

Ashok Kumar Chauhan (Dr.) Vs. State

Ashok Kumar Chauhan (Dr.) Vs. State

SooperKanoon Citation : sooperkanoon.com/704627

Court : Delhi

Decided On : Nov-18-2003

Reported in : 2003VIIIAD(Delhi)160; 108(2003)DLT698; 2004(72)DRJ463

Judge : S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 406 and 420

Appeal No. : Crl.M.(M.) No. 2641 of 2003

Appellant : Ashok Kumar Chauhan (Dr.)

Respondent : State

Advocate for Def. : Anil Soni, Adv.

Advocate for Pet/Ap. : S.K. Sharma,; S. Thomas and; Rahul Choudhury, Advs

Judgement :

S.K. Agarwal, J.

1. This is an application under Section 438, Cr.P.C. for grant of anticipatory bail in case FIR No. 5/2002 under Sections 406/420/120-B, IPC, P.S. Kapas Hera [DIU Cell S/W), Delhi.]

2. Learned Counsel for the petitioner submits that petitioner Dr. Ashok Kumar is a qualified doctor. He has registered office at 63-A, Mayur Vihar Phase-II, Delhi (hereinafter the 'Society'). Dr. R.L. Arora was Secretary and Ms. Promilla Sardar was Treasurer of the Society. Bank account of the Society could be operated by any of the two office-bearers, namely President, Secretary or Treasurer. As per prosecution allegations, Secretary and the Treasurer floated another Society, 'Lok Hitkari Sehkari Awas Samiti Ltd., Ghaziabad.' They, under their own signatures, transferred about Rs. 2.50 crores from Society's account to newly floated Society at Ghaziabad. Petitioner did not sign any cheque and no money from the Society was transferred to any other account under the signatures of the petitioner. Petitioner was not aware of the amounts being transferred by Secretary and Treasurer to the new Society floated by them and the fraud committed upon the Society. On coming to know about the same, petitioner made all efforts to get the amount recovered. Secretary and Treasurer of the Society were arrested; now they are on interim bail and are paying embezzled amount in Installments.

3. Learned APP for the State, on instructions from S.I. Rajinder Kumar, DIU Cell S-W, Delhi did not contest the factual situation. However, he opposes the bail on the ground that petitioner being President of the Society, was equally responsible for huge loss; that petitioner as the President of the Society had been participating in the meetings of the society, signing minutes or other documents from time to time, which itself shows that conspiracy, thereforee, he is not entitled to the relief of anticipatory bail.

4. There is nothing on record to show that petitioner designedly or intentionally omitted to perform any of his mandatory duties while acting as the President to infer any conspiracy. In all such cases, track of the embezzled amount should be the guiding factor. In this case, to repeat, petitioner did not sign any check, did not transfer any amount to the account of the new Society or any other account under his signatures. He himself was not the office-bearer of the new Society, thereforee, he would not have any reasons to know about the activities of the Society. Merely because petitioner was the President of the Society or that he was participating in the meetings and signing the minutes put up before him or that he was a member of the new society. In my considered view, it by itself is not enough to post him

with the requisite knowledge of dishonest intention, which is the basic ingredient of the offence of conspiracy, cheating or fraud. Admittedly, Secretary and Treasurer have been arrested, they are on interim bail and are paying the money. Documents have been seized. Nothing incriminating is to be recovered from the petitioner or at his instance. There is nothing to show that petitioner is likely to abscond or tamper with evidence.

5. For the foregoing reasons, the petitioner is allowed. In the event of his arrest, petitioner is ordered to be released on bail on his furnishing personal bond in the sum of Rs. 25,000/- with one surety in the like amount, to the satisfaction of the Arresting Officer/SHO, subject to the condition that he shall join investigation as and when required and shall cooperate in the investigation.

6. Petition stands disposed of. Any observation made herein would not affect merits of the case during trial. dusty.