra Sri N.I.Jafri, learned counsel appearing on behalf of the C.B.I. vehemently opposed the bail prayer of the applicant contending that the premium policy of M/s S & S.Convergers Pvt.Ltd. had already lapsed on 30.4.2009 which was never renewed by the Company. The fire had broken out in the said company on 31.7.2009 . K.K.Malhotra, father of Shagun Malhora, Director, M/s S & S Convergers Pvt. informed about the broking out of the fire to R.P.Pathak . The applicant R.P.Pathak contacted to coaccused D.D.Balihar Administrative Officer New India Insurance Company . The applicant having conspired with accused persons prepared an antedated pay order dated 30.7.2009 which was handed over to D.D.Balhihar, Administrative Officer of the Company on 31.7.2009 towards the premium to cover insurance coverage/ policy . The Insurance Company had issued an insurance policy with effect from 000 hours on 31.7.2009 in favour of M/s S & S Converges Private Limited causing wrongful loss to the New India Insurance Company and wrongful gain to M/s S & S Converges Private Limited. The applicant was working as Branch Manager of the Bank and another official namely Vikash Shukla was working as Assistant Manager, they entered into conspiracy with Shagun Malhotra , K.K. Malhotra who are Directors of the Company and D.D.Balihar is Administrative Officer of the Insurance Company who got a pay order premium from Vikas Shukla, Assistant Manager bearing no. 11191 purportedly dated 30.7.2009 for Rs. 2,28,036/ on 31.7.2009 . The said cheque was handed over to D.D.Balihar, Administrative Officer . The applicant was never informed about the breaking out of the fire by K.K.Malhotra ,the father of Shagun Malhotra, Director M/s S & S Converges Private Limited. The applicant is the person alone who had directed them to collect the pay order from the Bank . Vikas Shukla who was working as Assistant Manager was knowingly impersonated as Clerk while there was active role of Vikas Shukla ,Assistant Manager in the said conspiracy. They got prepared antedated pay order and handed over the same to D.D.Balihar at 12.20 hours on 31.7.2009. During investigation, the investigating officer had collected several call details of the applicant along with the officials of the M/s S & S Converges Private Limited who had conspired together to manage the lapsed policy which had already expired in the month of April 2009 and was never renewed . It was further stressed that Raghubir Singh C.T.O. who is alleged to have made entry in the computer /register on 30.7.2009 , made entry in pay order register at serial no. 500465 bearing leaf No. 11323 which was overwritten as leaf No. 11191. The serial no. 500507 bearing leaf no.11232 was overwritten as serial no. 500447

bearing leaf no. 11332. There was great manipulations on the part of the accused persons in preparing the cheques. The statement was recorded by the investigating officer where he disclosed that he had made the entry but he was not aware as to who had overwritten the same . This clearly establishes that the entry over the cheque leaf was done by the applicant alone. The applicant is the authority who had passed the pay order .During investigation the entries as mentioned above were verified and the signatures were procured which was not denied by the applicant. The verification of the pay order, register of the bank and the despatch/date of issue were not found to be genuine . There was clear manipulation in preparing the same. The applicant had misused his position and got prepared the antedated pay orders in order to cover fire insurance claim giving benefit to M/s S & S Converges Private Limited causing wrongful loss to the insurance company. The court below has dealt with each and every aspect of the case and has found the applicant and coaccused persons actively involved in the conspiracy hence the bail was rightly rejected.

6. After analysing the rival submission advanced by the learned counsel for the parties, it transpires that the pay order was issued allegedly with the sole object of causing wrongful loss to the Insurance Company and wrongful gain to M/s Converges Pvt. Ltd. The noticeable feature of the case is that when the insurance of the Company had already lapsed long back i.e. on 30.4.2009 and the fire in the said company had broken on 31.7.2009 on what basis claim was made by the company and under what circumstances pay order was prepared to make good the loss of the company and its stock. In Sunder Lal Vs. State (FB) 1983 (20) ACC 140, it is held that if coaccused has been granted bail, it would not be sufficient to admit the other accused on bail . It was emphasized in the argument of the bail application of K.K.Malhotra that the alleged preparation of documents in the bank totally relates to the officers/officials of the Bank . In the matter of Vikas Shukla, he was shown to be the clerk of the Bank and had passed the responsibility upon the Manager of the Bank. The order dated 25.3.2011 granting bail to Vikas Shukla was later got corrected vide order dated 30.3.2011 showing him as Assistant Manager which itself depicts that correct facts were not placed before the Court and the buck was passed on others proving himself to be absolutely innocent. Further in Pramod Kumar Saxena Vs. Union of India 2008 (63) ACC 115 S.C. it has been held by the Hon''ble Apex Court that mere long period of incarceration in jail would not be per se illegal. If the applicant has committed offences , he has to remain behind bars . Such detention in jail even as an undertrial prisoner would not be violative of Article 21 of the Constitution of India. There was prior meeting of the mind of the officials of the bank and the company who were involved in hatching the conspiracy by issuing antedated pay order by manipulations in the record . There is no unimpeachable and convincing evidence to prove that the applicant is absolutely innocent and had no knowledge with regard to conspiracy being hatched by them.

7. Looking to the overall facts and the nature of allegations, this Court is not inclined to grant bail to the applicant. The bail of the applicant is accordingly

rejected. The court concern is directed to proceed with the trial expeditiously.

