

(2021) 12 DEL CK 0005

In the Delhi High Court

Case No : Bail Application No. 2823 Of 2020

Sunil Kumar Jha

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-12-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 406, 420

Citation : (2021) 12 DEL CK 0005

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Mohit Mathur, Vipul Wadhwa, Rajni Gupta, Chirag Mudgal

Final Decision : Disposed Of

Judgement

Rajnish Bhatnagar, J

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking regular/interim bail in case FIR No. 141/2018 under Sections 420/406/120-B IPC registered at P.S. E.O.W.

2. In brief, the facts of the case are that a complaint was lodged by one Laxman Dass Bhardwaj, aged around 90 years against the petitioner and his wife alleging that he practices Vaidacharya and runs a manufacturing unit of some Ayurvedic medicines. It is alleged by the complainant that he used to propagate his advice about benefit of Ayurveda on various TV channels. He came in contact with accused Sunil Kumar Jha (petitioner herein), who introduced himself as channel head of Katyani Devotional TV channel and complainant started telecasting his programs on the said channel in the year 2010-2011.

3. It is alleged by the complainant that petitioner Sunil Kumar Jha introduced co-accused Bindu Jha as his wife by saying that she is an expert having all technical knowledge to run TV channel, broadcasting etc. Petitioner Sunil Kumar Jha also apprised the complainant that he had worked in Doordarshan and he alongwith

his wife Bindu Jha is the Director of a company namely M/s Viceroy Engineering Pvt. Ltd. It is alleged that after gaining the trust of the complainant, both the accused persons i.e. the present petitioner and his wife gave a proposal about establishing his own TV channel by purchasing majority shares of M/s Express Broadcasting Pvt. Ltd., which runs a channel namely "Zonet Zawlbuk" (earlier ENTV) and assured the complainant to create all the required infrastructure for establishment of TV channel.

4. It is alleged that accused persons trapped the complainant in the year 2016-17 and the complainant thereafter transferred 2.21 Crores to the bank account of M/s Viceroy Engineering (proprietorship firm of the co-accused Bindu Jha) and also gave cash of Rs. 25 Lacs. It is alleged that on 08.02.2017, the accused persons started promotion/ advertisement of complainant's programme on a channel namely "Sanskriti TV" on which accused persons used content/ programme of complainant and sometimes it was live and sometimes recorded tapes were played.

5. It is further alleged that the telecast of the programme of the complainant was stopped on 06.09.2017. It is alleged that the complainant was neither given payment for telecasting his programme nor he was returned the amount given for the purchase of channel. It is alleged that the complainant at the instance of the accused persons as an authorized distributor executed "Distribution Agreement" dated 03.03.2017 on behalf of M/s Express Broadcasting Pvt. Ltd. with Dish TV India Ltd.

6. It is alleged that on the advice of the accused persons, the complainant through bank transferred Rs. 19,83,375/- to AV Edit Solution, Rs. 27,01,542/- to Planet Cast Media Services Ltd. and Rs. 1,50,50,000/- to Dish TV India Ltd. but later on the complainant came to know that the accused persons have purchased the channel Sanskriti TV through shareholding of M/s Express Broadcasting Pvt. Ltd. in the name of co-accused Bindu Jha and not in the name of complainant as promised. It is alleged that the complainant has paid a total sum of Rs. 4,18,34,917/- through bank transfers to accused persons namely the petitioner and his co-accused Bindu Jha and the above mentioned companies for establishing a TV channel in the name of the complainant and in addition to the above amount, it is alleged by the complainant that he had paid a sum of Rs. 1.50 Crore in cash additionally for development of studio in the premises of the accused persons situated at Chander Nagar, Ghaziabad.

7. It is alleged that complainant came to know that petitioner Sunil Kumar Jha made his wife Bindu Jha (co-accused) Director of the said channel and complainant was not appointed as Director-cum-owner of the said channel as per the promise. It is alleged that the staff of Sanskriti TV in their statement confirmed that the accused persons had told them that the complainant was one of the partner of Sanskriti channel. It is alleged that the statement of account of the complainant's bank account was scrutinized which reflected transfer of Rs. 2.21 Crores to the account of M/s Viceroy Engineering which is the proprietorship

firm of the co-accused Bindu Jha and Rs. 2 Crores to the account of the above named three companies.

8. Co-accused Bindu Jha has given all authorities in regard to signing of cheques, orders and communication in regard to the account of M/s Viceroy Engineering to her husband Sunil Kumar Jha (petitioner herein).

9. The agreement dated 11.01.2017, was produced during the investigation by the accused persons purportedly executed between M/s Viceroy Engineering through co-accused Bindu Jha and M/s Laxman Dass & Co. through the complainant for transmission of audio-video programme of the complainant on the Sanskriti TV channel. It is alleged that on scrutiny it was revealed that the agreement was executed at stamp paper No. BN 928551 of Rs. 50/- and it bears the stamp of Bablu Bharti, Stamp Vendor. Since the complainant was denying about the execution of any such agreement, stamp paper was got verified and it was revealed that it was issued on 11.09.2017 to stamp vendor Bablu Bharti which shows that agreement dated 11.01.2017 is forged.

10. I have heard the Ld. Sr. counsel for the petitioner, Ld. APP for the State, Ld. counsel for the complainant who assisted the Ld. APP for the State and also perused the Status Report and the records of this case.

11. It is submitted by the Ld. Sr. counsel for the petitioner that the matter is entirely a civil matter and in order to arm twist the petitioner and his wife, the present FIR has been registered. It is further submitted by the Ld. Sr. counsel for the petitioner that the complainant in the year 2015 had approached the petitioner for using the services of M/s Viceroy Engineering for production of half an hour audio-video promotion material for broadcasting on TV channels and the complainant had agreed to pay Rs. 5000/- for each episode. It is further submitted that the complainant has even requested the applicant/petitioner and his wife to use their good will and expertise in the TV medial industries for his promotional clips, so following the business understanding, the petitioner and his wife provided services to the complainant between December 2015 till December 2017 and recorded and produced over 400 episodes which were handed over to the complainant. He further submitted that for broadcasting the episodes of the complainant, the co-accused contacted many TV channels but no channel was willing to run the episodes of the complainant for a 24 hour long cycle. He further submitted that the petitioner came across certain shareholders of TV channel companies, who were willing to upload their stocks. So, the petitioner and his wife purchased all the shares of M/s Express Broadcasting Pvt. Ltd. vide M.O.U. dated 17.08.2016. Thereafter, the complainant came to know about the offer to purchase the share of Sanskriti TV and it was mutually agreed between the petitioner and the complainant that the complainant would subscribe for 47 slots of half an hour telecast per month on Sanskriti TV and for the same the complainant would pay Rs. 47 Lakh per month i.e. Rs.1,00,000/- each for every half an hour slot. The complainant was to pay advance payment of six months for telecast which came to around Rs. 2,82,00,000/- excluding all taxes which

were to be further born by the complainant. The advance payment in part i.e. Rs. 2,21,00,000/- was made by the complainant between 24.08.2016 till 07.10.2016 but the complainant failed to make the balance payment which is still due and outstanding. It is further submitted by the Ld. Sr. counsel for the petitioner that it was only on the basis of the assurances of the complainant that the petitioner and his wife engaged another company for linking up the satellite services for the programs on Sanskriti TV channel for proper broadcast of the episodes of the complainant. It is further submitted by the Ld. Sr. counsel for the petitioner that despite balance of Rs. 61,00,000/- out of the advance payment which is still due from the complainant, the complainant in order to gain the trust and confidence of the petitioner and his wife made an undertaking/confirmation for making all payments towards up-linking of TV channel "Sanskriti TV". He further submitted that in this regard, the complainant has even given one post dated cheque No. 000338 dated 05.01.2017 in favour of M/s Planet Cast Media Services Limited on 27.12.2016.

12. It is further submitted by the Ld. Sr. counsel for the petitioner that the petitioner and his wife fulfilled their part of the business with the complainant and started with the broadcast of the complainant's episodes and for the same the petitioner and his wife raised two invoices amounting to Rs.1,08,10,000/- and Rs. 2,16,20,000/- for the services rendered to the complainant from 06.02.2017 till 05.04.2017 and from 06.04.2017 till 05.08.2017 but the complainant after making the aforesaid payment failed to make any further payment to Sanskriti TV or M/s Planet Cast Media Services Limited. It is further submitted by the Ld. Sr. counsel for the petitioner that the complainant is liable to make a total payment of Rs. 1,28,00,000/- for the services rendered by the petitioner and his wife. It is further submitted by the Ld. Sr. counsel for the petitioner that the petitioner has also paid applicable taxes for the aforesaid services. He further submitted that due to the non-payment of dues and repeated false assurances of the complainant, the petitioner and his wife were constrained to institute a suit for recovery against the complainant on 21.05.2018

13. It is further submitted by the Ld. Sr. counsel for the petitioner that the complainant started to broadcast his episodes on other TV channel i.e. Prerna TV Channel and the petitioner and co-accused on enquiries came to know about the agreement dated 03.03.2017 between the complainant and Dish TV wherein the complainant dishonestly represented himself to be an authorized representative of M/s Express Broadcasting Pvt. Ltd. which is the company of the co-accused. He further submitted that when this fact came to the knowledge of the petitioner and the co-accused, two separate complaints dated 14.05.2018 were made to the police for investigation of the agreement dated 03.03.2017. He further submitted that on coming to know about the civil suit and criminal complaints filed by the petitioner and his wife, the complainant has filed the present FIR as a counter blast to the legal actions taken by the petitioner.

14. He further submitted that there is not even an iota of admissible evidence

against the petitioner and he has been falsely implicated. He further submitted that all the relevant documents have been given to the investigating officer and now the charge sheet stands filed, so there is no requirement of the petitioner for any purposes. It is further submitted by the Ld. Sr. counsel for the petitioner that the matter was sent for amicable settlement but the same could not be settled amicably. He further submitted that the charge sheet has been filed. It is further submitted by the Ld. Sr. counsel for the petitioner that the petitioner has not misused the interim bail granted to him.

15. On the other hand, it is submitted by the Ld. APP for the State assisted by the Ld. counsel for the complainant that petitioner is the mastermind of the whole conspiracy and he along with his associates induced the complainant and took huge money on the pretext of purchasing a TV channel. It is further submitted by the Ld. APP for the state that petitioner is the authorized signatory of A/c No. 1443002110094043 in the name of M/s Viceroy Engineering (proprietorship firm of co-accused) in which they received the cheated amount.

16. It is further submitted by the Ld. APP for the state that during investigation, petitioner did not disclose the identity of purported document/agreement dated 11.01.2017, which was used repeatedly by accused persons in their defence and the forged agreement dated 11.01.2017 was used by accused persons against the complainant in the civil case CS-472/18 also.

17. It is further submitted by the Ld. APP for the State that petitioner earlier worked as Deputy Director in Doordarshan/ Jodhpur and had been convicted in a criminal case filed by Doordarshan with CBI with regard to cheating and misappropriation of government goods from the stores of Doordarshan.

18. It is further submitted by the Ld. APP for the State that service tax receipts, annexed with the petition by the accused/petitioner are not related to the transaction between the applicant and complainant, however the alleged invoices dated 06.03.2017 and 30.05.2017 showing tax of Rs.13,16,000/- and 26,32,000/- respectively are not matched with the record of service tax department and as per the service tax department report the tax paid by the applicant in the year 2016-2017 is Rs.42,081/- only, which proves that the tax showed in the invoices was not paid by the petitioner as stated.

19. It is further submitted by the Ld. APP for the State that petitioner is the prime accused who alongwith his wife (co-accused Bindu Jha) in a well planned conspiracy had cheated the complainant who has invested his lifetime savings with the accused persons for establishment of a TV channel.

20. It is further submitted by the Ld. APP for the state that the petitioner is also backing out from the undertaking given in the Court with regard to securing the entire amount of Rs. 2.25 Crores by depositing the same with the Registrar General of this Court. Ld. Sr. counsel appearing for the petitioner submitted that the complainant as well as the petitioner and co-accused were ready to settle the matter and they had shown their willingness in this regard but the matter could

not be settled as the parties could not arrive at a common platform. He further submitted that the petitioner and co-accused were willing to settle the matter with the complainant and they had even shown their willingness to secure the amount but no consensus could be reached.

21. In the instant case, the matter was sent for mediation for settlement but the same could not be settled between the parties. There are claims and counter claims raised by the petitioner and co-accused on the one side and the complainant on the other side and even a civil suit is pending between the parties but the dispute in this regard cannot be adjudicated upon at this stage in this bail application and the respective claims will be decided in the civil proceedings.

22. The charge sheet has already been filed. As far as the question of forged agreement dated 11.01.2017, is concerned, it has been alleged that the agreement is antedated. However, what would be the effect of this agreement on the case of the prosecution would be considered during the course of trial and this is not the stage to comment on this agreement or to reach at any conclusion in favour or against any of the parties.

23. As of now, since the charge sheet has been filed, all the material evidence and documents have been collected, the petitioner has remained in J.C. for a period of more than two months, he was also granted interim bail and there are no allegations that during the period of interim bail, he ever tried to influence the witnesses or tamper with the evidence, in these circumstances, the bail application is allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the concerned trial Court. The bail application is disposed of accordingly.

24. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.