

Ashok Kumar Vs. State

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Court : Delhi

Decided On : Apr-07-2015

Judge : Sunita Gupta

Appellant : Ashok Kumar

Respondent : State

Advocate for Def. : Ms. Ritu Gauba

Advocate for Pet/Ap. : Mr. Subhiksh Vasudev, Mr. R.C. Pathak

Judgement :

\$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI BAIL APPLN. 2724/2014
ASHOK KUMAR Petitioner Through: Mr Subhiksh Vasudev and Mr R.C.
Pathak, Advs. Versus STATE Through: Respondent Ms Ritu Gauba, Additional
Public Prosecutor for the State along with SI Sumit Kumar, PS AATS/East
CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA % 1.

ORDER

0704.2015 By virtue of this application u/s 439 Cr.P.C. r/w Section 482 Cr.P.C.,
the petitioner seeks regular bail in case FIR No.300/2014 u/s 406/420 of IPC
registered with PS New Ashok Nagar.

2. The FIR in the instant case was registered on the complaint of complainant-Sh.
Jernail Singh wherein he stated that accused Ashok Kumar cheated him of

Rs.1,15,00,000/- by falsely offering to invest money in M/s Indus Towers Ltd. having its office at 7th Floor, MGF Cyber City, Gurgaon, Haryana thereby earning a huge return as profit through investment in the above mentioned company. Ashok Kumar induced the complainant and other victims to invest in the Indus Company for tower installation. In the month of August, 2010, he came to know that he fraudulently induced him to invest in a false and fraudulent business so he asked him to return his money but each time he ditched him, thereafter, he prayed for action against him.

3. Mr. Subhiksh Vasudev, learned counsel for the petitioner submitted that charge sheet has already been submitted from which it becomes clear that there is nothing on record to show wrongful gain of Rs.1,15,00,000/- to the petitioner and wrongful loss of the said amount to the complainant. There is no documentary evidence on record to show that any money was ever paid by the complainant to the petitioner. Also there is no evidence of the so-called

3. relatives of the complainant to show that the aforesaid amount was actually entrusted by them to the complainant. Further the investigation confirms that petitioner had nothing to do with either Indus Towers Ltd. or Indus company as even the lease deeds seized during the investigation show that they are unregistered, unattested by any witness and not signed by the petitioner. Furthermore, Mayur Trading Company and Indus Company are two entirely separate and distinct entities and it is highly improbable that while intending to invest in the latter, the complainant and his so-called 35 relatives ended up transferring their money to the account of the former. Petitioner is no longer required for the purpose of investigation. He is in custody since 2nd June, 2014. As such, he be released on bail.

4. The application is opposed by Ms. Ritu Gauba, learned Additional Public Prosecutor for the State on the ground that during investigation it was found that there was one company by the name of Indus Towers Ltd. in Gurgaon but the said company stated that it never employed Ashok Kumar, Vinod Verma and Anil Jain and the company never entered into any lease deed with the complainant and other victims. It was also found that account was opened by accused Vinod Verma

in the name of Indus Company at RBS Bank, NOIDA, UP and the address in the account opening form is the same as that of Mayur Trading Company of which the proprietor is petitioner Ashok Kumar. Thus, it is alleged that accused Ashok Kumar in connivance with co-accused Vinod Verma cheated the complainant by opening bank account in the name of Indus Company which looked similar to the actual company, i.e., Indus Tower Ltd.

5. During investigation, a notice u/s 91 Cr.P.C. was given to the Manager, Indus Towers Ltd., Building No.10, Tower-B, 9th Floor, DLF Cyber City, Gurgaon, Haryana for getting information/documents of this case. As per reply of Indus Tower Ltd. it came to notice that Indus Towers Ltd. has no office at the address 7th Floor, MGF Cyber City, Gurgaon, Haryana as mentioned in the lease deeds which were executed by accused Ashok Kumar. On this basis, Sections 419/467/468 IPC were added in this case. Indus Towers Ltd. has offices at Delhi-NCT and Haryana i.e. (1) Delhi Circle Office-Building No.10, 4th Floor, DLF Cyber City, Gurgaon, Haryana and (2) Punjab and Haryana Circle Office DLF Building, IT Park, Tower F, 3rd Floor, Chandigarh. Neither authorized signatory nor any person were/are working in the name of Ashok Kumar, Vinod Verma and Anil Jain for Punjab & Haryana Circle from 2008 till August, 2014 and Indus Towers Ltd. does not have any account with Royal Bank of Scotland, NOIDA, UP. Moreover, no vendor is/was ever authorized to execute any lease deed and agreement for acquisition of space for installation of telecom tower and Indus Towers Ltd. has not executed any lease deed or any other agreements for installation of telecom tower on the land of complainant and victims. As such it was submitted that keeping in view gravity of offence, accused is not entitled to be released on bail. Complainant is yet to be examined.

6. Needless to say, the allegations are very serious in nature of defrauding the complainant to the extent of Rs.1.15 crores. As per the status report, charge sheet has been submitted, however, none of the prosecution witnesses have been examined as yet. In Dipak Subhash Chandra Mehta vs. CBI and Anr.,¹ while considering the bail application, Honble Supreme Court observed that the Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of

evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (c) prima facie satisfaction of the Court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.

7. Keeping in view the gravity and seriousness of the offence coupled with the fact that so far even complainant has not been examined, at this stage, the accused is not entitled to be released on bail. The application is accordingly dismissed.
SUNITA GUPTA, J APRIL07 2015 rs 1 (2012) 4 SCC13

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