

Sanjay Tyagi. Vs State.

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Court : Delhi

Decided On : Sep-07-2010

Judge : Mr.Sanjiv Khanna,J.

Appeal No. : BAIL APPLN. 1490/2010.

Appellant : Sanjay Tyagi.

Respondent : State.

Advocate for Def. : Mr. Arvind Kr.Gupta, APP.; Mr.Vijay Aggarwal ; Mr.Rakesh Mukhija, Advs.

Advocate for Pet/Ap. : Mr.Maninder Singh, Sr.; Mr.Pawan S.Bindra ; Mr.Sunil Kumar, Advs.

Judgement :

ORDER

1. This application for anticipatory bail has been filed by Sanjay Tyagi. It is stated that Sanjay Tyagi was only a dummy director in M/s.Nanda Tourism Corporation Limited which is actually owned and promoted by R.K. Nanda and his wife Promila Nanda and his family members. It is stated that Sanjay Tyagi was an employee and was made Managing Director of M/s. Nanda Tourism Corporation Limited on 30th June, 2005 at the behest of the Nandas who had filed Form No.32 to the said effect. It is pointed out that Sanjay Tyagi is not concerned with M/s. Durga Builders Private Limited and is not an accused in the charge sheet filed by the police in the

case of M/s. Durga Builders Private Limited.

2. One Manjit Kaur had filed Co.P.No. 234 of 2005 for winding up of M/s. Nanda Tourism Corporation Limited and Co.P.No. 238 of 2005 for winding up of M/s. Durga Builders Private Limited. In Co.P.No. 238 of 2005 a detailed order dated 3rd October, 2008 was passed holding inter alia that the petition for winding up of M/s. Durga Builders Private Limited was a collusive petition filed to defeat the judgments/orders passed and the claims of creditors/plot holders. It was observed that Manjit Kaur had never provided security services and on the basis of falsified documents the winding up petition had been filed. Observations were also made against Bail Application No.1490/2010 Page 1 R.K. Nanda and Promila Nanda, directors of M/s. Durga Builders Private Limited. It was noticed that Manjit Kaur had not appeared in spite of repeated directions. Crime Branch which was investigating into some aspects was directed to conduct investigation into existence/address/whereabouts of Manjit Kaur/M/s. Kumar Security Syndicate. They were also required to investigate on the aspect of criminal conspiracy between Manjit Kaur and M/s. Durga Builders Private Limited as well as R.K. Nanda and Promila Nanda.

3. Subsequently by the order dated 18th April, 2009 in C.P.No. 234 of 2009 filed for winding up of M/s Nanda Tourism Corporation Limited similar directions were issued to the Crime Branch to conduct an investigation into existence/address/whereabouts of Manjit Kaur and to examine the question of conspiracy. Pursuant to the said directions EIR No. 140 of 2009 has been registered by the Crime Branch Delhi under Sections 420/467/468/471/193/196/205/120-B of the Indian Penal Code, 1860.

4. The Crime Branch has submitted final report in case of M/s Durga Builders Private Limited after completing investigation. Several allegations have been made against Mr. Sharad Kumar Aggarwal, Advocate for M/s. Durga Builders Private Limited and the Nandas. As per the charge sheet Manjit Kaur is a fictitious person and had not rendered or provided security services to M/s Durga Builders Pvt. Limited. The charge sheet was filed before the trial court on 16th July, 2009.

5. Reference has been made to the charge sheet in case of M/s Durga Builders Private Limited as Manjit Kaur had filed winding up petition against M/s. Nanda Tourism Corporation Limited for non payment of admitted dues for rendering security services.

6. Learned APP has pointed out that Sanjay Tyagi was appointed as an employee in M/s. Nanda Tourism Corporation Limited in 1994. On 1st October, 2003 he was appointed as a Director in M/s. Nanda Tourism Corporation Limited. It is pointed out that as per the last annual return for the year ending 31st March, 2005, available in the records of the ROC, Sanjay Tyagi had 10 shares in the said company. It is further stated that Sanjay Tyagi was appointed as a Managing Director of M/s. Nanda Tourism Corporation Limited on 6th May, 2005. The company petition No.234 of 2005 was filed after the petitioner was appointed as a Managing Director of M/s. Nanda Tourism Corporation Limited.

7. Learned counsel appearing for Mr. Arun Mehra, who was instrumental and responsible for producing documents and the order dated 3rd October, 2009 in C.P. 238 of 2005 has alleged and produced before me copy of Co.A.No. 472 of 2009. This is an affidavit filed by Sanjay Tyagi dated 16th February, 2009 along with another affidavit of Sanjay Tyagi attested by Oath Commissioner on 8th April, 2009. In the affidavit dated 16.02.2009 Sanjay Tyagi has stated as under:- "7. I affirmed that as on date the propounder hold more than the statutory requirement of 70% as required under the Companies Act propounder except to acquire the balance and undertake to buy any share from share holder willing to sell.

8. I depose the following shareholders are also the propounders.

1. Shri Sanjay Tyagi A-2, P.T.S. Malviya Nagar New Delhi

2. Ram Autar Jindal S/o Sh. Jagdish Prasad 2 P.T.S. Colony Malviya Nagar New Delhi.

9. As the petition is under Section 391 of the Companies Act and the propounders/petitioners are ready to make the payment to the creditors Manjeet Kaur sole proprietor of Kumar Securities Syndicate.

10. Total amount payable to alleged unsecured creditors. The amount due and payable based on the date of liquidation to the Manjeet Kaur proprietor of Kumar Securities Syndicate was Rs. 8,40,156/- and propounders have arranged and ready and willing to pay aforesaid amount of Rs. 8,40,156/- along with Bail Application No.1490/2010 Page 3 interest and the same has been consented by the petitioner Manjeet Kaur. There is no other creditors."

11. It may be noted here that the address of Mr. Ram Autar Jindal is same as that of Sanjay Tyagi.

12. Learned counsel for petitioner has submitted that Co.A.Nos. 472 of 2009 and 481 of 2009 were withdrawn as mentioned in the order dated 18th April, 2009. Co.A.No. 472 of 2009 was withdrawn with liberty to file a more detailed application.

13. Thus as per the prosecution case, Sanjay Tyagi had filed a false affidavits before the court in Co.P.No. 234 of 2005 in February/April, 2009 after the order dated 3rd October, 2008 was passed in C.P. No.238 of 2005 in the case of M/s. Durga Builders Private Limited. Even in February and April, 2009, Sanjay Tyagi in his affidavits had asserted that he was a propounder holding 70% shares with Mr. Ram Autar Jindal in M/s. Nanda Tourism Corporation Limited. He had also stated that Manjit Kaur, sole proprietor of M/s. Kumar Security Syndicate had rendered services to M/s. Nanda Tourism Corporation Limited and was creditor to whom Rs.8,40,156/- was payable. Manjit Kaur as per the prosecution is a fictitious person and no services was rendered by her and no amount was payable to her. It is submitted that Sanjay Tyagi has committed various offences and is liable for his conduct including filing of false affidavits in the court. Thus the allegations against Sanjay Tyagi relate to his individual conduct. In view of the aforesaid I am not inclined to grant anticipatory bail to the petitioner. The same is dismissed. Observations made above are for the disposal of the present anticipatory bail application and will not be construed as observations on merits binding on the trial

court.

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