

Manish Chawla vs State on 23 September, 2013

Author: Veena Birbal

Bench: Veena Birbal

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1348/2013

% Date of Decision: September 23, 2013

MANISH CHAWLA

..... Petitioner

Through: Mr. Vijay Aggarwal with Ms. Subhadra
Shukla, Adv.

versus

STATE

..... Respondent

Through: Ms. Jasbir Kaur, APP for State.
SI Shailendra, AFS/EOW.
Mr. Azhar Alam, Adv. for complainant.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. This is an application u/s 440 read with section 439(1)(b) and 482 of Cr.P.C. filed by the petitioner to set aside the order dated 28th June, 2013 passed by the Id.ASJ, Delhi wherein prayer is made to remove the condition of deposit of alleged cheated amount in bail order dated 20th June, 2013 passed by the Id.Chief Metropolitan Magistrate in FIR No.56/2012 registered u/s 420/406/467/468/471/120B IPC at PS EOW, Delhi. Further prayer is made for reducing the bail bond amount to ` 20,000/- from the sum of Rs.1 lakh.

2. Learned counsel for the petitioner submits that petitioner was arrested in some other case u/s 138 of the Negotiable Instruments Act on 11.5.2012. In the present case, he was arrested on 8th June, 2012 and since then he is in judicial custody.

3. Learned counsel for the petitioner has submitted that aforesaid FIR was registered against the petitioner on the basis of statement of complainant Mr.R.K.Malhotra, President of Progressive Channels Association of Information Technology with the allegations that the petitioner has defrauded the members of its association to the tune of ` 15 crores. It is alleged that petitioner had approached the members of its Association and induced them to sell the computers, laptops and other accessories through his companies to enable them to further sell out the same to the intending purchasers. It is alleged that members of the association agreed to the proposal and the petitioner

and other co-accused were to deposit with the members the resultant sale proceeds after keeping with them their share of profit. It is alleged that transactions had taken place during the period from September, 2008 to January, 2011. The goods were sold by the petitioner and other co-accused but the sale proceeds as agreed were not deposited. Further allegations are that cheques were issued to discharge the liability but the same were dishonoured and the proceedings u/s 138 of the Negotiable Instruments Act were initiated against the petitioner. Learned counsel submits that charge sheet has already been filed in the matter. It is further submitted that against co-accused supplementary charge sheet has been filed. It is further submitted that petitioner had applied for bail and the learned CMM (West) vide order dated 20th June, 2013 was pleased to grant bail to the petitioner. However, while allowing the bail application, the ld.CMM has imposed the conditions including the condition of deposit of alleged cheated amount.

4. Learned counsel for the petitioner submits that as per prosecution case, the alleged cheated amount is `15 crores and the said condition of deposit of cheated amount is onerous and beyond the ability of the petitioner and imposing such a condition amounts to denial of relief of bail though otherwise granted to the petitioner.

5. Learned counsel further submits that petitioner has moved an application u/s 440 read with section 439(1)(b) of the Cr.P.C before the ld.ASJ, Delhi for modification of the aforesaid order. It is submitted that the ld.ASJ has dismissed the said application vide order dated 28.6.2013 by observing that the cheated amount in the case is in crores and such orders are passed as consent orders and the petitioner or his family members may have agreed to deposit the cheated amount otherwise the ld.CMM would not have passed such an order. It is submitted that even learned counsel appearing for the complainant has submitted that it was a consent order, as such, the ld.ASJ dismissed the application.

6. Aggrieved with the same, present application is filed.

7. Learned counsel for the petitioner has submitted that it was not a consent order and the petitioner or his family members have never agreed for deposit of cheated amount as is observed by the ld.ASJ. It is further submitted that even reading the entire order passed by the ld.CMM, it cannot be said that it was a consent order.

8. Learned counsel submits that petitioner is in custody for the last more than one year and it is not possible for him to deposit such a huge amount as is ordered by the ld.CMM. It is further submitted that onerous condition has been imposed upon the petitioner which deprived him the benefit of bail. Relying upon the judgments in (i) R.D.Upadhyay vs. State of Andhra Pradesh: (1996) 3SCC 422, (ii) Vinod Kumar Vs. State of Delhi:

85(2000)DLT 299 and (iii) Munish Bhasin and ors vs.State (Govt. of NCT of Delhi) and another:2009(2)JCC 1081, learned counsel for the petitioner submits that such conditions could not have been imposed upon the petitioner and he is entitled for unconditional bail.

9. During the course of arguments, learned counsel for the petitioner has further submitted that family of the petitioner is ready to deposit ` 25 lacs before his release on bail and thereafter ` 25 lacs or some other amount would be deposited after his release and petitioner be given interim bail so that he can come out and see the possibility of arranging further amount for deposit and thereafter appropriate orders may be passed in the matter.

10. On the other hand, ld.APP for the State submits that the alleged cheated amount is about ` 15 crores. The status report has been filed wherein it is stated that apart from cheques that got dishonoured, petitioner has also provided forged sale deed of his property no.F-102, First Floor, Bali Nagar along with chain of the documents of previous owners to couple of victims. It is submitted that during investigation about 12 victims have been examined and the alleged cheated amount comes to about ` 15 crores. It is submitted that it has further come in the evidence that petitioner was selling goods which he was procuring from the victims at lesser prices than he bought and that too in cash.

It is further stated that petitioner was doing the said business with his father and other family members. It is further submitted that prior to his arrest, he has changed his name and started residing at Jaipur with his family by getting forged identities. Learned APP submits that present application is liable to be rejected. It is further submitted that the case law cited by the ld.counsel for the petitioner is not applicable to the facts of the case. It is submitted that innocent persons have been cheated by the petitioner and he does not deserve grant of unconditional bail as is prayed by him.

11. The offences like the present one are serious in nature and have ill effects on the society.

12. In Prahlad Singh Bhati vs. NCT Delhi & anr: (2001) 4 SCC 280, the Supreme Court in para 8 laid down the criteria for granting bail:-

"The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in a arbitrary manner. While granting the bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour means and standing of the accused, circumstances which are peculiar to the accused, reasonably possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with the larger interests of the public or State and similar other considerations."

The nature of accusations and larger interest of the public are the important public considerations for the grant of bail.

13. Regarding the contention of learned counsel for the petitioner that while dealing with the application for bail, the court cannot impose condition about deposit of cheated amount, reference

can be made to Suresh Chandra Ramanlal vs. State of Gujarat & anr: 2008(7) SCC 591, which was a case involving cheating and forgery in respect of funds of a bank, the Supreme Court while granting anticipatory bail on verified medical grounds, imposed a condition that the accused would deposit a sum of ` 40 lakhs with the bank in four equal monthly instalments. This was despite the fact that in the case before the Supreme Court, there were as many as 49 accused persons who were arrested and each one of them had already been enlarged on bail.

14. In the present case, FIR has been registered on the complaint of President of Progressive Channels Association of Information Technology having 100 members organization dealing in the business of selling and purchase of computers, on behalf of seven of its members against the petitioner, his father H.C.Chawla, wife Preeti Chawla and one Sushil Chawla, all either Directors or Proprietors of two companies, namely S.D.Infosys and Sementic Information Technology Pvt. Ltd having their office at H-68/03, Bali Nagar, New Delhi. The allegations are that the present petitioner representing the aforesaid companies had approached the members and purchased computer parts for onward sale to various buyers, resultant proceeds of which were to be deposited with the respective members after keeping their own share of profit. But petitioner failed to do so and the cheques issued were dishonoured and the petitioners and his family members fled from their residences after closing down their offices and duping seven of the members to the tune of ` 5.43 crores. During enquiry more victims levelled similar allegations against the petitioners totalling the cheated amount to ` 15.5 crores. It has also come in the investigation that initially petitioner was placing orders in thousands and after gaining the confidence of dealers/distributors, the orders worth crores were placed and that too on credit. It has also come in the investigation that he was selling the goods on lower price than the purchased price and that too in cash. Further analysis of accounts of the petitioner have shown that the amount received in the accounts of the company have been transferred into the personal accounts of the petitioner or cash has been taken out. It has also come in the investigation that bank account statements of petitioner and other accused persons reveals that they had started to wind up the savings and current accounts in February, 2011. They have got their FDs encashed and PPFs withdrawn and the cash lying in those accounts have also been withdrawn.

15. In view of the above background, prima facie it appears that the alleged offences have been committed for personal gain and the petitioner has moved in a planned manner. It is the duty of the court to safeguard the interest of the victims who have been duped of huge amount. It has also come in the investigation that the petitioner had taken out money from his saving and current account. The FDRs have also been encashed and PPF amount was also withdrawn. It has also come in the investigation that petitioner had mortgaged the properties with the bank in lieu of CC limits extended and the bank has taken over those properties and disposed off the same. In these circumstances, the reasonable condition of deposit can be imposed upon him for the grant of bail.

16. Considering the totality of facts and circumstances of the case, the order dated 28.6.2013 passed by Id.ASJ is set aside and the condition of deposit of the alleged cheated amount i.e., ` 15 crores as imposed by the Id.C.M.M. in the order dated 20.6.2013 is reduced to ` 5 crores. Subject to deposit of ` 1 crore with the trial court, the petitioner be released on his furnishing a personal bond of ` 50,000/- with one surety of the like amount to the satisfaction of the Id trial court. The remaining

amount of ` 4 crores be deposited with the ld.trial court within four months of his release i.e., ` one crore every month. In case of non deposit, the prosecution will be at liberty to apply for cancellation of bail. The other conditions imposed by the ld.trial court shall remain the same.

It may be mentioned that the judgments relied upon by the ld.counsel for the petitioner as referred above have been considered. The same have no applicability to the facts and circumstances of the present case.

Application stands disposed of in the above terms .

VEENA BIRBAL, J SEPTEMBER 23, 2013 ssb