

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CRIMINAL PROCEDURE

Bail Application No.1766/2009

Reserved on : 30.01.2009

Date of decision: 05.02.2009

SANJAY KAPOOR

PETITIONER

Through: Mr.Rajesh Harnal, Adv.

Versus

STATE ...

RESPONDENT

Through: Mr.Navin Sharma, APP for State
SI Rajeev Bhardwaj, EOW/Crime

MOOL CHAND GARG, J.

1. This order shall dispose of the bail application filed under Section 439 Cr.P.C. in case FIR No. 118/2006 under Sections 406/419/420/467/468/471 r/w Section 120-B IPC registered at Police Station Rohini, Delhi. The petitioner has been in custody since 27th May, 2007.

2. Briefly stated the facts of the case are that Sh.Siva Raman, Branch Manager of the South Indian Bank Ltd. lodged a complaint that one Sanjay Kapoor Proprietor M/s Sanjay Kapoor and Co., 18-C, Janyug Apartment, Sector -14, Rohini, Delhi was maintaining a current account with the bank. On 23.09.2000 he applied for credit facility/overdraft limit of Rs. 40 lacs by creating charge over the stock and book debts of M/s Sanjay Kapoor and Co. in favour of the bank. Sanjay Kapoor also offered a collateral security by mortgaging the property No. 53, Road No. 77, Punjabi Bagh, New Delhi shown to have been registered in the name of one Balkishan Monga. On 03.11.00, Sanjay Kapoor along with his father in law Shri K.C. Chaudhary and one person came to the bank and introduced him as Balkishan Monga r/o C-30, Gulmohar Park purported to be owner of the above property No.53, Road No. 77, Punjabi Bagh, New Delhi. The alleged Balkishan Monga also offered the creation of mortgage on the above property against the credit facility of Sanjay Kapoor whereas K.C. Chaudhary stood as guarantor of Sanjay Kapoor to obtain the credit facility. The alleged Balkishan Monga also submitted copy of sale deed NO. 5138 dated 25.04.63 in his favour executed by Refugee Cooperative

Housing Society Ltd. in respect of above mentioned property. Later on in the month of July 2001, Sanjay Kapoor applied for enhancement of credit limit to Rs. 65 lacs and as such on 06.09.01, the complainant Bank sanctioned a credit limit upto Rs. 50 lacs to Sanjay Kapoor. The necessary documents in this regard were once again executed by Sanjay Kapoor, his father in law KC Choudhary and the alleged Balkishan Monga. Shri Sanjay Kapoor than availed the cash credit overdraft limit (CCOL) of Rs. 46 lac (aprox.), credit on local discount cheque (LDC) of Rs. 11 lacs (approx.). In the month of March, 2004 the complainant Bank sent notice to Sanjay Kapoor to repay the above outstanding amount but inspite of repeated demand, he did not settle the accounts. It is alleged that the present petitioner in conspiracy with other accused persons availed the CC Limit and fled away without paying the dues of bank causing a loss of Rs. 71.03 lacs to the complainant bank on the basis of the aforesaid forged documents.

3. The petitioner had also filed an application for bail before the Additional Sessions Judge, who dismissed the same vide order dated 9.7.2008 by rightly observing that the petitioner is the direct beneficiary of the cheated amount. Considering the magnitude of the fraud no ground for bail is made out. Now the petitioner filed the present petition.

4. It is submitted by learned counsel for the petitioner that the petitioner is B.Com (Hons.) from Delhi University and a permanent Tax payer to the Government of India for the last many years and belongs to a respectable family. His family consists of his wife, five year old daughter and an old ailing septuagenarian mother. The petitioner has clean antecedents and has no previous history of being involved in any other case of any nature whatsoever till date. All offences alleged against the petitioner are triable by Magistrate. Incarceration of petitioner in jail would serve no useful purpose.

5. It is also submitted that in the charge sheet dated 16.8.2007 and the supplementary charge sheet dated 5.1.2008 filed after obtaining report of the CFSL it is admitted by prosecution that the petitioner has not impersonated any other person. He has neither made any false documents nor forged the signatures of any person on any documents relied on by the prosecution. It is also submitted that no signatures in the hands of the petitioner as an impersonator were found appearing or present on any of the alleged forged/false document. As such, no offence under Section 419/467/468 is made out against the petitioner. The offence under Section 471 IPC is bailable. Moreover co-accused Ashok Singhal, Mange Ram and Radhey Kishan Vats have already been granted bail notwithstanding the fact that co-accused Ashok Singhal is a habitual offender and has voluminous criminal record, he has been granted bail by this Court.

6. It is also submitted that the petitioner opened a current A/c No. 1242 with the complainant bank on 18.6.1999. After some time he requested the bank to grant Cash Credit Overdraft Limit (CCOL) of Rs. 40 lacs against lien on the FDRs of Rs. 17 lacs of Shri K.C. Choudhary, the father in law of the petitioner, original deposits of Rs. 5 lacs made by the petitioner, hypothecation of stocks, lien on book debts and deposits with the bank, but bank asked for a collateral security in the form of mortgage of immovable property. The petitioner did not have any immovable property in his name. It was under these circumstances that the petitioner, after talking to the Bank, was introduced to Ashok

Singhal, who told the name of the mortgagor as Bal Kishan Monga s/o late Shri Gora Mal Monga and the particulars of the property. It is also stated that the petitioner did not know Ashok Singhal, Mange Ram or other co-accused personally and as such remained oblivious of the fact that Mange Ram is not Bal Kishan Monga. In fact, the petitioner saw accused Radhey kishan and Deepak for the first time when they were produced in Court with the petitioner during remand proceedings. It is also stated that the petitioner had already paid back to the complainant bank a sum of Rs. 25,00,000/-. Had the petitioner intended to cheat, he would not have made deposits of Rs. 5 lacs of his own, deposits of FDRs of Rs. 17 lacs of his 76 year old father in law as security. There is nothing incriminating against the petitioner except the statements of co-accused, which are otherwise also inadmissible in evidence.

7. The submission made by learned counsel for the petitioner cannot be accepted on the face of it, for the simple reason that the petitioner himself offered collateral security of the property bearing No. 53, Road No. 77, Punjabi Bagh, New Delhi as belonging to one Balkishan Monga whereas the said property had been sold to M/s. P.P. Jewellers on 18.3.1999 and in the year 2003 the property was sold to one Harpreet Singh by M/s P.P. Jewellers. Based upon the aforesaid collateral security, the petitioner availed enhanced financial limits and in fact, the equitable mortgage was credited of the aforesaid property on behalf of the petitioner and in this connection the other co-accused persons, namely, Ashok Singhal and Radhey Kishan also accompanied Mange Ram who posed himself as Balkishan Monga before the Bank Manager and thereby supported the version of the petitioner that the aforesaid sale deed had been rightly executed and that Balkishan Monga, who is the non-existent person, is the owner of the property. Based upon the aforesaid representation of the petitioner, further limits were sanctioned to the tune of Rs. 50 lacs on 6.9.2001 and the aforesaid limit has been utilized by the petitioner and in this manner the petitioner even today is indebted to the complainant bank to the tune of Rs. 71.03 lakhs (as on 8.3.2005) and the bank has also taken steps for recovery of the aforesaid amount. In these circumstances, prima facie, it is borne out that the petitioner is guilty of the offence. No doubt, the offence alleged against the petitioner so far as cheating is concerned is triable by the Metropolitan Magistrate and the punishment up to 7 years can be awarded in respect of some of the offences, the factum of cheating a Public Sector Bank, in fact, tantamount to cheating the society at large. These white color crimes are more serious than even the hurt cases.

8. In the case of Gurcharan Singh and Ors. Vs. State (Delhi Administration [(1978) 1 SCC 1180), it is held that the over-riding considerations in granting bail which are common both in the case of Section 437(1) and Section 439(1) Cr.P.C. are the nature and gravity of the offence; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.

9. Learned counsel for the petitioner wants to take the benefit of the bail granted to Ashok Singhal and has drawn my attention to page 25 of the paper book i.e. the charge

sheet where it is stated that Ashok Singhal on the basis of the forged documents of property No. 53/77, West Punjabi Bagh, New Delhi himself availed credit limit of Rs. 30 lacs by producing similar fake documents of property before Andhra Bank, Vishwas Nagar in his account of M/s Nikhil Trading Company. After availing the same property in his bank account at Vishwas Nagar successfully to avail the credit limit he forwarded another set of documents of the same property to the petitioner with the help of Radhey Kishan, Deepak and further Radhey Kishan had also arranged an impersonator Mange Ram to sign the documents as B.K. Monga. The said Ashok Singhal was involved in many other cases, yet he has been released on bail.

10. I have gone through the orders releasing Ashok Singhal on bail. Yet I do not find that the case of the petitioner can be treated paramateria to the case of Ashosk Singhal. At this stage, therefore, I do not find it a fit case to release the petitioner on bail. Nothing stated here in would prejudice the trial on merits.

11. The bail application is accordingly dismissed.

Sd./-
MOOL CHAND GARG, J.

FEBRUARY 05, 2009