Servesh Kumar and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-05-1995

Reported in : 1995(1)WLN618

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Criminal Misc. Bail Application No. 293 of 1995

Appellant : Servesh Kumar and ors.

Respondent : State of Rajasthan

Judgement :

N.L. Tibrewal, J.

1. The petitioners have moved this application for anticipatory bail in Crime No. 325/94 registered at Police Station, vishwakarma, Jaipur City, under sections 420 and 406 IPC. All the petitioners are on interim bail since February 20, 1995. During the pendency of this bail application the parties were directed to negotiate for a compromise and the learned Counsel for the petitioners and the Bank of Rajasthan made efforts to negotiate for exploring some amicable settlement, but they could not arrive at any compromises, as such, the matter was finally heard on May 18, 1995. Mr. Dhankhar, Senior Advocate appearing for the petitioners, vehemently contended that an open running and current account of the petitioners' firm with the Bank is operating since 1980 and a cash credit facility to the extent of

Rs. 15/- lacs was provided by the Bank to the firm in May 1990 and the firm has been sending accounts/statements to the Bank regularly, but, however, the firm was closed in the year 1992 due to paucity of funds and non-recovery from the debtors of the firm. Learned Counsel contended that there was no dishonest intention or mis-representation by any partner of the firm when cash credit facility was extended to the firm. As such, even if the prosecution case is taken on its face value, the offence under section 420 IPC is not made out. It was also contended that the offence under Section 406 IPC is not made out as there was no entrustment of any article or the goods. Learned Counsel further contended that it was a simple loan transaction, but still the report has been lodged by the Bank at the Police Station to humiliate and pressurise the petitioners. It was further contended that the report has been made by the Bank on October 6, 1994 while as per the contents of the report itself, the Bank Officers had come to know on 13.11.1992 that movable goods have been disposed of by the firm, but still no criminal action was taken for about two years and there were negotiations for rehabilitation package scheme, but the same could not succeed as the Bank did not advance loan to the firm to re-start the factory. Learned Counsel also draw attention of this Court that it is not the case of the Bank that any false or incorrect statement or account was ever produced by the firm and in the balance-sheet dated 1.7.93 the stock position was correctly given by the firm as Rs. 4,86,194, 25 and this very fact shows the bonafides on the part of the firm. Then it was contended that the petitioners No. 3 to 5, namely, Basant Kumar Jain, Pradeep Jain and Sudhir Kumr had retired from the firm since a long time and this fact was intimated to the Bank when several documents were filed during rehabilitation package negotiations. Lastly it was contended that arrest of the petitioners is not required for the purpose of investigation and they be given the benefit of pre- arest bail. On the contrary. Mr. Agrawal learned Public Prosecutor assisted by Mr. Kasliwal, counsel for the complainant, contended that though offence under section 420 IPC might not have been committed by the partners of the firm but, still the offence under Section 406 IPC is clearly made out from the facts of the case. It was contended that cash credit facility to the extent of Rs. 15 lacs was provided under a deed of hypothecation of goods to secure amount and after execution of the documents, the partners of the firm were bound to deposit the amount whenever the hypothecated goods was sold by them. Learned Counsel contended that by the deed of hypothecation all goods, raw material etc. stood entrusted to the partners of the firm and they were holding control of the goods on behalf of the firm, though there might not have been an actual physical entrustment of the goods to the Bank and then to the firm. Mr. Kasliwal also contended that some of the partners have withdrawn the amount from the creditors which was not deposited in the firm and it showed their malafide intention.

2. I have given my careful consideration to the above submissions. Normally, this court is reluctant to grant pre- arrest bail in cases where money of the Bank and other public institutions is involved, but I find that there are some special features of the case requiring consideration. From the facts narrated by the parties, there is no dispute that an open running and current account of the firm with the Bank is operating since 1980. Cash-credit facility was provided in the year 1990 and it also appears that the firm had to close its business in the year 1990 due to financial stringency. From the facts narrated in the FIR it does appear that the Bank Officers had come to know as back as on November 23, 1992 that the firm has closed its business and finished goods of the firm were disposed of by the firm, but still no action was taken by them. There is nothing on record to show that the partners of the firm made any mis-representation in their statements/balance-sheets etc. representing incorrect picture of the financial condition of the firm. From various negotiations between the parties some of them have been brought to my notice for perusal, it is also evident that rehabilitation package negotiations were going on since early 1993 and it appears that when the negotiations failed, the Bank thought it proper to initiate criminal proceedings against the petitioners. On the merits, I would not like to express any opinion the question as to whether by execution of hypothecation deed there was entrustment of the goods and raw material etc. of the firm but taking into consideration the totality of the circumstances I am of the opinion that it is a fit case in which benefit of pre-arrest bail be given to the petitioners specially when their arrest is not required for the purpose of investigation.

3. It is, therefore, ordered that the petitioners, Servesh Kumar S/o Shri Jagdish Prashad, Jagdish Prasad, Basant Kumar Jain, Pradeep Jain and Sudhir Kumar sons of Shri Babu Lal shall be released on bail in case FIR No. 325/94 Police Station, vishvakarma, Jaipur City, Jaipur provided each one of them furnishes personal bond in the sum of Rs. 1 lac with two sureties in the sum of Rs. 50,000/- each to the satisfaction of the SHO/Arresting Officer concerned. The bail shall be subject to following conditions-

(i) that the petitioners shall make themselves available for interrogation by a Police Officer as and when required;

(ii) that the petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court;

(iii) that the petitioners shall not leave India without previous permission of the Court.

(iv) that the petitioners shall not disposed of any movable or immovable property of the firm without permission of the trialCourt.

4. The bail application is disposed of as indicated above.