

Bail Application No. 1983/23
State Vs. Sai Ramakrishna Karuturi
FIR No.135/2018
PS: Crime Branch-New Delhi
u/S. 409/420 IPC

06.02.2024

Present: Sh. Manoj Kumar Garg, Ld. Addl. PP for the State.
Sh. Raman Gandhi, Ld. Counsel for complainant.
Sh. Tanveer Ahmad Mir, alongwith Sh. Vaibhav
Suri, Sh. Kartik Venu, Sh. Yash Datt, Sh. Shashwat
Sarain and Ms. Ariana Alhuwalia, Ld. Counsels
appearing on behalf of applicant/accused.

ORDER

1. In the application, it is stated that applicant is a well educated, 58 year old, law abiding citizen of India. He has clean antecedents and has no previous involvement. He is a married man with three daughters. He has medical history. He is in custody since 16.10.2023 when he surrendered to the custody and jurisdiction of Ld. CMM, PHC, in terms of Order dated 25.09.2023 of Hon'ble Supreme Court of India in SLP (Crl.) No. 7053 of 2023.

2. It is stated that the present FIR has been registered at the behest/complaint of the Ambassador to the Republic of Djibouti (RoD) in India. The complaint is dated 04.05.2018 and is premised on civil transaction that took place between Karuturi Global Ltd. (KGL) and Karuturi Overseas Ltd., Dubai (KOL) on the one hand and RoD and its appointed advisory/consultant firm namely Multiflex Biotech FZC (MBF) on the other hand. It is stated that the genesis of the dispute is two tripartite agreements dated 10.09.2011 and 23.02.2012 entered between abovesaid parties. Under these agreements, KOL was to develop about 15,000 hectares of agricultural land in Ethiopia and supply the agricultural produce to Djibouti. Accordingly, RoD had issued bank guarantees to the tune of US \$ 3 Million from Central Bank of Djibouti under the agreement dated 10.09.2011 and for US \$ 3.5 Million under the agreement dated 23.02.2012 as securities in favour of KOL.

3. It is stated that KOL has invested huge sums for

cultivating the lands and had grown crops in full compliance in terms of both the agreements, however, unfortunately, the crops were destroyed as a result of floods causing huge losses to KOL. Hence, KOL as per Clause 8 of the agreement dated 10.09.2011 is not liable for any acts of God. KOL in compliance of the agreement had planted about 1200 Ha of maize but unfortunately the crops were destroyed due to floods resulting in submergence of crops. The said fact has been acknowledged on behalf of RoD vide e-Mail dated 18.11.2012. Despite suffering heavy losses, since KOL was unable to supply the food material, it had supplied the requisite machinery to the government of Djibouti which is evident from various e-Mails exchanged between the parties.

ARGUMENTS BY Ld DEFENCE COUNSEL

4. It is argued by the Ld. Defence Counsel that the alleged offence, if any, occurred outside the jurisdiction of India and no sanction u/s 188 IPC has been obtained for

Bail Application No. 1983/23
State Vs. Sai Ramakrishna Karuturi
FIR No.135/2018
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prosecuting/initiating criminal proceedings with respect to the crime committed in foreign country. It is further argued that the complaint is of 2018 and no final report has been filed by the IO till date. Despite lodging of the FIR in 2018, no efforts were made by the IO to arrest the appellant/accused. In fact, the applicant/accused cooperated in investigation on each and every date and stage. The IO had issued Letter of Retogatory, which would take long time and till the same is received, no sanction can be procured u/s 188 IPC. It is submitted that the applicant cannot be may to suffer incarceration for indefinite period. The dispute, if any is premised on the agreements and is civil in nature. There is clause for international arbitration, however, the same has not been invoked by the complainant. The KOL is under IBC at present.

5. It is further submitted that the applicant had no intention to cheat any person. The crops could not be grown due to the conditions beyond his control. He has duly compensated the complainant by providing sufficient machinery. He is ready to

Bail Application No. 1983/23
State Vs. Sai Ramakrishna Karuturi
FIR No.135/2018
PS: Crime Branch-New Delhi
u/S. 409/420 IPC

abide by any condition imposed by the court. It is prayed that he be released on bail. Ld. Counsel for applicant in support of his arguments has relied upon following judgments:

- (a). Sanoop v. State of Kerala B.A. No. 581 of 2018;*
- (b). Sartaj Khan v. State of Uttarakhand Crl. Appeal No. 852 of 2018;*
- (c). P. Chidambaram v. Directorate of Enforcement (2020) 13 SCC 791;*
- (d). Vinubhai Haribhai Malaviya v. State of Gujarat (2019) 17 SCC 1;*
- (e). Satender Kumar Antil v. CBI (2022) 10 SCC 51;*
- (f). Rishi Gupta v. State of NCT of Delhi Bail Appln 2506/2023;*
- (g). Rajat Sharma v. State (NCT of Delhi), 2015 SCC OnLine Del 8914.*

ARGUMENTS BY LD. COUNSEL FOR COMPLAINANT
AND LD. ADDL. PP FOR THE STATE

6. Per contra, the application is vehemently opposed by

Bail Application No. 1983/23
State Vs. Sai Ramakrishna Karuturi
FIR No.135/2018
PS: Crime Branch-New Delhi
u/S. 409/420 IPC

the Ld. Addl. PP for the State and Ld. Counsel for complainant stating that the applicant who is the Director of KOL had cheated the complainant of an amount of US \$ 5 million without performing any act under the agreements dated 10.09.2011 and 23.02.2012 executed by him through his company. Though he claimed to have taken on lease 3,00,000 hectares of land from the Government of Ethiopia at Gambella, but it was subsequently revealed that the entire land was in a flood plane and unfit for any agricultural activity. The accused was not having any land leave aside 10,000 hectares of land. He never showed said 10,000 hectares of land which was allegedly earmarked for agricultural activity to be performed for the complainant as per agreement dated 10.09.2011. No agricultural activity was ever done / started by the applicant. He neither started any agricultural activity nor repaid the credit facility / loan and thus pocketed the amount of US \$ 6.5 million. It is further submitted that applicant is a flight risk as he has no permanent residence in India. He has substantial assets in Kenya, Africa where also ICICI Bank had initiated proceedings for recovery. It is prayed that considering the nature

of allegations and gravity of offence, the application be dismissed. Ld. Counsel for complainant in support of his arguments has relied upon following judgments:

- (a). MANU/SC/1133/2022 Vivekanand Mishra vs State of U.P.;*
- (b). MANU/DE/1814/2022 Sajjan Singh Beniwal vs Govt. of NCT of Delhi;*
- (c). MANU/DE/1419/2020 Sushil L. Godhwani vs State;*
- (d). 266(2020) DLT 57 (DB) Court on its Own Motion vs State;*

ANALYSIS AND FINDINGS

7. Heard Ld. Defence Counsel, Ld. Addl. PP for the State and Ld. Counsel for the complainant. Perused the complete bail application and the report of the IO. As per the contents of the complaint, an agreement for “Agricultural Consulting and Contract Production” was executed between KOL and RoD dated 10.09.2011. By virtue of the said agreement, KOL had to share agricultural produce derived from land measuring 10,000 hectares situated in Ethiopia. In the year 2012, KOL entered into another agreement with RoD dated 23.02.2012 about

development of 5,000 hectares of land in Ethiopia. In order to assist KOL to perform its obligations under the abovesaid agreements, the Central Bank of Djibouti issued a bank guarantee in favour of Bank of Africa to enable it to provide funds to the tune of US \$ 6.5 million to KOL. It is alleged that after receiving the bank guarantee / loan, the applicant neither cultivated any land in Ethiopia nor provided the agricultural produce to RoD as per the agreements.

8. The IO in his report has stated that the applicant took the plea that his company has done agricultural activities in Ethiopia but the entire development / crop was destroyed due to floods that occurred in Baro river. It is stated that the applicant had relied upon certain news clippings to show that he suffered losses due to floods. The floods occurred in 2011 and the contracts are of October 2011 and 2012. The floods, if any as per the newspaper clippings filed by the applicant occurred in 2011 and not in the year 2012 when the applicant was under obligation to perform the agreement which was entered for a period of ten

Bail Application No. 1983/23
State Vs. Sai Ramakrishna Karuturi
FIR No.135/2018
PS: Crime Branch-New Delhi
u/S. 409/420 IPC

years. It is further stated that the stand taken by the applicant that the floods destroyed the entire crop cultivated for the complainant is false and baseless, without any proof. It is stated that the applicant has not done any agricultural activities for the complainant over 10,000 hectares of land and has siphoned off the amount of credit facility / loan of USD 5 million. Further, as per the forensic audit report of the company, it is evident that Ethiopian Government had canceled the deal in 2017 accusing KGL of developing only 1200 hectares of its allocation as opposed to 10,000 hectares of land which is the subject matter of the present complaint.

9. From the contents of the complaint and the report of the IO, it is evident that KOL had to share agricultural produce to RoD derived from agricultural activities to be done at the land measuring 10,000 hectares situated in Ethiopia by virtue of the agreements dated 10.09.2011 and 23.02.2012. In order to complete the activities, he was provided with the funds / bank guarantee / loan of USD 6.5 millions (Rs. 65 crores in Indian

Bail Application No. 1983/23
State Vs. Sai Ramakrishna Karuturi
FIR No.135/2018
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u/S. 409/420 IPC

Rupees approx). The said agricultural produce was never supplied by KOL to RoD. The defence of the applicant who is the Director of KOL is that he could not carry out the agricultural activity in Ethiopia due to floods. Nothing has been brought on record by the applicant to show that he had suffered losses due to floods in Ethiopia, except one or two newspaper clippings. The Ld. Defence counsel has failed to show that the land measuring 10000 hectares was identified in Ethiopia where the agricultural activity was carried out by the applicant. He has relied upon the report of Development Bank of Ethiopia, however, even on perusal of the said report, it cannot be said that the applicant had shown to the complainant the land which was identified by him for carrying out the agricultural activities and agricultural activities were duly carried out on the said land. As regards the plea of supply of equipment in lieu of agricultural produce is concerned, as per complainant, only scrap has been supplied by the applicant. On perusal of the emails relied upon by Ld Defence Counsel, it is evident that only very little / less equipments have been supplied by the applicant to RoD and the

other equipments demanded by complainant were never supplied by the applicant or on his behalf.

10. Considering the nature of allegations and the gravity of offence which are summarized as under:

a) The applicant was given the bank guarantee / loan to the tune of USD 6.5 millions for performing the agricultural activities which he had failed to perform.

b) The applicant had neither returned the amount nor supplied the agricultural produce as agreed between the parties under the aegis of the agreement dated 10.09.2011 and 23.02.2012.

c) The applicant even after executing the acknowledgment of debt dated 10.02.2013 for an amount of 5 million USD, has not paid the said amount to RoD.

Bail Application No. 1983/23
State Vs. Sai Ramakrishna Karuturi
FIR No.135/2018
PS: Crime Branch-New Delhi
u/S. 409/420 IPC

d) That he had not supplied any accounts of losses purportedly incurred by him due to floods except the newspaper clippings.

e) The applicant had failed to show that he had supplied substantial machinery/equipment to RoD as agreed between the parties.

The application is dismissed.

Nothing stated herein shall tantamount to an expression of opinion on the merits of the case or otherwise. Copy of the order be given dasti.

(KIRAN GUPTA)
Addl. Sessions Judge-04
Patiala House Courts
New Delhi/06.02.2024