

(1979) 05 DEL CK 0043

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal Nos 221 of 1979

Wajinder Singh etc.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-05-1979

Acts Referred:

Citation : (1979) RLR 381

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : Jethamalani, Harjinder Singh, K.K. Sud and J.C. Digpaul, for the Appellant;

Judgement

M.L. Jain, J.

(1) This is an application u/s. 438 Criminal Procedure Code . for anticipatory bail. In view of Balchand Jain v. State Air 1977 Sc 366, I granted interim bail to the petitioner and issued notice to the PP. in order that a wrong order of anticipatory bail may not be obtained by the petitioner by placing incorrect or misleading facts or suppressing material facts. The investigation made so far discloses that the petitioners are partners of M/s Capital Steel Industries, 64, Rani Jhansi Road, New Delhi, which carries on the business of manufacture of steel furniture. In order that they may be able to get raw material, the Director of Industries assessed the capacity at 150 Metric Tons per year in the year 1975. In the year 1978, they applied to the Delhi State Industrial Development Corporation for enhanced quota of steel on the basis of a photostat copy of a capacity certificate enhancing the capacity to 1350 M.T. They lifted about 607.9 M.T. valued at about Rs. twenty four lakhs. The certificate bore the date July 31, 1978. Later on, when the Directorate inspected the factory premises on 20.2.1979, the unit was found closed. A suspicion arose thereupon and an inquiry was initiated. On 18.3. 1979, a report was lodged with the Police Station Paharganj that while their account books were being carried in a three-wheeler scooter carrying from Paharganj, to Naraina, the person carrying the account books happened to go to meet

someone on way. On his return, he found that the scooter had decamped with all their account books. Meanwhile, the Department concluded its inquiries and found that the aforesaid certificate of enhanced capacity purporting to have been issued by Mr. H.L. Mhindru, Joint Director of Industries, Delhi, was a forged one, and no such certificate was issued by him. The Department lodged an FIR No. 423/79 under sections 420, 468 and 471 Indian Penal Code with the Police Station, Connaught Place, on 19.4.79. The petitioners applied for anticipatory bail on 21.4.79, in the court of session. The learned Additional Sessions Judge rejected the application for anticipatory bail on 23.4.1979. The Metropolitan Magistrate issued non-bailable warrants against them on the same day. On 25.4.1979, the petitioners were declared proclaimed offenders because they could not be apprehended. On the same day, they approached this court and made the present application. In this application they have stated that they were approached by one Mohan Makhija, an Assistant in the office of the DSIDC, in April/May, 1978. He told them that if proper details were furnished with regard to the consumption of the raw materials in the last two years, they could get a certificate for enhanced capacity. He also told them that he could get this done as he had links with the officers of the Directorate. The petitioner thereupon gave him information for assessment of enhanced capacity. In July, 1978, Mohan Makhija informed them that the revised capacity certificate was ready, but he supplied them only a photostat copy thereof and said that the original was with him. The petitioner under the bonafide belief signed a forwarding letter prepared by Mohan Makhija. He had assured them that all proper verifications had been made by the higher officers and checked by one Anant Ram and that release of further material had also been directed. Mohan Makhija thereafter began to blackmail the petitioners in order to extract money. When the petitioners refused to oblige, a false case was made against them by the Department. This, prima facie shows that the petitioners were a party to obtain a false and forged certificate of enhanced capacity in order to draw more quota of steel from the DSIDC. The learned Additional Sessions Judge declined anticipatory bail stating that the offence is a grave one and provisions of anticipatory bail are not meant to be invoked in such cases. Mere willingness on the part of the accused to join the investigations cannot be a sufficient criterion for allowing anticipatory bail to the offenders.

(2) Mr. Jethamalani contended that the learned Additional Sessions Judge has stated wrong principles for refusal of anticipatory bail. He submitted that bail must be allowed unless the court is satisfied that the petitioners are likely to misuse the liberty, if so allowed, and will not make themselves available for interrogation during investigation. To make an elaborate examination of the truth of the prosecution case at this stage is irrelevant. As a matter of fact, bail is meant for the guilty people and unless there are chances of likely misuse, bail should not be refused merely to encourage the malicious designs of the police. During the period the petitioners had been on interim bail they have on each day been with the police right from morning till evening and they have been

thoroughly interrogated. They further undertake to join the investigation and fully co-operate with the investigation officer in the case. They also stated that a lakh of rupees of their firm is lying with the Department, which should go to prove their bona fides that no fraud was committed by them.

(3) The learned Standing Counsel appearing for the State on the other hand, vehemently opposed the application. He raised a preliminary objections that once the Magistrate has issued warrants of arrest and the Additional Sessions Judge has declined anticipatory bail the petitioners have no right to approach this court for the same purpose. He relied upon *Joginder Singh and others v. State of H.P.* 1916 C.L.R. (H.P.), 40, and *Amiya kumar Sen Vs. State of West Bengal*, . As regards the merits, Mr. Sood submitted that it was one of those cases where the court should decline anticipatory bail.

(4) I have considered over the matter. I leave it for some future occasion to examine whether after bail has been refused by the court of Sessions, the accused can approach the High Court or not. For the present, I shall assume that the jurisdiction being concurrent, this court has the power to grant anticipatory bail even though the petitioners had not succeeded in the court of session. The petitioners have more or less admitted that they were a party to defrauding the Department for getting increased quota though they had no requisite capacity and for that purpose in collaboration with Mohan Makhija obtained a forged certificate. So much so that from a business of Rs. 24,553.00 in the year 1974-75 when they began, their business shot up to Rs. thirty two lakhs in the year 1978-79. This is really an example of what are known as white collar crimes. The Department has even suspended one of its officers and Mohan Makhija has for the present made himself unavailable to the investigation agency. There is more in the case than meets the eye, and the investigation has to be carried on how and in what manner the material was used or sold in black and how large is the ring of culprits, officials and non-officials both. There is in the circumstances every likelihood that the petitioners will misuse the liberty and will be able to suppress evidence. They have already made it safe by making a report with the Paharganj Police Station that their account books may not be subjected to scrutiny by reporting their loss. There is a strong prima facie case against them and, indeed ,to a large extent, admitted by them. As regards the money lying with the Department, Mr. Sood explained that it was against the quota of material which could not be lifted as the fraud was meanwhile exposed. I, Therefore, do not consider it a fit case where the discretionary powers under sec. 438 Cr. P.C. should be exercised.