A.K. Arora and anr. Vs. State

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Court : Delhi

Decided On : Jul-12-2006

Reported in : 2006(90)DRJ571

Judge : S.N. Aggarwal, J.

Acts : Indian Penal Code (IPC) - Sections 34, 120B, 149, 407, 408, 409, 415, 420, 467, 468, 471, 503 and 506

Appeal No. : Bail Appln Nos. 667 and 677/2004

Appellant : A.K. Arora and anr.

Respondent : State

Advocate for Def. : Sunil K. Kapoor and ; Vivek Sood, Advs.

Advocate for Pet/Ap. : Siddarth Luthra and; Deepak Gera and; Rajni Gupta, Advs

Judgement :

S.N. Aggarwal, J.

1. These are two bail applications filed by the real brothers - A.K. Arora and J.K. Arora. They seek anticipatory bail in case registered against them vide FIR No. 58/2003 dated 7.4.2003 under Section 403/409/415/420/467/468/471/503/506/120-B/34 IPC, Police Station Naraina. This

FIR was registered on the complaint of Shri S.N. Virmani, one of the partners of M/s. Jai Mata Di Enterprises, Mr. Lalit Malhotra, Mr. Arvind Bhasin and Mr. Sanjeev Datta were the other partners of the firm M/s. Jai Mata Di Enterprises.

2. The petitioners at the relevant time were Joint Managing Director and Managing Director in M/s.Som Distilleries Ltd. (hereinafter referred to as 'SDL') and M/s. Som Distilleries and Breweries Ltd (hereinafter referred to as 'SDBL'). The Companies M/s. SDL and M/s. SDBL were dealing in the business of manufacturing and sale of country-made liquor and also Indian : Made Foreign Liquor. They had their business dealings with M/s. Rash Enterprises since 1997. At that time, the Complainant-S.N. Virmani was one of the partners in the said firm, M/s. Rash Enterprises. The firm M/s. Rash Enterprises had deposited an amount of Rs. 80 lacs with M/s. SDBL in 1997. In the course of time, the above two Companies with whom the petitioners are associated started having their dealing with M/s. Mahalakshmi Traders and later on with M/s. Jai Mata Di Enterprises. The partners in M/s. Jai Mata Di Enterprises were also partners in M/s. Mahalakshmi Traders. After the Companies of the petitioners started having their dealings with M/s. Jai Mata Di Enterprises, an amount of Rs. 60 lacs out of Rs. 80 lacs deposited by M/s. Rash Enterprises was adjusted in the account of M/s. Mahalakshmi Traders and the balance Rs. 20 lacs remained in the account of M/s. Rash Enterprises. The firms with which the Complainant was associated acted as an agent of the petitioners. On 19.3.2001, an Agreement was allegedly entered into between M/s. Som Distilleries Ltd and M/s. Jai Mata Di Enterprises in relation to supply of liquor to Delhi Government. In the course of business dealings between the parties, dispute arose between them and the petitioners who had appointed the Complainant and his sister firms as their agent came to know that the Complainant-S.N. Virmani along with other partners of the above firms had evaded sales tax, misappropriated huge money and had caused wrongful loss to the petitioners and on coming to know of the same, they filed a criminal case against the Complainant vide F.I.R. No. 315/2002 under Section 409/407/408/420/468/471/120B/149 with Police M.P. Nagar, Bhopal, Madhya Pradesh. As a counter-blast to this FIR, the Complainant lodged the instant FIR in which the petitioners seek anticipatory bail. In the instant FIR, it is alleged against the petitioners that they had forged and fabricated the Agreement dated 19.3.2001

and had caused a huge business loss to him through cheating and forging of the said Agreement.

3. The sole controversy between the parties centers around the alleged Agreement dated 19.3.2001 executed between M/s. Som Distilleries Ltd and M/s. Jai Mata Di Enterprises. The said Agreement is at pages 24 to 27 of the paper book of the Bail Application of petitioner-A.K. Arora. The learned APP for the State has relied upon Clause 15 of the said Agreement to show that the petitioners are in possession of copy of the duly signed Agreement but they have deliberately withheld the same from giving it to the IO for comparison of admitted and disputed signatures of the Complainant on the said Agreement. The learned APP has also drawn my attention to page 41 of the paper book which is a bail order passed by Shri V.K. Jain, then A.S.J., New Delhi, on 12.6.2003 wherein it is observed that counsel' for the petitioners at that time had offered to supply the duly signed copy of the Agreement to the IO for comparison purposes. This contention made on behalf of the respondent/State is rebutted by learned Counsel for the petitioners who has submitted that the petitioners were having only photocopy of the duly signed Agreement with them which they gave to the IO pursuant to the assurance given to the Court on 12.6.2003 and in this regard learned Counsel for the petitioner has relied on the order of the Trial Court dated 4.7.2003 to show that it was brought to the notice of the Court that the petitioners were having only photocopy of the duly signed Agreement with them which has been supplied by them to the 10. The petitioners have also stated on affidavit that they do not possess the original duly signed copy of the Agreement and they are in possession only of photocopy of a duly signed Agreement which they have already given to the IO. It is also stated that they have filed a photocopy of the same in a case pending against the Complainant at Bhopal.

4. What emerges from the above is that there is a bona fide commercial dispute between the Complainant and the petitioners. Admittedly the FIR lodged by the petitioners against the Complainant is first in point of time and the instant FIR in which bail is sought of subsequent-in point of time. It shall be significant to mention that the petitioners were granted interim protection against their arrest first by the learned Additional Sessions Judge vide order passed on 12.6.2003 and later on by

this Court vide order passed on 6.4.2004. The petitioners are enjoying interim protection against their arrest ever since then till date. They, in fact, are on interim bail for almost three years.

5. I have asked the learned APP whether the petitioners have participated in the investigation while they enjoyed interim protection against their arrest and to this the answer was in the affirmative. The learned APP for the State has submitted that both the petitioners seeking anticipatory bail had participated in the investigation as and when they were called by the IO and they never misused the protection granted to them. It is an irony that though three years have passed since the date petitioners were granted interim protection against their arrest but the IO could not complete the investigation in the case till date. This causes distrust and loses faith in the investigating agency. The investigating agency is expected to act with reasonable despatch and should act in a responsible manner.

6. In the facts and circumstances of the case delineated hereinabove, the petitioners have made out a case for grant of anticipatory bail to them. Accordingly, the petitioners are admitted to anticipatory bail on their executing bail bonds in the sum of Rs. 5 lacs each with two sureties each in the like amount to the satisfaction of the Arresting Officer. The petitioners shall, however, participate in the investigation as and when called by the I.O.