

(2008) 05 DEL CK 0200

Delhi High Court

Case No: Bail Application No. 633 of 2008 and Criminal M.C. No. 3258 of 2008

Vijay Kumar Sharma

APPELLANT

Vs

State of NCT

RESPONDENT

Date of Decision: May 22, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 167, 173, 173(8), 438, 482
- Penal Code, 1860 (IPC) - Section 120B, 406, 420

Hon'ble Judges: Gita Mittal, J

Bench: Single Bench

Advocate: Mukul Rohatgi and Sidharth Luthra, Shally B. Mahashwari, S. Tabrez, Anil Karnwal and S.S. Pillaina, for the Appellant; R.N. Vats, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Gita Mittal, J.

This petition was originally filed by the petitioner seeking a direction to strike off/expunge certain observations contained against the petitioner in the order dated 23rd February, 2008 passed by the learned Additional Sessions Judge from the record of the case in FIR Nos. 106/2007, 135/2007 & 136/2007 registered by the police station under Sections 420/406/120B IPC. The petitioner had also prayed for quashing of charge-sheet filed by the prosecution before the trial court to the extent that it contained the name of the petitioner in the concluding paragraphs of the chargesheet. Along with the main petition, the petitioner has sought interim direction by way of Criminal Miscellaneous Application No. 3528/2008.

2. The matter came up before the court on 20th March, 2008 when the court recorded the request on behalf of the petitioner that petition has been wrongly registered as a petition u/s 482 of the Code of Criminal Procedure and that the present petition should be entertained only as an application for anticipatory bail. As

a consequence, the petition has been de-registered as a petition seeking quashing; treated as a petition for seeking anticipatory bail and so registered. Learned Counsels appearing in the matter have been heard on such prayer.

3. The petitioner has contended that he was a former director/managing director of the JVG Group of Companies which virtually came to an end with the imposition of certain conditions by the Reserve Bank of India in the year 1998. With the initiation of proceedings against it before the company judge of this Court, this company is stated to have virtually come to an end. The petitioner was struggling with several litigations which arose in relation to the affairs of this company and was making efforts to settle down peacefully without any blemish. Mr. Mukul Rohtagi, learned senior Counsel appearing for the petitioner submits that the case set up by the prosecution against the petitioner is that he is the brother in law to one Shri Y.S. Rana, who is the managing director of M/s PSG Developers Private Limited, the company against whom the complainant has lodged the complaint. The submission is that the petitioner is neither a beneficiary nor a conspirator with M/s PSG Developers Private Limited the main accused in this case.

4. The complaint seeks registration of the case alleging that the directors and officers of M/s PSG Developers & Engineering Limited had defrauded and cheated the complainant by inducing and alluring them through misleading advertisements and other sources for procuring plots and flats. The allegation is that after receiving payments, no information with regard to allotment of plots and flats was being received. A sister concern, M/s Goga Industries Limited was propounded and it was misrepresented that this company is a corporate agent of the Kotak Life Insurance Company so as to allure members of the public into investing money with the accused. This company when contacted has clarified that it had no connection with M/s PSG Developers & Engineers Private Limited. The complainant has alleged that during the course of inquiries, it was learnt that the sister of Mr. Y.S. Rana was the wife of the present petitioner and that he, i.e. Shri V.K. Sharma, was also a director of M/s JVG Limited which was involved in another major land scam in the year 1996. The further allegation is that on inquiries made, it was found that no land of the alleged project was owned by the company or the said Mr. Rana. The refund of the amounts was refused. Cheques of part payments which were issued to the investors, were dishonoured on presentation. In this background, it was alleged that the company and its management had effectuated a major fraud without having any land or licences.

5. On such complaint made on 25th May, 2007 with the Economic Offences Wing of the Delhi Police, the case was registered and investigation was carried out. Several similar complaints have been made.

6. During the course of investigation of the complaint dated 25th May, 2007, made by Shri Tej Bir Singh and nine others, it was revealed that M/s PSG Engineers Limited had transferred some funds to M/s Yusuf Engineering Private Limited in which Shri

V.K. Sharma, the present petitioner, was a director. It has been urged on behalf of the prosecution that though a facade of independent businesses of these two concerns and these two persons Shri V.K. Sharma & Shri Y.S. Rana is being propounded, however in reality, they have closely interacted and have worked together in perpetuating the fraud. In this behalf, my attention has been drawn to the close business dealings which have been revealed during the course of investigation which is still underway.

7. Mr. Mukul Rohatgi, learned senior Counsel appearing for the petitioner, has submitted that the petitioner had suffered immensely in the previous case relating to the affairs of the JVG group which was registered against him; that he is on bail in the earlier cases and consequently, there is no question of his being involved or committing any further offences. It has been vehemently urged that the petitioner has nothing to do with M/s PSG Developers and Engineers Limited and that Shri Y.S. Rana had also no concern with the company in which the petitioner is a director. My attention has been drawn by learned senior Counsel to the agreements dated 30th July, 2005 executed between M/s PSG Developers & Engineers Limited and M/s Yusuf Engineering Company Private Limited. It is contended that these agreements were the basis of the only transactions conducted between the companies.

8. It is submitted that the present petitioner Shri V.K. Sharma is a director in M/s Yusuf Engineering Private Limited.

9. It has been urged by Mr. Rohtagi, learned senior Counsel that as per these agreements, M/s Yusuf Engineering Company Private Limited had agreed to arrange land to the extent of 100 crores at Mohali and Zeerakpur in the state of Punjab. Such land was to be located at one place and was required to be inter connected. For this transaction, M/s Yusuf Engineering Company Private Limited was to receive commission at the rate of Rs. 1,00,000/- per acre from M/s PSG Developers & Engineers Limited.

10. According to the petitioner, the only payment received by M/s Yusuf Engineering Company Private Limited is the sum of Rs. 5,00 crores from M/s PSG Developers & Engineers Limited. My attention is drawn to a document dated 31st January, 2006 which purports give details of such debits effected by M/s Yusuf Engineering Company Limited out of the money received from M/s PSG Developers & Engineers Limited. The petitioner submits that this payment advice gives the full details of such advances which were made by M/s Yusuf Engineering Company Limited in terms of the agreement dated 31st July, 2005 on behalf of M/s PSG Developers & Engineers Limited. The contention is that details of several parties reflecting the cheque numbers, the amount for which they were drawn as well as the date on which the cheques were issued, have been set out therein. Learned senior Counsel has contended that in view of the full disclosure by M/s Yusuf Engineering Company Limited, the investigating agency had full particulars of the entire transactions conducted by M/s Yusuf Engineering company Limited and there was therefore no

requirement any further of the petitioner of the purpose of investigation or interrogation. It is urged that the petitioner having given even the names and particulars of the parties, it was open for the investigating officer to verify the same.

11. The further contention is that the petitioner has acquired the land in terms of the memorandum of understanding dated 30th July, 2005, M/s Yusuf Engineering Company P. Ltd. has performed its part of the agreement and therefore no criminality can be attached to its actions.

12. The present matter was taken up on 27th March, 2008. On this date, a direction was issued by the court that the petitioner shall join investigation before the investigating officer on 1st April, 2008 at 10.00 a.m. at Economic Offences Wing of the Delhi Police. It was also directed that the petitioner would disclose his current address where he would be available to the investigating officer. The petitioner was directed to produce before the investigating officer all documents executed in respect of the transactions. In view of this order, the court had also directed that till the next date of hearing, the petitioner would not be arrested and that he shall appear before the investigating officer on all dates fixed by him.

This order has remained in operation till date.

13. On behalf of the petitioner, it is urged that the petitioner has fully complied with the directions made by this Court and has cooperated with the investigating officer. It has been urged that the petitioner has furnished full information to the investigating agency in writing and enclosed complete documentations with letters dated 3rd April, 2008 and 8th April, 2008 which have been placed before this Court. The submission is that in these circumstances, the petitioner is entitled to exercise of discretion in his favour and that nothing further is required to be done by him.

14. The respondent has filed a status report into the investigations of FIR Nos. 106/07; 135/07 and 136/07 dated 21st April, 2008. It has been pointed out that these three cases were registered under Sections 406/420/120B of the Indian Penal Code by the police station Parliament Street on the joint complaint of several investors who had reported thus:

In the year 2005, M/s PSG Developers and Engineers Ltd., having office at Hotel Le Meridian, 2nd Floor, Commercial Tower, Windsor Place, New Delhi had induced and allured them through misleading advertisements published in various newspapers and also through other sources, for selling of plots and flats at different projects including Manesar (Gurgaon), Faridabad and Greater Noida (UP). Complainants also informed that said company had mentioned in the brochures of the projects that they were a sister concern of M/s Goga Industries Ltd. (which was in Insurance sector and Corporate Agent of Kotak Life Insurance). It was further alleged that Mr. Yatindra Singh Rana, MD of the company, informed them that the land of the project was owned by his company which had completed all the requisite formalities of the projects and would soon get the license for the project within a week's time.

Believing the said advertisements and representations to be true, complainants had deposited huge amount with the said company for the projects at Manesar (Gurgaon), Faridabad and Greater Noida (UP). Complainants further informed that Mr. Rana, MD of the company had not acquired/procured the license till they made the complaint. On enquiries from M/s Goga Industries Ltd., it was learnt by complainant that M/s PSG Developers and Engineers Ltd. was not a sister concern of M/s Goga Industries Ltd. and Mr. Rana, the MD was unable to satisfy the investor's queries. The company issued refund cheques to some of the investors towards part amounts, but all the cheques got bounced. Complainant also reported that the company had been giving bogus assurance through advertisements, solely for the purpose of inducing the common people and collecting huge amounts from them. Thus they have cheated the public at large, which are more than 2000 in number and till date the cheated amount has been detected about Rs. 64 Crore.

15. Mr. R.N. Vats, learned APP has pointed out that during the course of investigation amongst others, the following facts have come to light:

(i) The petitioner Vijay Kumar Sharma is the brother-in-law of the accused Yatender Singh Rana, who was the Managing Director of the company M/s PSG Developers and Engineering Limited and that the present petitioner was the main brain behind the crime.

(ii). Mr. Y.S. Rana and Shri V.K. Sharma at one time were directors of M/s Yusuf Engineering Company Private Limited.

(iii). The present petitioner had been giving different addresses at different places and seven such addresses had been brought to the notice of the investigating agency. One such address given by the present petitioner was A-2, Chhatarpur Enclave, New Delhi which has also been mentioned by Shri Vijay Kumar Sharma, the present petitioner as his address in some places.

During the course of investigation, statements of accounts of M/s PSG Developers and Engineering Limited have been collected from various banks. These statements on scrutiny have revealed that M/s PSG Developers and Engineering Limited had their accounts with UTI Bank (Saket); Syndicate Bank (Chhatarpur); UTI Bank (Jodhpur) & Punjab National Bank (Nehru Place). As per the bank records, the residential address of Shri Y.S. Rana was also A-2, Chhatarpur Enclave, New Delhi.

It has been pointed out that the landlord of this premises has stated that same were given on rent to the JVG Group of Companies through Shri Vijay Kumar Sharma.

(v). The initial office of M/s PSG Developers & Engineering Limited was reflected as A-24, Okhla Industrial Area, New Delhi. According to the Director (Industries), DDA, as per the written communication, the property No. A-24, Okhla Industrial Area was in possession of M/s Yusuf Engineering Company Private Limited. According to the prosecution, the wife of the present petitioner is still running a firm from this very

address and M/s Yusuf Engineering Company P. Ltd. is also having its office at the same address.

(vi). An amount of Rs. 5.00 crores was transferred from M/s PSG Developers & Engineering Limited to M/s Yusuf Engineering Company Private Limited in which the present petitioner was admittedly a director, through a cheque dated 16th December, 2005. The present petitioner was admittedly a director of M/s Yusuf Engineering Company P. Ltd. It has been pointed out that M/s Yusuf Engineering Company Private Limited was neither a specialised land arranging company nor had any land of its own. Two more cheques dated 15th May, 2006 in the sum of Rs. 1.93 lakhs and a cheque dated 27th June, 2006 in the sum of Rs. 1.93 lakhs stood issued from M/s PSG Developers and Engineering Limited to Yusuf Singh. An amount of Rs. 1.00 crore has been shown as returned by M/s Yusuf Engineering to the PSG Developers & Engineering Limited by a cheque dated 18th January, 2006.

(vii). According to the prosecution, in order to prevent discovery of the real facts, the petitioner has juggled and given different addresses when submitting any application/forms to government officers and banks. Even two pan cards possessed by him reflect of different address.

(viii). During the course of investigation, the various complains received from the investors have stated that the petitioner was the person who was actively representing M/s PSG Developers and Engineers Limited. Shri D.K. Goel of M/s Balpardha and Shri D.S. Gill of M/s Jat Properties Pvt. Ltd., Mohali have stated that it was the petitioner who represented PSG Developers & Engineers Limited in the process of purchasing the land.

(ix). To the same effect is the statement of Vijay Kumar, who has submitted that it was the present petitioner who represented M/s PSG Developers & Engineers Limited in purchasing the land.

(x). It is pointed out that the associates and relatives of Shri V.K. Sharma are distributed in as directors in different companies and rotated. As per the prosecution, there is a commonality or past association and his involvement in the affairs of the various companies including those forming part of the JVG Group; M/s Goga Industries Ltd; M/s PSG Developers as well as M/s Yusuf Engineering Company Private Limited. As per the prosecution, this has all been effectuated to keep the innocent investors in the dark. There is yet another company which is under investigation which was floated recently by the present petitioner under the name and style of M/s Vian Infrastructure Limited. Other directors in this company Sajad Alam & Sudhir Kumar Rai are absconding. Orders u/s 82 of the Criminal Procedure Code have been obtained against these persons.

16. Mr. R.N. Vats, learned APP appearing for the State has vehemently opposed this application. On instructions from Inspector Mukesh Walia, the investigating officer it has been contended that the petitioner has not complied with the terms of the

order dated 27th March, 2008. It is complained that though the petitioner did appear before the investigating officer but he has refused to produce originals of any of the documents which would be in his power and possession. Some photocopies have been produced alongwith two communications dated 3rd April, 2008 and 8th April, 2008. However full and complete disclosure, which would have enabled the investigating agency to expeditiously complete its investigation, has not been made. It is also urged that even the photocopies which have been produced are not complete and the complete transactions have not been disclosed. As a result, the investigation is being diverted by the petitioner to irrelevant transactions to prevent the truth being revealed and the culprits being brought to book.

17. Mr. Mukul Rohatgi, learned senior Counsel appearing for the petitioner has further submitted that the police has filed a report u/s 173 of the CrPC against Mr. Y.S. Rana and there is not a whisper of an allegation against the present petitioner.

I have been taken through the entire challan which has been filed by the police.

18. Mr. R.N. Vats, learned APP has explained that Mr. Y.S. Rana was in custody and having regard to the provisions of Section 167 of the Criminal Procedure Code, it was necessary that the charge sheet against him be filed within a period of 60 days. However so far as the petitioner and other persons who have been named by the complainants are concerned, investigation was still underway. Having regard to the non-cooperation on the part of the present petitioner and the incomplete information being furnished, it is contended that investigation was not complete and that such fact was clearly stated in the report which was filed in respect of Mr. Y.S. Rana.

19. In this behalf, I find that in the charge sheet dated 10th December, 2007 filed by the police against Mr. Y.S. Rana, the police had stated thus:

From the investigation conducted so far, it is crystal clear and proved that accused Y.S. Rana, MD of M/s POSG Developers & Engineers Ltd. (placed in column No. 3 of present charge sheet) in collusion and connivance with co-accused Sajjad Alam, Sudhir Kr. Rai and others hatched a criminal conspiracy, with the common intention and sole object to cheat the investors/victims/public right from the very beginning and by siphoning off the amount from the a/c of company, as there are many entries of cash withdrawal from the account of the company and cash withdrawn in the names of the Directors of the Competent Authority for the launching of any of the project and thereby collected huge amount from the public by way of misrepresentation and inducement.

Sufficient evidence both oral and documentary is available against accused Y.S. Rana (presently in J/C) for chargesheeting him. Accordingly, chargesheet u/s 173 Cr.P.C. Against Y.S. Rana has been prepared. Investigation with regard to co-accused Sudhir Kumar Rai, Sajjad Alam and other associates/remaining directors/suspects including V.K. Sharma (brother-in-law of Y.S. Rana), is continue and supplementary

chargesheet in this regard will be filed u/s 173(8) Cr.P.C. Report of the CA; is still awaited and the same will be filed before this Hon"ble Court as and when received. It is, therefore, respectfully prayed that cognizance against accused Y.S. Rana mentioned in column No. 3 may kindly be taken as per law. List of documents and witnesses, relied upon are enclosed herewith for kind perusal. Some of the witnesses had already produced their original documents and other witnesses would produce the original documents at the time of trial. Chargesheet against accused Yatindra Singh Rana in case FIR No. 106/07 PS Parliament Street has already been filed before this Hon"ble Court. Accused persons may be called through warrants and witnesses through summons.

(Emphasis supplied)

Thus, it would appear that the investigation into the offences against the other persons who have been named by the complainants including the present petitioner was still in progress on 10th December, 2007 necessitating the charge sheet.

20. It is necessary to notice that in case the contention made by learned senior Counsel on behalf of the petitioner was to be accepted, the consequence would be that in a case where allegations of conspiracy were made and one of the co-accused was in custody, the other co-accused would be able to avoid custodial interrogation as well as secure release of the co-accused who was in custody simply by evading appearance and assisting the police in the investigation. Certainly this cannot be the spirit and intent of the statutory provisions or a ground in a case of the present nature, on which an application for anticipatory bail would require to be considered.

21. In the instant case Mr. Vats has submitted that on account of the incomplete and half paid information which has been made available by the petitioner in notional compliance of the order dated 27th March, 2008 directing him to join investigation, several serious matters have been revealed. The payment advice dated 31st January, 2006 relied upon by the petitioner discloses the names of some of the persons to whom moneys have purportedly been advanced by M/s Yusuf Engineering Co. Pvt. Ltd. on behalf of M/s PSG Developers & Engineers Ltd. It has been pointed out that admittedly Mr. V.K. Sharma was an authorised person on behalf of M/s Yusuf Engineering Co. Pvt. Ltd. in such transactions. One of the companies to whom money was so paid was M/s Jat Properties Pvt. Ltd. The contention is that the petitioner has not cooperated and has not placed any of the original memorandum of understandings which were allegedly executed as per this payment advice and there is no material which is available to support the contention that payments have actually been advanced. At the same time, on investigation of the parties named in this advice, the prosecution has secured a copy of two agreements to sell dated 22nd December, 2005 purportedly entered into by M/s Jaat Properties Pvt. Ltd. with M/s Yusuf Engineering Co. Pvt. Ltd. The present petitioner is a signatory to these transactions. As per the document which has been obtained from M/s Jaat Properties Pvt. Ltd., the present petitioner has received an amount of Rs. 44 lakhs in

cash for cancellation of two of the agreements to sell. The position with regard to the other transactions is not available and is yet to be found out by the investigating officer.

22. From the above, it is apparent that certainly the petitioner has not made full disclosure of facts. He has not assisted or cooperated with the investigating officer. The factum of refund of the amount of Rs. 44 lakhs was a material fact. More so in view of the fact that heavy reliance is placed on the submission of the petitioner that efforts have been made to procure amounts on behalf of M/s PSG Developers & Engineers Pvt. Ltd. and as a mere agent on its behalf. Cooperation with the investigation has to be real and meaningful. In given facts, the petitioner by his concealment, has in fact misled the investigation agency.

23. The amount of Rs. 44 lakhs is certainly not a small amount. This aspect acquires even more significance inasmuch as no disclosure of these facts has been made to the investigating officer though the petitioner has had more than adequate opportunity and despite the specific directions of the court made on 27th March, 2008 directing the petitioner to produce all documents executed in respect of the transactions.

No such transactions have been admittedly disclosed to the investigating agency in the letters dated 3rd or 8th April, 2008 or documents. Very cleverly a one line insertion in the last synopsis placed on record before this Court has been made. Such conduct only illustrates and manifests the mala fide on the part of the petitioner.

24. It has also been pointed out by the prosecution that there is a concerted effort to mislead the investigation agency inasmuch as that incomplete facts are being placed before it so as to send the investigation officer on a wild goose chase.

25. The further submission of the investigating agency is that apart from M/s Yusuf Engineering Pvt. Ltd., the petitioner is actively concerned with the affairs of M/s Sajid Properties Pvt. Ltd. It has been submitted that the petitioner is operating the bank account of this company as well and information in this behalf has been obtained from the Syndicate Bank, Tauru, District Gurgaon. As per the prosecution all transactions between the PSG Developers & Engineers Ltd., Yusuf Engineering Co. Pvt. Ltd., Sajid Properties Pvt. Ltd. and several other companies are completely intermingled.

26. No original documents have been produced by the petitioner before the investigating officer. Today a statement is made that the petitioner only had the photocopies which have been placed before the court. However as noticed above, even these photocopies are not complete.

27. A submission is made that the petitioner does not dispute the photocopies. However the definition of "documents" under the Indian Evidence Act is clear and

explicit. The petitioner is fully conscious of the fact that there are other co-accused also who are being investigated in the matter. It is certainly not sufficient for the petitioner to submit that he does not dispute the photocopies.

28. This Court gave an opportunity to the petitioner to facilitate the investigation by the order dated 27th of March, 2008 in view of the submissions made. The petitioner has claimed innocence in the matter and was therefore required to provide complete facts and documents to the investigating agency.

29. From the above, it would appear that the petitioner has not cooperated or joined investigation in terms with the orders passed on 27th March, 2008 or in terms of the requirement of law.

30. It has been pointed out by Mr. Mukul Rohatgi, learned senior Counsel that apart from the transactions which are the subject matter of the MOU dated 31st July, 2005, the petitioner has transacted in respect of large amount of land in Faridabad and Jodhpur. No disclosure or documents in respect thereof have been made available. In addition, it is pointed out that though the agreement with M/s PSG Developers & Engineers or for a land of only about 100 acres, however the petitioner appears to have acquired more than 600 acres of land. There is no disclosure of any of the agreements based thereon that such acquisitions have been made. It is expressed by the learned APP that there is complete non-cooperation by the petitioner and a prayer is made that in this background, custodial interrogation in this behalf is necessary.

31. The co-accused is in custody. From the huge transactions and according to the prosecution, serious investigation into several complaints and the companies wherein the petitioner and the co-accused are concerned or represented, is required.

The principles on which an application for anticipatory bail is required to be considered are well settled.

32. Principles governing grant of anticipatory bail are settled. The question as to whether to grant anticipatory bail or not would depend upon a variety of circumstances. No single circumstance can be treated as of universal validity or as necessarily justifying grant or refusal of bail. In [Gurcharan Singh and Others Vs. State \(Delhi Administration\)](#), the court had held that there cannot be any exonerable formula in the matter of granting bail and that the facts and circumstances of each case would govern the exercise of judicial discretion in granting or cancelling bail.

33. While the issue of bails is based on concerns of personal liberty and justice, at the same time public interest in an unimpeded investigation into serious offences cannot be undermined or underplayed. In [Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab](#), the Supreme Court had laid down the principle that Section 438

cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Anticipatory bail is a device to secure the individual's liberty. It is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely.

34. Section 438 of the Code of Criminal Procedure requires that while balancing the right of an individual to his liberty, it is equally important that the right of the police to investigate into crimes reported to them.

35. It has been repeatedly held that the power u/s 438 of the Code of Criminal Procedure is to be used sparingly and only when exceptional grounds are made out. Some of the tests normally applied are the nature and seriousness of the prosecution; the nature of evidence in its support; the severity of the punishment which the conviction will entail; the character, behavior and standing of the accused; a reasonable possibility of the accused absconding.

36. Investigation into serious allegations is underway. Large scale transactions have been unearthed. Prima facie, a link between the deals of M/s PSG Developers and the petitioner has been drawn. Certainly the present case is not a fit case to grant anticipatory bail.

37. It is an admitted fact that the petitioner was implicated in an earlier case and incarcerated. He is therefore well aware of the requirement of cooperation and participation in the investigation. The petitioner has set up a plea of innocence. All the more reason that he would make a complete disclosure of facts and documents known to him and facilitate the police to expeditiously get to the root of the matter.

In this view of the matter, the interim orders dated 27th March, 2000 are hereby recalled.

These applications are hereby dismissed.