

A.F.R.
Reserved On 26.4.2022
Date of Delivery 12.5.2022

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4109 of 2021

Applicant :- Akhilesh Kumar @ A.K. Rajiv

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Chandra Singh, Arun Sinha, Atul Mishra, Ayodhya Prasad Mishra, Siddhartha Sinha

Counsel for Opposite Party :- G.A., Romit Seth, Varsha Sharma

Hon'ble Krishan Pahal, J.

1. Heard Sri Arun Sinha and Sri Ayodhya Prasad Mishra, learned counsels for the applicant and Sri Vinod Kumar Shahi, learned Additional Advocate General assisted by Sri Santosh Kumar Mishra, learned AGA-I for the State of U.P.

2. By means of the present bail application, the applicant seeks bail in Case Crime No.160 of 2020, under Sections 406, 419, 420, 467, 468, 471, 120-B IPC & Section 7ka/8(1)(1) of Prevention of Corruption Act, Police Station- Hazratganj, District- Lucknow, during the pendency of trial.

BRIEF FACTS OF THE CASE

3. As per prosecution story, two persons, namely, Vaibhav Shukla and his friend Santosh Sharma are said to have met the Informant, Manjeet Singh Bhatia @ Rinku at his residence at Indore, Madhya Pradesh in the month of April, 2018. They are stated to have enquired from Informant whether he has flour mill and also about annual turnover of his business. Vaibhav Shukla belonged to a very respectable family and is a closed friend of the Informant. The said two persons, Vaibhav Shukla and Santosh Sharma are said to have taken documents of Informant's company pertaining to previous financial years and also the profile of Informant's company. They again visited the office of Informant and informed him that one S.K. Mittal who is stated to be the Deputy Director of Department of Animal Husbandry, Uttar Pradesh, had met them and he is very close

to the Minister and they want to get him a supply order for supply of wheat, sugar, flour and pulses to the tune of Rs.292.14 crores with the condition that a commission of 3% of the total amount of the supply order is to be provided in advance. The Informant asked them to get the time period extended as the supply order was too big for him. Santosh Sharma is stated to have assured him to get the time extended. The aforesaid two persons are said to have informed the Informant that they would also have their share in the profit and running the said business. On said promise and assurance of Vaibhav Shukla and Santosh Sharma, the Informant has paid huge amount to them which was to be provided to Secretary S.K. Mittal.

4. Thereafter, the Informant was called to Lucknow and is stated to have visited various places along with Vaibhav Shukla and Santosh Sharma and was even stated to have met the said Secretary S.K. Mittal at the Secretariat, Lucknow. The Informant is said to have informed S.K. Mittal that he shall require a godown to keep the said items for which Mittal had asked him to pay Rs.72 lakhs to M/s R.K. Traders, U.P. as a rent for the said godown which was deposited in the bank account of M/s R.K. Traders by the Informant.

5. When Informant checked the online status of the Tender, nothing was found there only then he came to know about the fraud committed to him of Rs.9,72,12,000/-. The Informant enquired from Vaibhav Shukla and Santosh Sharma about the said absence of Tender details on website whereupon they informed him that on 22.11.2018, they have to go to the office of CBCID as there have been some complaints with regard to the said Tender and an enquiry is being conducted. The Informant went to the office by CBCID, Lucknow where his entry was noted on a register and one constable took him to the S.P., CBCID who made certain queries from him regarding the Tender and even asked him to write on a paper that he had already supplied the said material for which he has got the order. On coming

out of the gate of CBCID office, the said S.K. Mittal was found waiting outside and on being asked him, the Informant told him about the events at the CBCID office. At this, the said S.K. Mittal had asked him to go back to his home and also asked that he shall be informed further details through Vaibhav Shukla and Santosh Sharma.

6. On 26.12.2018, the Informant again met S.K. Mittal with Vaibhav Shukla and Santosh Sharma and then he asked the present applicant to provide him with a copy of the original work order, an undated bill book and also an affidavit of some supply and only then the said supply shall be started. All the documents as asked by S.K. Mittal, were sent by the Informant through his employee Lavendra. On 11.1.2019, S.K. Mittal is stated to have retained those documents with him and sent Lavendra and Santosh Sharma to the S.P. of CBCID. The Informant was called several times to Lucknow as he insisted for the work after having paid such a heavy amount. On 30.3.2019, the Informant was called to Lucknow and he had stayed in Oyo room behind Piccadily hotel and from where they kept on calling S.K. Mittal for the said amount who assured him that the said money shall be transferred to his account through RTGS. On 31.3.2019 at about 06:00 PM, the Informant was asked to reach in front of Phoenix Mall, Lucknow. The Informant along with Vaibhav Shukla, Santosh Sharma and his friend Rakesh Porwal reached there from where they were forcibly abducted by police men in three vehicles including one constable Dilbahar Singh and were threatened that if they raised any alarm, they shall be put to death. Thereafter, they were taken to police station Naka Hindola, Lucknow where they were threatened by police personnel and are said to have retained their ID proofs also. They were released by the police personnel after threatening them that if they were seen again, they will be killed in an encounter.

7. The Informant came to know later on that the person who had met him as S.K. Mittal is actually Ashish Rai an imposter, who runs

an entertainment office at Mumbai and there are several police and media personnel connected to him including Monti Gurjar, Roopak Rai, Santosh Mishra, A.K. Rajiv (present applicant), Amit Mishra, Uma Shankar Tewari, Rajnish Dixit, Anil Rai. The two D.B. Singh and Arun Rai are stated to be the hardcore criminal. Anil Rai, Editor of reputed channel along with Dheeraj Kumar, Private Secretary, Department of Animal Husbandry and Umesh Mishra from the office of State Minister, Animal Husbandry and others were also involved in the commissioning of aforesaid offence. The Informant is said to have been defrauded to the tune of Rs.9,72,12,000/-.

RIVAL CONTENTIONS

8. Learned counsel for the applicant stated that the applicant, who is a permanent resident of Lucknow, has been falsely implicated in the present case. He has not committed any offence as alleged by the prosecution. Although the applicant is named in the FIR but no specific allegations have been levelled against him by the Informant as well as the main witnesses Santosh Sharma and Vaibhav Shukla. Learned counsel has argued that the police arrested the main accused Ashish Rai in connection with the present case and at his pointing out, the police is stated to have gone to the house of the applicant on 14.6.2020 at Nehru Enclave, Gomti Nagar, Lucknow and when the applicant had opened the door of his house, he was identified by Ashish Rai as A.K. Rajiv. The name of the applicant A.K. Rajiv @ Akhilesh Kumar was revealed there. The police is stated to have enquired about some documents connected with the present case on which the applicant is said to have procured a suitcase from a room adjoining to his house. The said suitcase was sealed and seized at the spot and the arrest/recovery memo was also prepared by the police.

9. Learned counsel for the applicant has also relied upon the statement of his Saving Bank Account, State Bank Branch, Jawahar Bhawan, Lucknow wherein an amount of Rs.1,60,000/- is said to have

been transferred through three transactions on 27.7.2018, 3.8.2018 and 24.1.2019. There is no evidence of the source of the amount transferred in the said transactions. No cash has been recovered from the possession of the applicant though recovery of Rs.28 lakhs have been made from the house of co-accused Ashish Rai. There is no allegation that the first Informant directly or indirectly paid any amount to the applicant.

10. Learned counsel for the applicant has further argued that no case under the Prevention of Corruption Act is made out against him as he is a private person and has nothing to do with it. The money transferred to the account of the applicant by co-accused Ashish Rai was the payment of a loan which he had taken from him. The amount transferred to his account was not a share of the amount usurped by co-accused Ashish Rai. The applicant is a respectable person and a renowned journalist of the locality. He being a social person meet several persons daily and had no inkling of any offence having been committed by Ashish Rai. The allegations levelled against the applicant have come up in the concluding part of the FIR and not in the main body. The applicant has not forged any document or used it as a genuine one. As a matter of fact, nothing incriminating has been recovered either from the possession of the applicant or at his pointing out. False recovery has been shown from his possession by the police only to show good work. There is no evidence against him except the confessional statement of the co-accused persons which is not admissible under the Indian Evidence Act. The applicant has not given any confessional statement to the police and if any confessional statement has been recorded by it, is false. There is no criminal history of the applicant.

11. Learned counsel for the applicant has further submitted that the applicant had the possession of the documents kept in a suitcase were already in the knowledge of the police before the said recovery as it is

said to have been revealed by the co-accused Ashish Rai. So the fact already discovered has been re-discovered by them. The said recovery does not fall within the ambit of Section 27 of the Evidence Act.

12. Learned counsel for the applicant has further contended that the co-accused Monti Gurjar against whom identical allegations have been levelled, has already been enlarged on bail by the trial court vide order dated 18.12.2020. The co-accused Sachin Verma has also been released on short-term bail by this Court vide order dated 22.4.2022 passed in Criminal Misc. Bail Application No.1456 of 2021. The applicant is ready to deposit the amount of Rs.10,00,000/- immediately after his release within a stipulated period fixed by the Court. The charge-sheet has been filed against the applicant. There is nothing on record to suggest that there is any conversation of the applicant either to the Informant or the co-accused persons. The allegation against the applicant is that he had introduced the Constable Dilbahar Yadav to the first Informant, although if it is so, introducing a person to somebody else does not constitute any offence. There is no likelihood of applicant tampering with evidence and he is ready to cooperate with trial.

13. Per contra, Sri Vinod Kumar Shahi, learned AAG assisted by Sri Santosh Kumar Mishra, learned AGA-I have vehemently opposed the bail prayer of the applicant on the ground that none of the accused persons have been granted bail in the present subject matter. The first Informant has been victimized and traumatized by the applicant and other co-accused persons and has even been illegally threatened and beaten up in police custody by the officials of police at CBCID office and P.S. Naka Hindola, Lucknow. The Informant could not bear the trauma and as such took the refuge of the then Speaker of Lok Sabha and on whose directions, the instant FIR has been lodged.

14. Sri Shahi, has further argued that the alleged offence was executed in a well planned and orchestrated manner in connivance

with the Personal Assistant and Peon of the Minister along with other named co-accused persons. The said sealed suitcase recovered from his possession was opened in the presence of Magistrate concerned in which a large amount of documents was found which pertain to the said offence which substantiates the allegations of complicity of applicant. The documents relating to the Department of Animal Husbandry were also recovered and the same have been annexed as Annexure-5 to the counter affidavit. He has further placed reliance upon the details of the CDR of the mobile numbers of the applicant indicating that he was in constant touch with the co-accused person Ashish Rai and Dilbahar Yadav from his mobile number 9415907020. The CDR is also a part of the Annexure-5 to the counter affidavit.

CONCLUSION

15. It would be inappropriate to discuss the evidence in depth at this stage because it is likely to influence the trial court but from the perusal of the evidence collected during investigation so far, it prima-facie appears that the applicant was also involved in the commissioning of said offence and no reason was found to falsely implicate him in the present case. This is a high profile fraud committed by the high profile criminals having long reach with higher echelons of the society. This is a white collar crime and such offences are on the rise in the prevalent social conditions. There is a recovery of a suitcase at the pointing out of the applicant. The CDR also confirms the complicity of the applicant as he was in regular touch to co-accused Ashish Rai and Dilbahar Yadav through his mobile.

16. Considering the facts and circumstances of the case, the nature of offence, complicity of accused, fraud of huge amount, involvement of high echelons as well as the rival submissions advanced by the learned counsel for the parties and without expressing any opinion on the merits of the case, I am not inclined to release the applicant on bail.

17. Accordingly, the bail application of the applicant is **rejected**.

18. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

19. However, it is directed that every endeavor shall be made by the trial court to conclude the trial expeditiously, if there is no other legal impediment.

Order Date :- 12.5.2022
Siddhant

(Justice Krishan Pahal)