

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: June 08, 2013*
Judgment Pronounced on: July 01, 2013

+ **Bail Appl. No.666/2013 & CrI.M.A. No.9293/2013**

NARENDRA KUMAR RAJGARHIA Petitioner
Through Mr.Sandeep Sethi, Adv. with
Mr.C.Mukund & Mr.Pankaj Jain,
Advvs.

versus

STATE OF NCT OF DELHI Respondent
Through Mr.Mukesh Gupta, APP for the State
with I.O./Insp. Vivek Maheshwari,
EOW.
Mr.Arun Bhardwaj, Sr.Adv. with
Mr.Madhav Khurana & Mr.Vishal
Malhotra, Advvs. for complainant.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the abovementioned application for grant of bail.
2. The following grounds on which the bail must be granted:
 - a. The Sessions court acted mechanically and did not apply his mind and passed an order without appreciating the requirements for the grant of bail, which are allegedly all in favour of the petitioner.
 - b. He states that, out of all the banks that have allegedly been subject to fraud, only one filed a criminal complaint, and that too, was not against the petitioner, thus proving his bona fide nature.

- c. The investigation of the case, with regard to the petitioner is complete and there is no further need for custodial interrogations and that the petitioner has willingly cooperated in the investigation thus far.
- d. The allegedly forged document was produced by the complainant, and has no relation to the petitioner in the instant case. Since, the petitioner is a permanent resident of Delhi, there is no possibility of him absconding.
- e. Even after being incarcerated for 146 days by the Police Officials, nothing incriminating was found against the petitioner and further submits that the entire investigation and arrest had been conducted in a mala fide manner and has caused irreparable injury in one way or the other. Further, making allegations against the petitioner's son, who was not involved in any manner, also throws light on the mala fide nature of the investigation process.
- f. Further, the petitioner has been experiencing medical problems, for which the environment in a prison is unsuitable.

3. Brief facts of the case are that in September 2007, the petitioner and his son, Prateek Rajgarhia approached the complainant bank, Yes Bank Pvt. Ltd., for a Cash Credit and Term Loan, stating that it was necessary for his firm, M/s. Texcomash Exports and offered to provide movable and immovable properties as collateral.

4. The petitioner's son executed a personal guarantee in favour of his father a cash credit system with a limit of ₹4 Crores, against the loan. Loan facility was enhanced to a further limit of ₹8.5 Crores. The petitioner had defaulted on his account and therefore, it was declared as NPA on 23rd November, 2010.

5. The property which had been given as collateral was allegedly a HUF property. The complainant bank instituted proceedings under the SARFAESI Act and took possession of the land. It was revealed that the petitioner and his father used the same property as collateral for loans from various other banks.

6. The petitioner initiated proceedings before the DRT Tribunal, wherein, he offered to pay ₹2 Crores upfront, provided that there is a stay on the auction of the aforementioned property. Based on this, the DRT issued a stay on 26th August, 2011. He did not make these payments. Moreover, it is further alleged by the respondent that petitioner colluded with his daughter to avoid payment, for they instituted an S.A. No. 73/2011, titled *Ms. Milli v. Yes Bank and Anr.* wherein it was claimed that the property belonged to the HUF and the same is not owned by petitioner therefore, such property cannot be auctioned or put under any kind of restraint.

7. The bail application is strongly opposed by Mr.Mukesh Gupta, learned APP for the State. According to him, the total outstanding as on date is to the tune of ₹13 crores, as the petitioner through forged property documents obtained the loan and he stopped paying the dues to the complainant Bank who had taken the steps under the SARFAESI act, 2002 for payment of ₹9,91,94,751.64/- along with interest applicable.

8. By order dated 14th May, 2011, the ACMM inter-alia ordered that possession of the mortgaged property be given to the Yes Bank Ltd. but instead of handing over the smooth possession of the mortgaged property, the petitioner got filed a S.A. No.73/2011 through his daughter Ms. Milli Raj before the DRT-I claiming that the property in question belong to N.K.Rajgarhia HUF. The petitioner had no right to mortgage the said property, nor could any Bank have taken a mortgage of HUF property. In

view thereof, the Yes Bank Ltd. the complainant filed a criminal complaint with EOW on which the present case was registered on 28th January, 2012.

9. During the investigation, the record of the Sub Registrar, New Delhi disclosed that the title deed of the property No.D-52, Second Floor, Defence Colony, New Delhi exists in the name of N.K.Rajgarhia HUF, not in the name of the petitioner individually. Further, the title deed of the plot of 4580 Sq. Meters area in Vill. Junpat, Tehsil Dadri, Distt. G.B.Nagar, U.P. also turned out to be forged.

10. During the investigation, it was also found as mentioned in the status report that the petitioner is involved in committing similar offence on the basis of forged and fabricated property documents for securing loans from various other Banks/financial institutions also. The said property was also mortgaged with M/s Citifinancials Consumer Finance (India) Ltd. The original documents were deposited by the petitioner in the said Bank.

11. It is not denied by the learned APP that on 13th February, 2013 the charge sheet against the petitioner is filed. However, investigation in respect of a number of persons, namely, Pratik N. Rajgarhia, Sanjay Aggarwal, Kapil Chugh, Kaushal Kumar, Manoj Garg, Prabhakar Kumar, Vipin Gupta, Warris Hasan Khan, Farhat Najmi, S.K.Aggarwal, Advocate, Stamp Vendors, whose names have come up as accomplices in the offence committed by the petitioner is still pending. It is also stated that various details of the money advanced are still to be traced. The investigation, according to the learned APP, is at the very crucial stage and all the bogus accounts to which monies were siphoned are yet to be traced.

12. Mr.Sandeep Sethi, learned Senior counsel appearing on behalf of the petitioner has raised an objection for intervening and advancing arguments on behalf of the complainant. He argues that this Court should not consider

the argument of the complainant as it has no right to intervene in the present proceedings. He submits that the charge sheet against the petitioner has been filed on 14th February, 2013. The petitioner is now not required for custodial interrogation however, if need arises, petitioner undertakes to join the investigation and provide full cooperation with the investigation if continued against the other accused as alleged by the respondent. After some discussion, Mr. Sethi offers that his client shall arrange atleast a sum of ₹2 crores and pay the same to the complainant Bank within short time fixed by the Court.

13. Fresh application was filed by the complainant, being CrI.M.A. No.9293/2013 for its impleadment as a respondent in the present case.

14. Notice is issued to the petitioner who may make his submissions on the next date. Till the next date, without expressing any opinion on merit of the case, coupled with the fact that charge-sheet against the petitioner has been filed in the month of February, 2013, the petitioner be released on bail on his furnishing a personal bond in the sum of ₹1 lac with one surety of the like amount subject to the satisfaction of the learned Trial Court.

15. As offer is made on behalf of petitioner who shall within four weeks deposit a sum of ₹1 crore with the complainant from the date of release. He shall also deposit further a sum of ₹1 crore by 30th August, 2013 with the complainant. An undertaking by way of his affidavit would be filed within three days from the date of his release.

16. The petitioner shall not leave the country without the permission of the Trial Court and shall join the investigation as and when called and will not approach other accomplices.

17. Liberty is granted to the respondent/State to get the order vacated if the petitioner fails to comply any of the conditions mentioned in earlier para of this order.

18. List on 2nd September, 2013 before the regular Bench.

(MANMOHAN SINGH)
VACATION JUDGE

JULY 01, 2013