

(2013) 05 DEL CK 0421

Delhi High Court

Case No: Bail Application 732 of 2013

Pinki Chauhan

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision: May 29, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 438
- Penal Code, 1860 (IPC) - Section 120B, 201, 406, 420

Citation: (2013) 3 JCC 1674

Hon'ble Judges: R.V. Easwar, J

Bench: Single Bench

Advocate: Sachin Mishra, for the Appellant; Jasbir Kaur, APP, for the Respondent

Final Decision: Allowed

Judgement

R.V. Easwar, J.

This is a bail application u/s 438 of the Cr.P.C. for anticipatory bail filed by Ms. Pinki Chauhan in case FIR No. 211/2012 registered in P.S. Prasad Nagar under sections 420/406/201/120B of the Indian Penal Code. The FIR was registered at the instance of one Harish Kumar Sharda, son of Kewal Kishan, on 22.09.2012 against one Sandeep and his company by name M/s. We Can Global, situated at 10th Floor, Vikrant Tower, Rajindra Place, New Delhi. According to the FIR, the plaintiff was a resident of Bhanga, Punjab. He saw the advertisement of the aforementioned company in the Punjab Kesari newspaper dated 03.08.2012, inviting candidates who desired to go to Singapore. Attracted by the advertisement the complainant met Sandeep who retained the passport of the complainant and asked the complainant to undergo a medical examination. On 20.08.2012, the complainant received a phone call from a girl on his mobile phone and he was informed by her to go to Delhi on 22.08.2012 and meet Sandeep. Accordingly, the complainant came to Delhi when he was asked to deposit Rs. 25,000/- with the girl who was sitting outside the cabin. The complainant did as he was told and was issued a receipt for the amount

by the girl whose name, according to the complainant, was Asha. On 27.08.2012, the complainant received a phone call from Sandeep and was informed that his Singapore visa was ready and he was asked to deposit the balance amount of Rs. 45,000/- in his office on 01.09.2012; the complainant was also told that he would have to leave for Singapore in the flight on 05.09.2012. The complainant did as he was told and deposited the balance amount by demand draft issued by the Punjab National Bank. He was issued a receipt for the total amount of Rs. 70,000/- by the girl who called herself Asha. Thereafter he was told by Sandeep to go to Mumbai and stay in a hotel where a person by name Swamy or Naresh will meet him; a mobile telephone number was also given to the complainant. But when the complainant reached Mumbai on 02.09.2012 and tried to contact the number there was no response. The complainant thereafter contacted Sandeep and was directed to speak to one Mahima Chauhan whose phone number was given. On speaking to her, the complainant was told to take rest for a while, but on 04.09.2012 the owner of the hotel threw the complainant out. Thereupon the complainant reached Delhi but found the office of M/s. We Can Global locked. Neither Sandeep nor Mahima Chauhan could give him a satisfactory reply.

2. On the above facts the complainant requested the police to take action against Sandeep, Mahima Chauhan and Asha. In fact, the complaint was filed by several persons - 12 in number - who had the same experience and had lost their monies.

3. A case was registered u/s 420/406 of the IPC and further investigation was directed to be made.

4. The present anticipatory bail application has been filed by Ms. Pinki Chauhan. It has been stated by her that two persons by name Naresh Kumar and Arun Kumar were managing and controlling the affairs of M/s. We Can Global, which was the sister concern of M/s. USA Enterpriser and both were owned by Naresh Kumar. It is stated that she had initially joined M/s. USA Enterpriser as an Executive Assistant on 03.05.2012 and was issued an authority letter on 10.05.2012 for the purpose of handling the cash. She was assigned the duty and the responsibility of setting up the offices. On 10.07.2012 the applicant resigned from the job since her salary was not being paid. However, on the very next day she joined the company again at the request of Naresh Kumar. Another authority letter was issued in favour of the applicant on 11.07.2012 authorising her to handle cash up to Rs. 20,00,000/-. According to the applicant, this was only for the purpose of taking out money from the bank and that she was never authorised to take any money from the client. According to the applicant, she was only following the orders of her employer and was never involved in actually taking the money for herself or for her use. She was herself a victim of fraud played by her employer. On 13.10.2012 when she reached the office, she found it locked and all her attempts to contact the employer were in vain. She states that Naresh Kumar is due to pay her Rs. 90,000/- being the salary for two months. She further states that she never participated in the business affairs

nor was she aware of the alleged illegal practices of the two companies and that she never received any payment from any person at any point of time. It is prayed that the case of the prosecution rests upon the statement of the complainant and other similarly situated witnesses in various parts of India and there is no chance of her tampering with the evidence. It is pointed out that both Naresh Kumar and Arun Kumar are in police custody along with another woman called Ms. Babita Sharma. The case of the prosecution rests upon the documentary evidence and since the same is already in police custody the custodial interrogation of the applicant is not required. It is pointed out that there is no incriminating evidence for proceeding against the applicant.

5. The learned Additional Public Prosecutor opposed the bail application. She pointed out that the applicant had assumed a different name while working for the employment agencies and had collected monies from clients which cannot be denied. She also pointed out that the applicant was authorised to handle cash and there is nothing in the letter of authority suggesting that it is limited to withdrawal from bank. The learned Additional Public Prosecutor further points out that the applicant had travelled to Mumbai for the work of the two firms and cannot disown her role nor can she pretend ignorance of the kind of activities carried on by the firms. It is submitted that despite this Court's orders dated 07.05.2013 and 20.05.2013 the applicant has not cooperated in the investigation. The learned Additional Public Prosecutor, therefore, strongly opposed the grant of anticipatory bail.

6. After carefully considering the facts on record, the averments in the complaint and the rival arguments, I am of the view that the applicant may be granted anticipatory bail. On 24.05.2013 when this Court heard the final arguments in the matter, the applicant was personally present in the Court. The complaint does not mention her name directly though the case of the prosecution is that the applicant was functioning under the name of Asha. Whether the applicant and Asha are one and the same is a matter to be investigated and proved. There is no direct averment in the plaint that it was the applicant who received the cash. Moreover, the applicant claims herself to be only an employee of the firms without any knowledge of their alleged illegal activities. The proprietors Naresh Kumar and Arun Kumar as well as Babita Sharma are already in police custody. I agree with the submission made on behalf of the applicant that all documentary evidence has already been recovered. The learned Additional Public Prosecutor in the course of her arguments referred to a mobile phone and SIM card which was allegedly destroyed by the applicant. The applicant who was present in Court, denied this and indicated her readiness to produce the phone as and when required.

7. Taking all the aforesaid facts and circumstances into account, I am of the view that the anticipatory bail should be granted. The same is granted to the applicant subject to her furnishing a personal bond in the amount of Rs. 25,000/- and two

sureties for a like amount to the satisfaction of the SHO concerned. She is further directed to cooperate in the investigation and appear before the SHO/IO concerned as and when required. She should not tamper with or attempt to influence the witnesses. She is directed not to leave Delhi without the prior permission of the SHO/IO. In case she holds a passport, the same shall be surrendered to the SHO/IO concerned until further orders. The anticipatory bail is granted subject to the aforesaid conditions. The bail application is allowed in the above said terms.