

Sanjay Kant Vs. State

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Court : Delhi

Decided On : Sep-11-2002

Reported in : 101(2002)DLT54

Judge : Mahmood Ali Khan, J.

Acts : Indian Penal Code (IPC) - Sections 439

Appeal No. : Crl. M(M) No. 1620/02

Appellant : Sanjay Kant

Respondent : State

Advocate for Def. : Pawan Sharma, APP

Advocate for Pet/Ap. : S.P. Singh Chaudhary, Adv

Judgement :

Mahmood Ali Khan, J.

1. The petitioner has filed this application for grant of bail under Section 439 of the IPC. The prosecution case is that the petitioner was working as an accountant of the complainant. During the course of his official duties he misappropriated and embezzled the money of his employer by forging documents. He in all embezzled more than Rs. 5,40,000/-. The argument of the counsel for the petitioner is that the

petitioner is in judicial custody since February, 2002 and that the challan has not been filed, CFSL report is still not received and so the charges have not been framed. It is contended that the trial of the case will take long and no useful purpose will be served by keeping the petitioner in jail. The judgment of the Supreme Court in Ashok Dhingra v. NCT of Delhi, : (2000)9SCC533 has been cited which was a case of cheating of a foreign national of a sum exceeding Rs. 65 lakhs and the Supreme Court prima facie did not find circumstances entitling the accused to be released on bail but considering that he was in custody and continuing to detain him during the pre trial stage may not be in the interest of justice granted bail subject to certain conditions. He also referred to the judgment of the Supreme Court in Lambert Kroger v. State : 85(2000)DLT46 and Anil Mahajan v. Commissioner of Customs and Anr. : 2000ECR36(Delhi) in which also the petitioner was in judicial custody and there being no apprehension of tampering with the evidence or his fleeing from justice he was granted bail.

2. APP on the other hand has opposed the grant of bail. It is submitted that the petitioner was an accountant of the complainant and he has falsified the accounts and has embezzled the petitioner of about Rs. 5,40,000/- and that there was every possibility of his fleeing from justice.

3. I have given careful consideration to the submissions made. The Supreme Court in Ashok Dhingra (Supra) has granted bail to the accused since he was continuing in detention in a case of cheating of Rs. 65 lakhs and this court in the judgment of Lambert Kroger (Supra) and Anil Mahajan (Supra) had also granted bail to the accused who was in judicial custody. However in the instant case it cannot be said that the petitioner will not flee from justice or not tamper with the evidence. He was an accountant of the petitioner and after winning the confidence of the complainant had falsified the accounts in order to embezzle the amount. The Supreme Court in Mahesh Kumar Bhawsinghka v. State of Delhi, : 2000 CriLJ2786 considered a similar question where the accused had embezzled a big sum of money and was in jail for a long time. His bail application was strongly opposed by the State. The Supreme Court found force in the contention of both the sides and directed the trial court to commence the trial within one month and complete the evidence in three months and if the evidence was not completed

then granted bail to the accused.

4. In the totality of the facts and circumstances an order similar to the order passed in Mahesh Kumar (Supra) may be passed in this case so that interest of both the parties is safeguarded.

5. Accordingly, I direct that the trial court shall frame the charges within 15 days from today and complete the recording of the prosecution evidence and the trial within six months. In case the trial court does not complete the trial as aforesaid and the delay in the trial court is not attributable on the part of the petitioner, he shall be released on bail on his furnishing a personal bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of the trial court. Application stands disposed of.

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