

Sunil Kumar Vs. State

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Court : Delhi

Decided On : Mar-27-2015

Judge : Manmohan Singh

Appellant : Sunil Kumar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment pronounced on:

27. h March, 2015 % + BAIL APPLN. No.2444/2014 TEJINDER PAL KAUR Through Petitioner Mr.Anil K. Aggarwal, Adv. versus STATE OF NCT OF DELHI Respondent Through Mr.Ravi Nayak, APP for the State along with SI Devender Kaushik, PS I.P. Estate, in person. + BAIL APPLN. No.332/2015 SUNIL KUMAR Through Petitioner Mr.Anil K. Aggarwal, Adv. versus STATE Through Respondent Mr.Ravi Nayak, APP for the State along with SI Devender Kaushik, PS I.P. Estate, in person. CORAM: HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. By this order, I propose to decide two anticipatory bail applications, filed by Tejinder Pal Kaur and Sunil Kumar, under Section 438 Cr.P.C. seeking pre-arrest/anticipatory bail with directions to the Investigating Officer/Arresting Officer in case FIR No.377/2014, under Sections 420/468/471 IPC, P.S. I.P. Estate (Central District), New Delhi to release the petitioners in the event of their arrest in

the said case.

2. Brief facts of case are that on 6th September, 2014, the aforesaid FIR was registered on the complaint of Dr.Siddhartha Ramji, Medical Superintendent, Lok Nayak Hospital, Delhi alleging that the Pay and Accounts Office XV had intimated the hospital authorities about significant mismatches between the pay bills and the corresponding outgoing salary head at LNH on 29th August, 2014, following which a Committee was constituted which investigated the matter from 1st September, 2014 who submitted its preliminary report on 4th September, 2014, which was duly forwarded to the Secretary (H&F.W), Govt. of NCT of Delhi. In addition to the above employees of the hospital there are 2 other persons who are not at the strength of Lok Nayak Hospital to whose accounts also, large sums of money have been transferred. They are; (1) Harpreet Singh and (2) Ajay Kumar. After going through the available records of bank statements of some of the employees, it was noticed that the illegal transfers have been taking place from June, 2012 till date.

3. On the basis of available records, it was found that there were 12 beneficiaries (one AAO, nine Nursing Orderly and two outsiders including one DEO posted in the Pay and Accounts office) involved which managed to embezzle an amount of Rs.1,25,16,409/-, consolidated beneficiaries are as under:1. Sh. Praveen Kumar Bail Appl.Nos.2444/2014 & 332/2015 4.

2. Sh. Sunil Kumar Nursing Orderly 4,13,990/- 3. Sh. Anand Kumar Sharma Nursing Orderly 3,82,308/- 4. Sh. Dinesh Pal Singh Nursing Orderly 11,65,051/- 5. Sh. Sanjeev Kumar Nursing Orderly 14,46,645/- 6. Sh. Ashok Singh Nursing Orderly 16,82,127/- 7. Sh. Anil Kumar Nursing Orderly 17,48,457/- 8. Sh. M S Tajender Pal Kaur AAO648,443/- 9. Sh. Sushil Kumar Nursing Orderly 4,81,012/- 10. Sh. Vijay Pal Singh Sh. Vijay Pal Singh 3,05,879/- 11. Sh. Ajay Kumar Private Person 24,97,672/- 12. Sh. Harpreet Singh Private Person 8,25,228/- Total = 1,25,16,409/- A joint anticipatory bail application was moved before the Additional Sessions Judge, Tis Hazari Court which was dismissed by order dated 1st November, 2014 with direction to join the investigation. Later as per the direction of the Court eight alleged accused joined the investigation. Out of eight, six have been granted regular bail under Section 439 Cr.P.C. after having undergone 2

months judicial custody as informed by the learned APP for the State. It has also been informed that the substantial amount have been deposited by the five accused before the learned trial court.

5. The case of Tejinder Pal Kaur is that as part of her official duty, she is responsible only for checking of the salary bills of class IV employees of the LNJP Hospital. The salary bills are prepared by the Dealing Assistant. It is alleged by her that excess payments have been made to the employees, from the very opening statement in the FIR The Pay & Account Office XV has intimated the hospital authorities about significant mismatch between the pay bills and corresponding outgoing salary head at LNH. The salary bills checked by the petitioner have been found to be correct.

6. The petitioner is not responsible for making actual payments or for ECS transfers of money/salary to the bank accounts of the employees. She was employed in Accounts Branch, whereas payments through ECS transfers are made by the officers and staff employed in the Pay and Account Office (PAO). She has no role or involvement in making or remitting of any irregular payments to the bank accounts of any employee. The same is the responsibility of the DDO, who prepares and checks the salary bills of all gazetted officers including the petitioner.

7. In the case of other employees or accused excess payment might have been made since July, 2012 as alleged, in the case of the petitioner such payment have been recently made to her bank account only on 2 occasions i.e. on 28th June, 2013 for a sum of Rs.2,56,166/- and on 8th November, 2013 for a sum of Rs.86,288/- totalling to Rs.3,42,454/-. The aforesaid amount also included amount of Rs.76,870/- (Rs.36,899/- + Rs.39,971/-) towards salary due to the petitioner. The excess payment made to the petitioner is Rs.2,65,675/-. The 3rd payment of Rs.76,971/- made to the account of the petitioner has been reverted to and cancelled by PAO, without paying monthly salary to the petitioner.

8. It is further stated that the petitioner is an unmarried woman of 48 years of age, thus have very meagre needs of life. The petitioner used to withdraw money from her saving bank account only through ATM transactions in small amounts up to Rs.10,000/- at one time. The petitioner seldom visited her bank and last got her

pass-book updated more than 2 years ago on 2nd August, 2012.

9. The petitioner was surprised to receive an order dated 1st September, 2014 purportedly issued by the Establishment branch of the hospital divesting her of the charge in the Accounts Branch and directed her to attend the office of the Superintendent (E-1) and to make herself available to be present before some inquiry committee. But neither the petitioner was ever conveyed the reasons or ground for the aforesaid action against her, nor she was called to attend the purported inquiry committee.

10. It is stated that it is only through some staff members the petitioner came to know that some excess payment of salary and arrears have been made to her bank account by the PAO Office and for the aforesaid reason disciplinary action is being contemplated against her. Immediately on receiving aforesaid information the petitioner visited her bank and got her pass-book updated on 6th September, 2014 when the petitioner came to know, for the first time that on 2 occasions in past some amount in excess of the petitioners entitlement have been remitted to her account by the PAO of LNJP Hospital.

11. On 8th September, 2014 the petitioner was summarily put under suspension in contemplation of some disciplinary proceeding against her. However the details of inquiry proceeding has not been conveyed to her till date. On 9th September, 2014 the petitioner also came to know through media briefing purportedly made by Delhi Government officer that an FIR has been registered against the petitioner on complaint lodged by the MS of the Hospital at the behest of the de-facto complainant. Bail Application No.322/2015 filed by Sunil Kumar 12. The case of the Sunil Kumar is that he is not so literate person and is residing with his family comprising of his three minor children i.e. daughter (IIInd class), son (Vth class) and the son (aged about two and a half years old). The father of the petitioner is retired from the Govt. service and also owns an ancestral property. It is stated that the petitioner because of the duty in the Hospital left the ATM card at home and as his wife is a housewife the same was used by his wife as well as his children for withdrawing from the bank for household expenses.

13. It is submitted that the petitioner in any manner has the knowledge of the excess amount transferred through ECS in his salary account and as soon as he came to know of the same, the petitioner immediately approached the bank and also submitted the letters dated 5th September, 2014 and 3rd November, 2014 to the bank; letter dated 9th September, 2014 to the Director (Administration) and also to Drawing and Disbursing Officer, Lok Nayak Hospital; letter dated 23rd September, 2014 to the Medical Superintendent, Lok Nayak Hospital about the excess amount in his account and he has already deposited the amount of Rs.4,13,990/vide DD dated 25th November, 2014 to the Deputy Controller of Accounts, Lok Nayak Hospital and there is nothing left to be recovered from the petitioner.

14. In the following judgments, the law of anticipatory bail has been discussed: i) In the case of Ravindra Saxena v. State of Rajasthan, reported in (2009) 1 SCC684 it is held that anticipatory bail cannot be denied merely because allegations of cheating and forgery have been made. Further held on facts, High Court could not ignore appellants plea that dispute between him and complainant regarding sale of specific flats, was purely of civil nature and complainant had already filed suit for specific performance. ii) In the case of Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors., reported in (2011) 1 SCC694 it is held: Relevant consideration for exercise of the power

111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia case [(1980) 2 SCC565:

1980. SCC (Cri) 465]. that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 Cr PC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do.

In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail: (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence; (iii) The possibility of the applicant to flee from justice; (iv) The possibility of the accused's likelihood to repeat similar or other offences; (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people; (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern; (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused; (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the

accused and these allegations are corroborated by other material and circumstances on record.

15. Learned counsel for the petitioner Tejinder Pal Kaur has produced the letter dated 24th February, 2015 issued by the office of the Medical Superintendent, Govt. of NCT of Delhi, Lok Nayak Hospital, New Delhi which indicates that the balance amount of Rs.12,70,813/- is lying in the GPF account of the petitioner Tejinder Pal Kaur. As far as the amount of Rs.5,71,472/- is concerned, the petitioner has no objection if the said amount be withdrawn from her GPF account and kept deposited with the complainant and the remaining amount be attached till the final disposal of the present proceedings. Learned counsel for the petitioner has also made the statement that the petitioner Tejinder Pal Kaur is always open to join the investigation and she shall also produce the documents required by the IO in the matter and shall provide full cooperation in this regard. The undertaking is also given on her behalf that in case the IO requires her presence in her office to trace out the details, she will come from her residence to the office for the purpose of investigation and she will also accompany the IO in case her presence is required to trace out any other documents if so required. Similar statement has been made by the learned counsel appearing on behalf of Sunil Kumar.

16. Learned APP for the State has opposed the prayer of the petition stating that she is involved in embezzlement of the Government money to the tune of Rs.6,48,443/- through ECS in her bank account at different gap of time and she is the only person who knows how much money all the staff receives in their account. Therefore, the custodial interrogation is required. He further states that apart from her, one more accused Sanjeev Kumar has returned the part payment. It is not denied by the learned APP for the State that the petitioner Tejinder Pal Kaur was interrogated earlier in the presence of her relative and W/HC Brajesh and on interrogation, she was in cooperative, although she has denied of having knowledge of embezzlement of Govt. money and she has not returned any money back even. As it is a serious offence committed by the responsible Government officials in a planned way, therefore, in order to unearth the complete racket and to reach to the truth, custodial interrogation of the petitioner is required.

17. As already stated by the learned counsel for the petitioners that the petitioner Tejinder Pal Kaur is prepared to deposit the alleged embezzlement amount of Rs.6,48,443/- and even she is agreeable for the attachment of the balance GPF amount of Rs.12,70,813/- till the final decision of the case. She has already given the undertaking about joining further investigation and shall provide full cooperation in the matter. Having considered the entire facts and circumstances of this case coupled with the fact that since the co-accused have already got the bail from the trial court in the matter pertaining to the present FIR after having undergone to judicial custody for about 2 months (although the learned APP for the State submits that the coaccused were released after getting the regular bail under Section 439 Cr.P.C.), similar is the case of Sunil Kumar I think that no useful purpose will be served if she is arrested when she is ready to deposit the alleged embezzled amount as well as attachment of her GPF account in which she is having more than Rs.12 lacs, and she is also ready to join the investigation in future if so required. They do not have any prior antecedents and have not previously undergone in respect of cognizable offences. The possibility of the petitioners to flee from justice is almost not possible in view of the statement made by them that they would appear on each and every date before the trial court.

18. Under these circumstances, considering the overall facts of the case I am of the view that in the light of the statements made by the petitioners and without expressing any opinion on merit, it is directed that in the event of their arrest, the petitioners shall be released on bail subject to their furnishing personal bonds in the sum of Rs.20,000/- each with one surety each of the like amount to the satisfaction of the Investigating Officer (IO) and further subject to the following conditions:(a) that they will appear as and when directed by the IO and continue to cooperate in the investigation; (b) that they will furnish their present addresses and contact numbers to the IO and will not shift from the said addresses or change the contact numbers, without prior permission of the IO; (c) that they will surrender their passports to the IO and will not leave the country without prior permission of the Court. (d) Tejinder Pal Kaur shall deposit the entire embezzled amount from her GPF account as per the version of the complainant with her employer if already not deposited and remaining amount which is more than 12 lacs in the GPF account shall remain attached till the final decision of the matter.

19. In case of violation of any of the conditions mentioned above, it will be open to the State to apply for cancellation of the bail.

20. The petitions are accordingly disposed of. Dasti. (MANMOHAN SINGH)
JUDGE MARCH27 2015

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