

Subodh Gupta Vs. State (Cbi)

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Court : Delhi

Decided On : Aug-13-1998

Reported in : 75(1998)DLT445

Judge : J.B. Goel, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

Appeal No. : Crl. M. (M) No. 2103 of 1998

Appellant : Subodh Gupta

Respondent : State (Cbi)

Advocate for Def. : A.K. Dutt, Adv.

Advocate for Pet/Ap. : D.C. Mathur, Sr. Adv.,; Rebecca M. John and; B.S. Mehra

Disposition : Application dismissed

Judgement :

J.B. Goel, J.

1. This is a bail application filed by Subodh Gupta.

2. Briefly, the facts are that D.K. Nayyar was the Branch Manager of Punjab National Bank, Kamla Nagar, Agra Branch during the period June 1992 to May,

1998. Perhaps, some complaints about financial irregularities/suspected misappropriation of Bank funds were made against him and he was placed under suspension. Shri K.C. Bansal who had replaced him as Branch Manager made four complaints dated 25.6.1998 on the basis of which four cases RC-01(E)/98-SIU(IX) to RC-4(E)/98-SIU(IX) were registered by the Central Bureau of Investigation (CBI) on 30.6.1998.

3. The petitioner has been arrested in RC-02 and RC-03 on 3.7.1998. D.K. Nayyar who remained untraceable for some time was also arrested later on 8.7.1998. In RC-02 and RC-03, allegations been made about financial irregularities/fraudulent withdrawals/misappropriation of Bank funds amounting to Rs. 2,14,84,692/- have been made against D.K. Nayyar who acted in collusion conspiracy with petitioner Subodh Gupta.

4. The Foreign Exchange Branch Office (FEO) at Barakhamba Road, New Delhi of Punjab National Bank had opened four FCNR's (foreign accounts of nonresidents) being Accounts No. 18,17,15 & 14 in US \$ at the instance of Kamla Nagar Agra Branch of the Punjab National Bank in the names of four different persons with different amounts totalling Rs. 2,14,84,692/- on 17.12.1997 and the accounts of those four persons at Agra Branch were debited. That FEO account at Barakhamba Road Branch was debited with Rs. 2,14,84,692/- on 18.12.1997 apparently at the instance of the Branch Manager, Agra Branch. Another debit entry of the same amount of Rs. 2,14,84,692/- was made on 19.12.1997; the amount of Rs. 2,14,84,692/- so debited was credited in a CAOD account (current account overdraft) without specifying the specific account number and name of the account holder in the Agra Branch. Apparently, it could be a fictitious account. The relevant bundle of vouchers pertaining to the entries of credit and debits from that account are reported to be missing and are suspected to have been destroyed along with other relevant Bank accounts by D.K. Nayyar. The amount of Rs. 2,14,84,692/- is alleged to have been misappropriated/embezzled by D.K. Nayyar in collusion with the petitioner by fraudulent withdrawals made by dubious modes from the aforesaid fictitious CAOD account through withdrawals made in the names of Nairobi Charitable and Medical Research Trust (for short the Trust) of which the petitioner is the President and (2) M/s. Seeroo Foods Pvt. Ltd. (for short

the Company) of which the petitioner is a Director. May be that some more funds of the Bank have also been fraudulently misappropriated through some other companies in which the petitioner has financial interest or otherwise.

5. The aforesaid Trust has its registered office at K-13, Khichripur, Delhi, a branch office at 187A, Sant Nagar, East of Kailash, New Delhi and a local office at 2/92, Church Road, Agra. The petitioner is a Chartered Accountant by profession and is resident of 701, Sector A, Vasant Kunj, New Delhi. The petitioner is also a Director of the Company which also has its office at Delhi.

6. On the written and signed application of the petitioner as purchaser, 11 Bank demand drafts of various amounts totalling Rs. 85.00 lakhs in favor of different parties have been issued. This amount of Rs. 85.00 lakhs besides Rs. 12,750/- as Bank commission was withdrawn and debited from the aforesaid fictitious CAOD account. It is further alleged that excess/fictitious credit entries were also made in Anupam fixed deposit account No. 489 standing in the name of the company and on the basis of those fictitious entries, a sum of Rs. 1,40,11,365/- has been over withdrawn through OD account No. A489 of M/s. Seeroo Foods Pvt. Ltd. in collusion and conspiracy between the said Branch Manager and the petitioner.

7. Both D.K. Nayyar and the petitioner after arrest were remanded in police custody; they were interrogated and had made disclosure statements. Several premises were also searched and some material/documents have been seized. However it is alleged that relevant Bank records have been destroyed and they have been replaced by fabricated accounts to cover up the aforesaid fraud/misappropriation/embezzlement of the Bank funds. Thus, the case against the petitioner and D.K. Nayyar is that they had colluded and acted in conspiracy and thereby defrauded the Bank of Rs. 2,14,84,692/- and have embezzled and misappropriated the same. It is possible that some more funds also may have been embezzled by them, however the matter is still under investigation.

8. Learned Counsel for the petitioner has contended that the petitioner remained in police custody from 3.7.1998 to 15.7.1998 when he was interrogated; he had joined the investigation and is no more required for investigation; he is being kept in custody unnecessarily for no valid purpose and his further continued detention

is not justified; normal rule is bail and not jail. Hence he should be released on bail.

9. Whereas, learned Counsel for the CBI has contended that huge funds of the Bank are suspected to have been embezzled, the matter is still under investigation, most of the relevant records of the Bank have been destroyed by D.K. Nayyar to cover up his fraud/embezzlement of the Bank funds and in the absence of the records they have been facing difficulty in investigation and unearthing various frauds/embezzlement made. If the petitioner is released on bail at this stage, it will hamper the investigation; there is possibility that relevant evidence may be further destroyed or fabricated by him which will prejudice the investigation; even otherwise Bank funds of several crores of rupees have been fraudulently siphoned by the two accused persons and considering the gravity of fraud, it will not be proper and justified nor in the interest of society or the State to admit the petitioner on bail.

10. The learned Addl. Sessions Judge has gone into the circumstances of the case and for valid reasons has not found it proper to admit the petitioner on bail. The investigations so far made apparently have revealed that funds of the Bank amounting to Rs. 2,14,84,692/- (which on further investigation may be found to be even more) have been fraudulently siphoned and misappropriated/embezzled by fraudulent means, apparently by D.K. Nayyar as Branch Manager in collusion with the petitioner. Relevant records appear to have been destroyed or are missing; the investigation is still not complete; there is every likelihood that the accused may tamper with the evidence if he is released on bail that will hamper and prejudice investigation. Even otherwise, huge amounts have been embezzled and the offence is quite grave and serious.

11. In exercising the judicial discretion in granting bail, the Courts would not be unmindful of the adverse effect it will have on the incomplete investigation which is likely to be affected, the difficulties likely to be faced by the Investigating Agency if the accused gets the opportunity to tamper with evidence on being released on bail and thereby public interest is likely to be affected. Courts should not hamper in the investigation of the offence, especially when the fraud/embezzlement involve

huge public funds.

12. In the facts and circumstances, in my view, it is not just, proper and in the interest of justice and also not in the interest of society and the State to release the petitioner on bail.

This application is accordingly dismissed.

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