SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Ritesh Gupta vs.state

Ritesh Gupta vs.state

SooperKanoon Citation : sooperkanoon.com/1203085

Court : Delhi

Decided On : Jan-30-2017

Appellant : Ritesh Gupta

Respondent : State

Judgement :

$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI BAIL APPLN. 111/2017 & Crl.M.A. No.1100/2017 Date of Decision:

30. h January, 2017 RITESH GUPTA STATE .....

... Petitioner
Through Mr.Rakesh Kumar Khanna, Sr. Adv. with Mr.A.K. Vali, Adv. & Mr.Achin Mittal, Adv. Versus ..... Respondent Through Mr.Ashish Dutta, APP for the State with Mr.Rishi Pal, DCP, Outer District, Mr.Arvind Kumar, SHO & SI Amit. Mr.Kirti Uppal, Sr. Adv. with Mr.Sidharth Chopra, Adv. & Mr.Dinesh Jindal, Complainant in person. CORAM: HON'BLE MR. JUSTICE P.S.TEJI P.S. TEJI, J1 The present anticipatory bail application under Section 438 of the Code of Criminal Procedure, has been preferred by the applicant in a case arising out of FIR No.17
lodged on 30th September, 2014 under Sections 420/467/468/471/120B of the Indian Penal Code at Police Station Mangolpuri. Bail Application No.111/2017 Page 1 of 8 2. The facts as emerge from the records, are that the complainant Saroj Jindal lodged an FIR against the applicant Ritesh Gupta, his parents Mr.Ram Niwas & Ms.Renu Gupta, Mr.Anand Singh Rawat, stating therein that the

applicant along with his parents Mr.Ram Niwas and Ms.Renu Gupta floated a company in the name of M/s Sidha Neelkanth Paper Industries Private Limited and obtained a loan from Andhara Bank, Pitampura Branch, New Delhi and mortgaged the property bearing no.170, Deepali, Pitam Pura, New Delhi. The complainant stated that with the consent of her husband and under the trust of her brother-in-law namely Mr.Ram Niwas Gupta, she created a mortgage over the property bearing no.392, Deepali, Pitam Pura, New Delhi and that Sh.Ram Niwas Gupta, being the promoter Director and the shareholder of the company, obtained a fresh loan from Andhra Bank to the tune of Rs.15.50 crores which was sanctioned on 27th March, 2010. On the said date itself, the complainant executed the required documents for availing the loan facility and alleged that she was unaware of any enhancement of the loan amount. Upon being served notice under SARFAESI Act by the Andhra Bank, the complainant received the information regarding recalling of the loan facility. It was further alleged by the complainant in the FIR that on the same date of recalling of the Bail Application No.111/2017 Page 2 of 8 loan, the amount due had been sufficient to clear the dues of the bank for the sale of property bearing no.170, Deepali, Pitampura. Thereafter, for the purpose of recovery of dues, the bank had filed an Original Application No.116/2014 copy whereof was supplied to the complainant Saroj Jidnal on 12th September, 2014. The complainant has alleged that the bank has claimed the amount on the basis of enhancement of loan facility from 27th March, 2010 by granting an ad-hoc facility of Rs.3.00 crores on 20th August, 2010 as well as further executing documents with respect to letter of sanction dated 24th January, 2011 for an amount of Rs.20.00 cores sanctioned by Chief Manager of the Andhara Bank. The complainant has stated that the signatures on the guarantee form from pages 132 to 135 of the original application filed by the Bank, are forged and fabricated and that the complainant Saroj Jindal never executed any such documents. It was alleged that the accused persons including the applicant herein, have caused wrongful loss to the complainant and wrongful gain to themselves. The complainant in the FIR further alleged that the hand writing expert had submitted a report to the effect that the signatures on the documents dated 20th August, 2010 and 24th January, 2011 are not same.

3. Arguments advanced by learned senior counsel the applicant Bail Application No.111/2017 Page 3 of 8 is that on 27th March, 2010, sanction was granted by the Andhra Bank to M/s Sidha Neelkanth Paper Pvt. Ltd. and that the property bearing no.170, Deepali, Pitampura, owned by his father Shri Ram Niwas Gupta and the property bearing No.392, Deepali, Pitampura, owned by Smt.Saroj Jindal, were mortgaged with the bank and that he was only a guarantor in the documents which was executed in pursuance of the said sanction. It was further submitted that the company secured additional ad-hoc facility of Rs.3.00 crores and that the said amount was returned by the company and it was only thereafter that the sanction advice dated 27th March, 2010 was reinstated. It was further submitted that on 24th January, 2011, the company further requested the bank to increase the sanction limit from Rs.15.50 crores to Rs.20.00 crores, however, the sanction advice had not been issued by the bank. It was further submitted that the complainant Saroj Jindal illegally flouted the sanction advice dated 27th March, 2010 and sold the entire property to Mr.Pramod Kumar Aggarwal, for a consideration of Rs.17.71 crores and accepted Rs.5.50 crores as advance. It was next contended that on 24th October, 2012, the complainant Saroj Jindal and Mr.Pramod Kumar Aggarwal entered into a subsequent supplementary agreement to sell acknowledging the mortgage of property being 392, Deepali, Pitampura and on 27th April, 2013, Bail Application No.111/2017 Page 4 of 8 the account of the company was declared by the Bank as Non- Performing Asset on the balance amount of Rs.16.61 crores as a result of which the existing limit for a sum of Rs.15.50 crores issued by the Bank, as availed by the company, existed.

4. Learned senior counsel for the applicant has further submitted that on the basis of sanctioned advice dated 24th January, 2011, the Andhra Bank issued notice under Section 13(2) of the SARFAESI Act. It was next contended that the complainant enjoyed the interim protection granted by the Debt Recovery Tribunal and it was only when the stay order was vacated on 1st August, 2014, the complainant fabricated the false story and got the FIR registered on 30th September, 2014.

5. In support of his submission, learned senior counsel for the applicant relies on the judgment of the Supreme Court in Sobran Singh Vs. State of U.P. 2014 (11)

SCALE520 Jagdish Nautiyal Vs. State 2013 [1]. JCC311 Bhadresh Bipinbhai Sheth Vs. State of Gujarat & Anr. (2016) 1 SCC152& Arnesh Kumar Vs. State of Bihar & Anr. (2014) 8 SCC273 6. In the case of Bhadresh Bipinbhai Sheth (supra), it was observed that Section 438 Cr.P.C. gives direction to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a Bail Application No.111/2017 Page 5 of 8 serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified.

7. In the case of Jagdish Nautiyal (supra) and Sobran Singh (supra), it was observed that the totality of circumstances deserve to be seen before a person is granted or denied the anticipatory bail. In the case of Sidharam Satlingappa Mhetre (supra) it was observed that Courts should be loath to reject the grant of anticipatory bail inasmuch as it impinges on the personal liberty of a person and unless and until there is an imminent and a great imperative to have a custodial interrogation of an accused, the anticipatory bail does not deserve to be denied.

8. The learned Additional Public Prosecutor for the State on instructions of the investigating officer present in court, has submitted that though the accused has been absconding and proceedings under Section 82 of the Cr.P.C. are going on, but since the role of the applicant is only guarantor, he is not required for the purpose of custodial interrogation. The investigating officer has further stated that so far as the signatures on the documents which are alleged to be forged, are concerned, the report of the CFSL is lying pending.

9. From the material placed on record and the submissions made, the only role assigned to the petitioner is that he was the Bail Application No.111/2017 Page 6 of 8 guarantor of the loan advanced to the company of which his father and others were directors/promoters. It is not specifically alleged against the petitioner that he committed any forgery of the documents. Even otherwise, as per the statement of the learned prosecutor, the petitioner is not required for the purpose of custodial interrogation.

10. In the above facts and circumstances and the fact that the role of the applicant is only guarantor and he is neither the director nor the shareholder of the

company, this Court is inclined to grant anticipatory bail to the petitioner - Ritesh Gupta, subject to his joining the investigation as and when directed by the Investigating Officer.

11. In view of the facts of this case, it is hereby ordered that in the event of arrest, the petitioner - Ritesh gupta be released on bail subject to his furnishing of personal bail bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the arresting officer.

12. The petitioner is directed to join the investigation as and when required and to cooperate in the investigation of the present case. He is directed not to influence the prosecution witness and tamper with the evidence. He is further directed not to leave the country without prior permission of the concerned Court. Bail Application No.111/2017 Page 7 of 8 13. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

14. With aforesaid directions, the present bail application stands disposed of. JANUARY30 2017/aa P.S.TEJI, J Bail Application No.111/2017 Page 8 of 8

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com