(2009) 07 DEL CK 0074

In the Delhi High Court

Case No : Bail Application No. 1174 of 2009

R.K. Nanda — APPELLANT

Vs

The State — RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Companies Act, 1956 — Section 434
Criminal Procedure Code, 1973 (CrPC) — Section 439

Citation : (2009) ILR Delhi 124 Supp

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Sarabjit Sharma, for the Appellant; Sanjay Lao, APP and Vijay Aggarwal and Rakesh Mukhija, for the Respondent

Judgement

Kailash Gambhir, J.—By way of this application moved u/s 439 Cr.P.C., the petitioner seeks grant of regular bail.

2. The case of the prosecution, in brief, is that in company petition No. 238/2005, filed by one Ms. Manjit Kaur, against M/s. Durga Builders Pvt. Ltd., directions were given by the Company Court vide order dated 3.10.2008 to Crime Branch to conduct investigation into the existence/address/whereabouts of Ms. Manjit Kaur daughter of Shri Gyan Singh, R/o E-208, Kavi Nagar Industrial Area, Ghaziabad (U.P). The court also directed investigation from the aspect of conspiracy between Ms. Manjit Kaur and Durga Builders Pvt. Ltd., as well as its Ex- directors Mr. R.K. Nanda, the petitioner and Smt. Promila Nanda, wife of petitioner. Pursuant to the said directions, the Crime Branch, Delhi Police carried out the investigation and found that Ms. Manjit Kaur does not reside at the given address and M/s. Kumar security Syndicate of which Ms. Manjit Kaur claimed to be the sole proprietor was also found to be non-existent firm. It was also found by the Crime Branch that all entries regarding supply of security guards to M/s. Durga Builders Pvt. Ltd. seem to be merely paper entries, so much so even the address of advocate namely Mr. Vishesh Jain on whose letter head and

signatures the said statutory notice u/s 434 of Company Act to M/s. Durga Builders Pvt. Ltd. was sent prior to filing of the company petition, was also found to be incorrect. The Crime Branch thus found that the papers submitted by the parties, before the High court in the company petition bearing No. 238/2005 do not seem to be genuine and there appears to be a clear nexus between advocates and Directors of M/s. Durga Builders Pvt. Ltd. Based on these facts, the Crime Branch registered the said FIR against the petitioner and Mr. Sharad Kumar Aggarwal, Advocate

3. Dr. Sarabjit Sharma, counsel for the petitioner submitted that the petitioner is an old man of about 70 years of age suffering from various debilitating and life threatening ailments and even during the past period of two months, the petitioner was sent to the DDU Hospital and was thoroughly examined by the Medical Board of RML Hospital, because of his suffering from serious ailments and his heart is functional only to the extent of 30-40%. Counsel thus submitted that the life span of the petitioner is quite short.

4. Counsel for the petitioner further submitted that the petitioner has not committed any offence either of cheating or forgery and in fact became victim at the hands of his rival Mr. Arun Mehra and advocate Mr. Sharad Kumar Aggarwal. Counsel further submitted that the petitioner was never aware of any winding up petition filed by Ms. Manjit Kaur against his company M/s Durga Builders Pvt. Ltd. based on some of the bills raised by her alleged proprietorship firm M/s. Kumar Security Syndicate against the company of the petitioner for a total sum of Rs. 9,35,800/-. Counsel further submitted that the company of the petitioner suffered a major setback when the petitioner failed to deliver possession of the developed plots to various depositors/buyers on account of huge demand raised by HUDA towards the regularization charges. The contention of the counsel for the petitioner was that the petitioner had purchased about 235 acres of the land in the name of the said company and the petitioner deposited a sum of Rs. 35 crores with the HUDA towards the EDC and other charges but since huge amount towards regularization charges was demanded by HUDA, due to which plot holders raised disputes against the petitioner. Counsel stated that in the writ petition filed by the plot holders against the petitioner before the Supreme Court, Mr. Harish Salve, Senior Advocate was appointed as Amicus Curiae to look into the entire matter from a broader perspective to settle the dispute of the plot holders. Counsel further submitted that at that crucial phase, Mr. Arun Mehra who was working as a contractor for the internal development of the said colony came forward to take over the assets and liabilities of the company for which an agreement to sell was entered into between the parties in the year 1997. Various civil cases and criminal complaints were filed against the petitioner and his wife Ms. Promila Nanda by the plot holders and the petitioner R.K. Nanda kept on paying and refunding the amounts of various plot holders and in fact an amount of Rs. 24- 25 crores already stood paid by the petitioner to various claimants/ plot holders. The contention of the counsel for the petitioner was that all through this critical period, Mr. Arun Mehra never came forward to settle the disputes and

claims of various plot holders, but in the year 2005, he filed a petition before the Company Law Board claiming his right over the said company of the petitioner based on the agreement to sell of the year 1997. The said claim of Mr. Arun Mehra was contested by the petitioner and vide order dated 2.2.2006, the said petition filed by Mr. Arun Mehra was dismissed by the Company Law Board. Against the said order of Company Law Board, company appeal was preferred by Mr. Arun Mehra before Delhi High court and the same was also dismissed by the Company Judge against which, Mr. Arun Mehra preferred SLP which is still pending adjudication but without there being any stay of the order passed by company court or Company Law Board. The contention of the counsel for the petitioner was that the petitioner had been struggling hard for the revival of his company and therefore, could never take any steps for inviting a winding up order from the company court by filing the said fictitious and collusive company petition. Counsel thus submitted that the said fictitious case was got filed by Mr. Sharad Aggarwal who entered into a conspiracy with Mr. Arun Mehra to cause serious harm to the petitioner so that the said company is ultimately wound up. Mr. Sharad Aggarwal had also been taking various cheques in the name of Ms. Manjit Kaur on the ground that she was his associate and even two cheques in question for an amount of Rs. 1 lac and Rs. 25 thousand were taken by him in the name of Ms. Manjit Kaur, which were ultimately deposited by him in his joint account with Ms. Manjit Kaur and then illegally withdrawn from the said joint account being maintained at UCO Branch of Delhi High Court, counsel contended. Counsel further submitted that the petitioner had no knowledge that Ms. Manjit Kaur was a proprietor of M/s. Kumar Security Syndicate or any notice was got served by the said lady through one Mr. Vishesh Jain, Advocate and pursuant thereto, the filing of the said company petition by the said lady against the company of the petitioner. The said Advocate also got filed a civil suit titled Vishesh Jain v. Arun Mehra in the High Court bearing CS (OS) No. 1136/2005 which was ultimately dismissed due to non appearance of Mr. Vishesh Jain. Another false suit was also filed by Mr. Sharad Aggarwal in Tis Hazari Court bearing suit No. 981/2006 in the name of Durga Builders Pvt. Ltd. v. Vishesh Jain, which suit was ultimately settled after alleged payment of Rs. 30,000/- by the company of the petitioner. The contention of the counsel for the petitioner was that Mr. Sharad Aggarwal had been either forging his signatures on various pleadings and vakalatnama or his signatures were scanned by him from power of attorney or other documents. Counsel for the petitioner also invited attention of this Court to the complaint made by Mr. Atul Gupta, an associate of Mr. Sharad Aggarwal, Advocate to the Crime Branch in which he has highlighted many misdeeds of Mr. Sharad Aggarwal. Counsel further submitted that the entire game plan against the petitioner was hatched out by Mr Arun Mehra in active connivance and collusion with Mr. Sharad Aggarwal and he only became a victim at their hands facing the present criminal prosecution.

5. Opposing the bail application of the present petitioner, Mr. Sanjay Lao, APP for the State and Mr. Vijay Aggarwal, counsel representing Mr. Arun Mehra submitted

that the present petitioner is well aware of the said company petition filed by Ms. Manjit Kaur against his company M/s. Durga Builders Pvt. Ltd. Counsel further submitted that the said fictitious company petition was got filed by the petitioner with the help of Mr. Sharad Kumar Aggarwal, Advocate so as to get rid of various creditors of the said company who ultimately, approached the company court after finding the publication in newspapers concerning the provisional appointment of official liquidator. Showing utter dishonesty on the part of the petitioner, APP for the State submitted that even order of the company court was challenged by the petitioner before the Division Bench of this Court and the said appeal was filed by the petitioner through none else but Mr. Sharad Aggarwal, Advocate, and therefore, now the petitioner cannot plead ignorance about filing of the said company petition by Ms. Manjit Kaur. Mr. Lao further submitted that various payments were being made by the petitioner in favour of Ms. Manjit Kaur including those payments of Rs. 25 thousand and Rs. 1 lac in the said company petition, and therefore, it is again false on the part of the petitioner to state that he was not aware about the pendency of the said false and frivolous company petition. Even another civil suit filed by Mr. Vishesh Jain against Mr. Arun Mehra in High Court is handiwork of the petitioner who got the said fictitious suit filed to defeat the rights of Mr. Arun Mehra in a petition filed by him before the Company Law Board. The connivance and fraudulent nature of the said suit was apparent from the fact that Mr. Sharad Aggarwal representing the company of the petitioner had accepted the court notice of the said suit on the very first date in the court itself which clearly shows that the said suit was got filed by the petitioner with the help of Mr. Sharad Aggarwal through someone by the name of Mr. Vishesh Jain. Counsel for the State thus submitted that the petitioner in active connivance and collusion with Mr. Sharad Aggawal has abused and misused the court process by filing the said fictitious case based on fictitious claim, which act on the part of the petitioner is a serious interference in the course of administration of justice and therefore, he does not deserve grant of regular bail.

6. I have heard learned Counsel for the parties at considerable length.

7. Without expressing any opinion on the merits of the above submissions and taking a prima facie view of the matter, it appears to me quite shocking that the petitioner has blatantly abused and misused his position by seriously interfering with the course of judicial proceedings.

8. The allegation of filing of fictitious case with fictitious names, fictitious addresses, forged documents, misusing and abusing the process of the court, no doubt constitutes very serious acts and deserve strongest condemnation.

9. The contention of counsel for the petitioner that the petitioner was totally ignorant about the misuse of his name and that of his company by Mr. Sharad Kumar Aggarwal who as per him had colluded with Mr. Arun Mehra, the alleged purchaser of the share holding of the said company, prima facie appear to be false and baseless. This Court is totally at a loss to see the audacity and courage

of people like the petitioner who can play the alleged frauds by using the Court process to their advantage.

10. The present petitioner thus appears to be no less sinner than Mr. Sharad Kumar Aggarwal, if the allegations against both of them are proved as correct. The petitioner although deserves no leniency of this Court but considering the fact that he is not required for any further interrogation and is in judicial custody for about last two months and also the fact that this Court is granting bail to other co-accused Mr. Sharad Kumar Aggarwal, Advocate, the petitioner is granted bail subject to his furnishing personal bond in the sum of Rs one lakh with one surety in the like amount to the satisfaction of the trial court. It is made clear that the petitioner shall not, in any way, tamper with the evidence or intimidate any person who is sought to be questioned by the respondent State. It is also made clear that this concession of bail shall not come in the way of the police to carry out any further investigation in the other cases already under investigation or likely to be registered against the police. The petitioner shall not leave the country without prior permission of the Court and shall surrender his passport, if any, which will be kept in the custody of the respondent.