(2002) 08 DEL CK 0059

In the Delhi High Court

Case No : CRLMM No''s. 2021 and 2053 of 2002

Surinder Kairam and Tarun Kairam — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Citation : (2003) CriLJ 1491

Hon'ble Judges : Mahmood Ali Khan, J

Bench : Single Bench

Advocate : Rajiv Datta and Udey Kumar, for the Appellant; Pewan Sharma and Richa Kapoor, APPs, for the Respondent

Judgement

Mahmood Ali Khan, J.—By this common order these two petitions; one filed by Surinder Kairam (Crl.M(M) No. 2021/02) for grant of regular bail and the other petition filed by Tarun Kairam (Crl.M(M)No. 2053/02) whereby he has prayed for grant of anticipatory bail will be disposed of as both of them are filed in the same case. Surinder Kairam is the father and Tarun Kairam is his son.

2. The case was registered on the complaint of Satish Kumar Sharma. The allegation against these two petitioners and their co-accused is that in execution of a criminal conspiracy hatched by the petitioner Surinder Kairam and other members of his family, including the son Tarun Kairam, they have cheated the complainant of more than Rs. 1.5 crores. Prosecution case is that in the year 2000-2001 the accused fraudulently and dishonestly pursuaded the complainant to become a partner through his company M/s A.S.& Sons (P) Ltd. in a partnership firm M/s Saat Sur Enterprises on the pretended object of carrying out firm/TV Serial business. On misrepresentation and false assurance the petitioner Surinder Kairam, who is the brain behind this conspiracy, in complicity with other accused collected the said amount by demand draft showing the same to have been paid to M/s Atexavision (India) which was a Chennai based firm of an NRI Subbarao who was supplying TV Serial named Gold Medal Champion, Soccer Legend, Golf Club etc. to M/s Saat Sur Enterprises. All the papers

agreement, receipt and payments were purportedly signed by V. Natrajan, who was said to be authorised signatory of M/s Atexavision (India) but entire documentation and execution of the receipt of payment were handled by co-accused K.C.N. Mohan at his residence-cum-office in Bangalore in his capacity as branch office representative of M/s Atexavision (India). The complainant and petitioner Surinder Kairam made several visit in October, 2000 to Bangalore, exchanged communications and messages, talked on telephone at Bangalore .It was agreed that 26 episodes of IV Serial Golf Club would be sold by M/s Atexavision (India) to M/s Saat Sur Enterprises for a total sum of Rs. 2.85 crores. One Sunil Joshi, a co-accused, was introduced as the prospective buyer of the said programme for a sum of Rs. 4.11 crores on behalf of M/s Channel G Entertainment, a Calcutta based subsidiary firm of a known film maker M/s Adhikari Brothers. Signing amount of Rs. 11.00 lacs through demand draft has also surreptitiously tendered by Sunil Joshi at the behest of the petitioner Surinder Kairam which was got credited in favor of M/s Atexavision (India). Half of this amount was taken back from the complainant by making misrepresentation. During investigations it was revealed that M/s Atexavision (India) and M/s Channel G Entertainment both were proprietary firm of the petitioner, Tarun Kairam which had bank account at Standard Chartered Bank, New Delhi. It was further revealed that Subbarao and V. Natrajan were non-existent persons and there was no office of M/s Atexavision in Chennai nor was M/s Channel G Entertainment a subsidiary of Adhikari Brothers nor did it have any office in Calcutta. Sunil Joshi was also not an authorised representative of Adhikari Brothers to negotiate for the purchase of the programme. The investigation also revealed that the programme Golf Club was imported by the petitioner, Tarun Kairam from M/s Sandra Carter, New York in the name of his another firm RB&CO, for a paltry sum of Rs. 1.75 lacs some time in December, 2000, i.e. a few months after the accused had entered into the conspiracy to cheat the complainant for more than Rs. 1.00 crores. During the investigation it was also found that the petitioner and his family and their firms have also opened as many as 30 bank accounts for defrauding the compliant and that the money was rotated from M/s Atexavision (India) to other accounts for either to prepare demand drafts of the share of the petitioner Surinder Kairam for a contribution in terms of the partnership deed of M/s Saat Sur Entertainment or to siphon off for personal use.

3. Counsel for Surinder Kairam has argued that his client was an old man and that he had entered into a partnership business with the complainant and that a dispute has arisen between them which has led to his filing of a suit by this petitioner for dissolution of the partnership and rendition of accounts etc. It is submitted that the averment of the complainant and the investigation disclosed the dispute of a civil nature and not commission of an offence. He further submitted that various properties of this petitioner which are sufficient to secure the interest of the complainant have already been attached. According to him the petitioner is a sick man and he was granted interim bail which has been

extended by the court and for this reason also the bail should be granted to the petitioner. He also contended that the charge-sheet has already been filed. His son Tarun Kairam had also joined the investigation. The petitioner also had a heart surgery. His wife and the daughter have been enlarged on bail. For all these reasons he has prayed for grant of bail to this petitioner.

4. Counsel for Tarun Kairam, petitioner has submitted that the charge-sheet has now been filed against his client also, Therefore, his client will file appropriate bail application before the trial court and till it is decided, he should be granted protection against arrest.

5. Both these petitions are strongly opposed by APP for State. According to her the investigation has revealed that both these petitioners, who are father and son, had sinister design to defraud the complainant of a huge sum of about Rs. 1.5 crores. They had entered into a criminal conspiracy in complicity with other co-accused for cheating the complainant. It was contented that in terms of the partnership deed entered into between the petitioner Surinder Kairam and the complainant investment of Rs. 75.00 lacs was to be made initially and that the complainant and the petitioner Surinder Kairam were to contribute in the ratio of2:1 but making fraudulent misrepresentation of buying TV Serial from a person at an exorbitant price the petitioner Surinder Kairam took huge amount of money from the complainant without investing a single pie himself. As a pretence, he rotated the money received from the complainant in about 30 bank accounts opened by him in different banks and in different names and shoed as it he was also making contributions which, in fact, the was not. She argued that the TV Serial was, in fact, imported by the son Tarun Kairam for a paltry amount of Rs. 1.75 lacs which the petitioner in conspiracy with his son and other accused pretended to have purchased from a south based NRI businessman, who was none else but the concern of Tarun Kairam. Similarly, one Sunil Joshi was set up as a representative of a known business firm Adhikari Brothers at Calcutta which, in fact, he was not representing but he was an employee of Tarun Kairam. The money received from the complainant also went into the bank account of the petitioner and his son Tarun Kairam. She also pointed out that after the arrest of the petitioner Surinder Kairam his son tried to withdraw huge amounts from various bank accounts but the 10 was vigilant, Therefore, he could not succeed. The APP has pointed out to the positive assertion made in the petition of Surinder Kairam that no bail application was filed before this Court prior to the instant petition. She contened that earlier bail application of this petitioner was considered and dismissed on merit on 2.4.2002. She also argued that copy of the order to this court dated 2.4.2002 by which similar bail application of Sunil Joshi was dismissed had been filed with this petition, Therefore, a deliberate false allegation is made in the application and this application for bail is liable to be dismissed for this reason alone.

6. APP also contended that the evidence which has been collected had shown the active complicity of Tarun Kairam in the cheating of the complainant. It was

stated that the charge-sheet has already been filed against him also now, Therefore, his application for anticipatory bail should also be dismissed.

7. Lastly, APP contended that the petitioner Surinder Kairam had obtained an interim bail from this court in June, 2002 on the ground that he was sick but the 10 has obtained a report from the concerned hospitals which showed that the petitioner could get his treatment even while remaining in jail. She also submitted that a video recording of the activities of the petitioner Surinder Kairam since obtaining of interim bail in the first week of June, 2002 was made which clearly showed that the petitioner is leading normal active life. She has filed list of the places which this petitioner had visited on different dates in the month of June and July 2002 which do not show that the petitioner is too sick to be sent to jail and his interim bail requires to be extended.

8. APP has cited an unreported judgment of the Supreme Court in Mahesh Kumar Bhawsinghka v. State of Delhi in an Special Leave to Appeal (Crl.) No. 2702/1999 dated 4.1.2002 in which in an embezzlement case of over one crore, the bail, was refused. App also cited Salauddin Abdulsamad Shaikh Vs. State of Maharashtra, where also anticipatory bail application of an accused was refused and it was observed that the anticipatory bail should not be granted where the application for regular bail should have been filed and which the trial court has to consider having regard to the material placed before it.

9. APP has also referred to Subhash Gupta Vs. Delhi (Delhi Admn.), where it was observed that consideration for grant or refusal of bail are the nature and gravity of the circumstance in which the offence is committed, position and status of the accused with reference to the victim and the offence, likelihood of his fleeing from justice or repeating the offence, likelihood of tampering with the witnesses and other relevant grounds. It was also observed that while granting or refusing the bail the public interest and the likely affect on the victim''s family must also be taken into consideration.

10. In the rejoinder counsel for Surinder Kairam could not explain the circumstances in which in the application it was concealed from the court that first bail application filed by Surinder Kairam was dismissed by this court on 4.4.2002 on merit. He simply submitted that it was a mistake on the part of the advocate who had drafted the application. As regards other contentions of the APP, he submitted that now the investigation is over and no useful purpose would be served by keeping the petitioner Surinder Kairam in jail since trial will take a long time.

11. I have given careful consideration to the submissions made at the bar. Prima facie on the basis of the allegations made in the complaint, the charge-sheet, the evidence and the material which has been collected during investigation indeed it appears that the petitioners Surinder Kairam and his son Tarun Kairam had entered into a criminal conspiracy along with the other accused to defraud and cheat the complainant of over a crore of rupees on the pretext of entering into a

partnership agreement between the complainant and the petitioner Surinder Kairam. A TV Serial worth Rs. 1.75 lacs was shown to have been purchased by the partnership concern for about a core of rupees. Similarly the co accused were set up to give credence to the whole transaction but alter they were turned out to be men of these two petitioners. The petitioner Surinder Kairam never invested his own money into partnership as per the terms of the partnership but rotated the money deposited in 30 bank accounts opened in different names to show as if the money was coming from his own pocket though it was the same money which was taken from the complainant.

12. In the instant case the petitioner Surinder Kairam has taken interim bail on the health ground but it appears from the video recording that he had been roaming about like an ordinary healthy man. The perusal of the medical papers submitted by him do not show that he cannot be provided adequate treatment of his disease while remaining in jail. He has committed very grave and serious offence. There is possibility of his tampering with the evidence or fleeing from justice considering the nature of the case. He does not deserve to get the regular bail or even an interim bail on medical ground.

13. Above all in the application he deliberately falsely represented that he had not filed any bail application earlier which fact has been found incorrect and there is no Explanation for his making this false statement to the court. It could not have been an inadvertent mistake since his bail application and bail application of co-accused Sunil Joshi were dismissed on merit on same day and he filed copy of the order of this court passed on the application of sunil Joshi. He has not come to the court with clean hands and for this reason also his application deserved to be dismissed.

14. Applying the principles of law laid down in the judgment cited at the trial and in the peculiar facts and circumstances of the case the application of the petitioner Surinder Kairam deserved to be dismissed. It is accordingly dismissed.

15. As regards the anticipatory bail of Tarun Kairam it is admitted that charge sheet against him has already been filed. Now he has to approach the trial Court for grant of regular bail. Counsel for this petitioner has already stated that this petitioner will appear before trial court and apply for bail. He, however, wanted this court to give protection to this petitioner till trial court disposes of the application. but considering the role assigned to him which is as grave and serious as the role of his father is, he does not deserved even the limited anticipatory bail in this case. His application is also dismissed. But it is clarified that the trial court will decide his bail application un-influenced by any observation made by this court against this petitioner in this order.

