

Court No. - 8

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14499 of 2021

Applicant :- Arvind Sen

Opposite Party :- State of U.P.

Counsel for Applicant :- Brij Mohan Sahai, Amar Singh, Digvijai Singh, Ravi Singh

Counsel for Opposite Party :- G.A., Romit Seth, Varsha Sharma

Hon'ble Dinesh Kumar Singh, J.

1. Heard Mr. Ravi Singh, learned counsel for the accused-applicant, Mr. Romit Seth, learned counsel for the complainant, as well as Mr. Rao Narendra Singh, learned Additional Government Advocate, and gone through the entire record.

2. By means of this application under Section 439 CrPC, the accused-applicant seeks bail in FIR No.0160 of 2020, under Sections 419, 420, 120-B, 406, 471, 467 and 468 IPC read with Sections 7 and 13 Prevention of Corruption Act, 1988 lodged at Police Station Hazratganj, District Lucknow.

3. As per allegations in the FIR, the complainant is resident of Bungalow No.4, 25 Purneeta Colony, Bichauli Hapsy, Indore, Madhya Pradesh. It is alleged that in the month of April, 2018, Mr. Vaibhav Shukla, resident of Indore and, Santosh Sharma met the complainant and enquired about the turn over of his Flour Mill. Vaibhav Shukla is a bosom friend of the younger brother of the complainant and belongs to a big respected family of Indore. The complainant told him the turn over of his mill. Thereafter, Vaibhav Shukla and Santosh Sharma came to the office of the complainant and took the profile of the company of the complainant and the returns of some previous years. Vaibhav Shukla again came to the office of the complainant and told the complainant that he and Santosh Sharma had met Sri S.K. Mittal, Deputy Director, Animal Husbandry at Lucknow, who told them that he was very close to the Minister of the department. Vaibhav Shukla told the complainant that Sri S.K. Mittal told him that he wanted to give supply order to the complainant for wheat, sugar, flour and pulses in the party's interest. The complainant was further told that he would have to pay 3% in advance of the total value of the supply order and supply order would be for Rs.292.14 crores. The supply would be required to be completed within a period of one year. The complainant told Santosh Sharma and Vaibhav Shukla that to complete the work order of this magnitude, he would require more time period, then Santosh Sharma said that they would get the time limit extended by another one year. Santosh Sharma said that this would be his responsibility. He further said that on getting the work order for

supply, 60% of the profit would go to the complainant and 40% would go to his company.

4. Believing in representation of Santosh Sharma and Vaibhav Shukla and their bona fide, the complainant gave turn over of his company and profile of his company to Santosh Sharma. After some days, Santosh Sharma and Vaibhav Shukla came to the office of the complainant with a tender form, which was allegedly issued by the department of Animal Husbandry, Government of Uttar Pradesh. Santosh Sharma asked the complainant and his wife to put their signatures on the tender form. The complainant and his wife put their signatures. Santosh Sharma informed them that several tenders would be submitted by many persons. He said that after comparing the rates of other tenderers, Sri S.K. Mittal would fill the rate in tender of the complainant, so that the complainant should get the contract for supply. Santosh Sharma asked the complainant to keep 3% of the tender value ready to be paid as advance and asked him to pay 1% forthwith. Believing in Vaibhav Shukla and Santosh Sharma, the complainant paid Rs.50 Lakhs on 3.5.2018 and thereafter, Rs.50 Lakhs on 18.6.2018 and, another Rs.50 Lakhs on 7.7.2018, which was allegedly given by them to Sri S.K. Mittal. Thereafter, the complainant paid Rs.2 Crores on 27.7.2018 to Vaibhav Shukla, which was allegedly given by them to accused Amit Mishra on 27.7.2018 on asking of said Sri S.K. Mittal. Vaibhav Shukla informed the complainant that tender had been allotted in his favour and asked him to reach Lucknow immediately because Sri S.K. Mittal, wanted to meet the complainant and he would like the complainant to meet the Minister as well.

5. On 31.8.2018, the complainant came to Lucknow where he met Vaibhav Shukla and Santosh Sharma. He along with Vaibhav Shukla and Santosh Sharma reached VVIP Guest House at Lucknow and after hiring a taxi reached at Gate No.9 of the Vidhan Sabha as was told by Sri S.K. Mittal. One peon present at the Gate, got the pass issued for them at Gate No.9. He took them inside the Secretariat and guided them to a big room where on the table, nameplate of Sri S.K. Mittal was displayed. Person sitting on the Chair introduced himself as S.K. Mittal. After exchanging pleasantries, the said S.K. Mittal asked the peon to bring the receiving register and the work order. Peon brought one work order and the register. The complainant was asked to sign on the receiving register and, work order was issued in his favour. The said S.K. Mittal asked the complainant to pay the remaining amount of 3% as he agreed with Vaibhav Shukla and Santosh Sharma. After completing the formalities, the complainant, Santosh Sharma, Vaibhav Shukla and said S.K. Mittal went for tea outside in a Coffee Shop. The complainant asked the said S.K. Mittal that the time period of the work order was very less. Work order was given to the complainant on 31.8.2018. However, the date on the work order was mentioned as 12.6.2018. He told S.K. Mittal that to make such a big supply, he

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would require to take loan from the bank and because of the festivals, there was a problem of labour etc. However, said S.K. Mittal assured him that everything was in his hands and, he would keep on extending the time limit by imposing minimum fine. He also told the complainant that since on the said date i.e. 31.8.2018, there was a cabinet meeting, therefore, meeting with the Minister was not possible, otherwise he would have ensured his meeting with the Minister as well. He told the complainant that the Minister was very happy with him because the complainant had fulfilled his commitment and asked the complainant to send the remaining amount soon. Thereafter, said S.K. Mittal left the coffee shop and went in a Safari car.

6. After this meeting, the complainant got assured about the genuineness of the transaction and, thereafter, he paid Rs.5.5. Crores in a few installments to the said S.K. Mittal through Vaibhav Shukla and Santosh Sharma. After a few days, Santosh Sharma telephoned the complainant and the said that for effecting such a big supply, a godown would be required and for this purpose Mittal Saheb told him to take a godown from R.K. Traders, U.P. on rent. The complainant was asked to deposit Rs.72 Lakhs in the account of R.K. Traders. The complainant deposited Rs.66,000/- on 25.9.2018, Rs.21.46 lakhs on 6.10.2018 and, Rs.50 Lakhs on 16.10.2018 in the account of R.K. Traders through RTGS as was asked by Santosh Sharma.

7. The total amount thus allegedly paid to said S.K. Mittal was Rs.9,72,12,000/- The complainant checked his tender online, but it was not found anywhere, then he contacted Vaibhav Shukla and Santosh Sharma over the phone and told them that his tender was not being shown. He also asked the date for starting the supply and he should be immediately informed about all these. Both Vaibhav Shukla and Santosh Sharma told the complainant that they would meet said S.K. Mittal and then would inform him accordingly regarding the real status. The complainant was told by Vaibhav Shukla and Santosh Sharma that some complaints had been received in respect of tendering process and CBCID was conducting an enquiry. The complainant was assured that he should not be worried at all. After some days, Vaibhav Shukla and Santosh Sharma came to Indore and met the complainant and told him that tender process was being enquired by S.K. Mittal himself and he would be required to go to the office of the CBCID, Lucknow on 22.11.2018. It was said that S.K. Mittal would manage everything and, there was nothing which should bother the complainant.

8. The complainant on 22.11.2018 reached to the office of the CBCID, Lucknow where he was asked to make his entry in the register and one Constable took him to the Superintendent of Police in the office of CBCID. The Superintendent of Police asked him whether the work order was given to the complainant and whether he

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had made supply. When the complainant told the Superintendent of Police that he has not made any supply, then the Superintendent of Police scolded him badly and said that he had made the supply. Thereafter, he dictated something to the complainant and asked him to put his signatures on the paper and kept the paper with him. The complainant came out of the office of the CBCID, where the said S.K. Mittal was waiting for him. He asked the complainant whether verification was done. The complainant nodded his head and told him that Superintendent of Police had told him that supply had been made and he dictated regarding this and made the complainant to sign it and, the said paper had been kept by the Superintendent of Police. S.K. Mittal asked the complainant to go to Indore and he would tell everything to Vaibhav Shukla and Santosh Sharma. The complainant came back to Indore on the same day.

9. On 26.12.2018, the complainant again met the said S.K. Mittal with Vaibhav Shukla and Santosh Sharma and requested him to issue order for making supply immediately. Then the said S.K. Mittal asked him to give original copy of the order, bill book, which was without any date and the affidavit of supply to be signed by both the partners and thereafter, only order would be issued for making supply. When the complainant objected to do this, S.K. Mittal told him that it was his responsibility to look after everything and the complainant should not be worried about anything.

10. Thereafter, Vaibhav Shukla and Santosh Shamra came to Indore and met the complainant and told him that the said S.K. Mittal had asked them to bring the original order, number of all the vehicles from which supply would be made, name of the drivers with details of bills and the bills should be without date. Mittal would fill the date as per the requirement. The complainant sent the original work order, affidavit of supply, bills of vouchers, empty bill book through his employee, Lavendra with Santosh Sharma to Lucknow. These persons met S.K. Mittal on 11.1.2019. The said S.K. Mittal kept the affidavit and bill vouchers with him and sent Lavendra and Santosh Sharma with original work order to the office of the CBCID to meet Superintendent of Police, who turned out to be accused Arvind Sen, a police officer of DIG rank. The said Superintendent of Police kept the original work order with him and sent these persons and told them that after completing the enquiry, he would call the complainant on the next date.

11. Since the complainant had paid Rs.9,72,12,000/- therefore, the complainant was pressing for making supply and contacted many times Santosh Sharma and Vaibhav Shukla and the said S.K. Mittal. The said S.K. Mittal asked them to come to Lucknow on 30.3.2019. The complainant with Santosh Sharma and Vaibhav Shukla and his employee, Lavendra reached Lucknow on 30.3.2019 and stayed in Oyo rooms behind Piccadilly Hotel and they kept on contacting S.K.

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Mittal over the telephone. S.K. Mittal kept on assuring Santosh Shamra for two days that he would make payment through RTGS. On 31.3.2019, when the said S.K. Mittal was again contacted, he asked them to reach in front of Phoenix Mall. Thereafter, the complainant, Vaibhav Shukla, Santosh Sharma and accused, Rakesh Porwal, friend of Santosh Sharma reached in front of the Phoenix Mall. As soon as they reached at Phoenix Mall, police in three vehicles came there and forcibly made them to sit in the police vehicles. The complainant was threatened that if he would speak, he would be shot dead. The police took them to the Police Station Naka Hindola and they were brought before the Police Inspector, where they were threatened by the Police Inspector. Their ID proofs were taken and the complainant was threatened that if he would be seen again in Lucknow, he would be killed in an encounter. Thereafter, these persons were allowed to go. It was said that the complainant along with his employee, Lavendra came back to Indore on the same day by catching a flight to Indore. After this, the complainant belief got confirmed that he had been cheated and duped in a big way in furtherance of a huge conspiracy. He was fearing for his life as he was threatened to be killed in an encounter. He could not understand what to do next.

12. It was said that the person who met him as S.K. Mittal, was the accused Ashish Rai. The complainant came to know and lodged the FIR alleging that he had been cheated of Rs.9,72,12,000/- in a criminal conspiracy hatched by Ashish Rai, Monte Gurjar, resident of Jaipur, Rajasthan, Rupak Rai, resident of Azamgarh, Santosh Mishra, Journalist, resident of Vikas Khand, Gomti Nagar, Lucknow, A.K. Rajeev, Journalist, resident of Gomti Nagar, Lucknow, Amit Mishra, resident of Faridabad, permanent resident of Amethi, Uma Shanker Tiwari, resident of Kanpur Nagar, Rajneesh Dixit, resident of Lucknow, D.B. Singh, resident of Lucknow, Arun Rai, Editor of News Channel 18, Dheeraj Kumar, Private Secretary to the Minister, Animal Husbandry, Umesh Mishra and other officers/employees. They had prepared forged and fabricated documents on the basis of which, they had cheated him of Rs.9,72,12,000/-.

13. Learned counsel for the accused-applicant submits that role of the accused-applicant is of conspirator with the main accused; Rs. 10 Lakhs was received in the account of business concerned of the accused-applicant from the proceeds of crime of Rs. 9,72,12,000/-; the accused-applicant had helped other accused allegedly actively assisting them to play the fraud with the complainant; the accused-applicant was police officer and he was on duty with the Chief Minister when the offence is alleged to have been committed by him; the accused-applicant has been languishing in jail since 27.01.2021 having no other previous criminal antecedent to his credit; service career of the accused-applicant has also been good throughout. Considering these, the accused-applicant may be enlarged on bail.

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14. On the last date of listing of the matter i.e. on 17.04.2023, this Court directed the counsel for the accused-applicant to bring a bank-draft of Rs.20,00,000/- (Rupees Twenty Lakhs) in favour of the complainant as a condition precedent for enlarging him on bail.

15. The learned counsel for the accused-applicant has brought the bank-draft of Rs.20,00,000/-, bearing Bank-Draft No.597948 dated 27.04.2023 issued by the State Bank of India. The bank-draft has been handed over to Mr. Romit Seth, learned counsel for the complainant, who has accepted the same.

16. While opposing the bail Mr. Rao Narendra Singh, learned Additional Government Advocate, has submitted that it is the Special Task Force of the Uttar Pradesh Police which could crack the crime of mind-boggling proportionate, and the manner in which it was committed. It has been further submitted that the accused-applicant is one of the main architects of the crime as he actively helped/assisted the main accused in commission of the offence.

17. I have considered the submissions advanced by Mr. Ravi Singh, learned counsel for the accused-applicant, Mr. Romit Seth, learned counsel for the complainant, as well as Mr. Rao Narendra Singh, learned Additional Government Advocate.

18. The accused-applicant was DIG Rank Officer when the alleged offence was committed; the draft of Rs.20,00,000/- has been accepted by the leaned counsel for the complainant; the accused-applicant never visited the Secretariat where Ashish Rai presented himself as Director in the Department of Animal Husbandry, hence, role of the accused-applicant is different than the role of other accused. Further, the accused-applicant has paid Rs. 20,00,000/- though Rs.10,00,000/- was received in the bank-account of business concerned of the accused-applicant. This payment of Rs. 20,00,000/- would not have any bearing in the trial as it is a condition precedent for enlarging the accused-applicant on bail. Considering all this, and also taking into account that the accused-applicant dos not have any other criminal antecedent, this Court deems it appropriate to enlarge him on bail, who is languishing in jail since 27.01.2021.

19. Let applicant-**Arvind Sen**, accused of above-mentioned FIR/crime number, be released on bail on **his** furnishing a personal bond and two local and reliable sureties each in the like amount to the satisfaction of the Court concerned with the following conditions, which are imposed in the interest of justice:-

*(i) the applicant(s) shall file an undertaking to the effect that **he** shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law;*

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(ii). the applicant(s) shall remain present before the trial court on each date fixed, either personally or through **his** counsel. In case of **his** absence, without sufficient cause, the trial court may proceed against **him** under Section 229-A of the Indian Penal Code;

(iii). in case, the applicant(s) misuse(s) the liberty of bail and in order to secure **his** presence proclamation under Section 82 Cr.P.C. is issued and the applicant(s) fail(s) to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against **him** in accordance with law, under Section 174-A of the Indian Penal Code; and

(iv) the applicant(s) shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of **his** bail and proceed against **him** in accordance with law.

[D.K. SINGH, J]

Order Date :- 3.5.2023

MVS/-