

IN THE HIGH COURT OF DELHI

Bail Application No.1877/2007

Neena Gulati Petitioner

VERSUS

\$ State Respondent

Bail Application No.1882/2007

Neena Gulati Petitioner

VERSUS

\$ State Respondent

! through: Mr.Mohit Mathur for the petitioner.
Mr.Pawan Sharma for the State.

RESERVED ON: 25.09.2007

% DATE OF DECISION: 28.09.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Petitioner Neena Gulati who is in judicial custody since 25.7.2007 prays that she should be admitted to bail in FIR No.435/06 dated 10.7.2006 under Sections 406/420/468/471/120-B IPC PS Hauz Khas and FIR No.109/07

dated 7.4.2007 under Section 420/468/471/120-B IPC PS Chittaranjan Park.

2. Whereas FIR No.435/06 has been registered against the petitioner pursuant to a complaint lodged by one K.S.Tomar, FIR No.109/07 has been registered pursuant to a complaint lodged by the Central Bank of India, Greater Kailash Branch, New Delhi.

3. I would be noting the admitted facts and thereafter the facts on which there is a divergence between the prosecution and the defence.

4. Admitted facts are that Neena Gulati and one Mandeep Singh Chatwal had entered into a partnership to carry on business under the name and style 'The Perfect Ten'. The business was of running beauty, slimming, health and fitness centres. 2 centres were being operated from 2 different premises. One business was being operated from the basement of a house bearing Municipal No.E-84 Greater Kailash, Part-I and the other was being operated from part of a residential building bearing Municipal No.H-1/A Hauz Khas, New Delhi. Further admitted fact is that Mandeep Singh Chatwal retired from the partnership and K.S.Tomar and his son Pankaj Tomar as also one Navroop Singh joined Neena Gulati as partners of The Perfect Ten. A deed of partnership dated

8.8.2002 was executed. Share of K.S.Tomar and his son in the profits and losses of the partnership firm was 15%.

5. Further admitted fact is that a few months thereafter, on 2.12.2002, K.S.Tomar and his son walked out from the partnership and it was agreed that in lieu of the investment made by the father and son in the capital of the partnership firm they would be paid a minimum guaranteed sum of Rs.63,820/- per month. Further admitted fact is that the minimum guarantee agreement recorded that the Tomars had invested Rs.56,72,900/- in the partnership firm which money was used for purchasing various equipments for running of the beauty, fitness and slimming centres.

6. Further admitted fact is that the partnership firm The Perfect Ten applied for and obtained a Cash Credit (Hypothecation) limit of Rs.7 lacs and a term loan of Rs.41 lacs from the Central Bank of India. When said facilities were availed of, The Perfect Ten was functioning as the sole proprietary firm of Neena Gulati i.e. other partners had retired.

7. Hereinafter are the facts which are in dispute between the parties.

8. K.S.Tomar lodged a complaint which resulted in registration of FIR No.435/06 under afore-noted provisions stating that Neena Gulati induced him to invest money in the

fitness and slimming centres which she was running along with Mandeep Singh Chatwal. She gave him a rosy picture. He invested Rs.56,72,900/- in the partnership firm. That Neena Gulati did not pay him any profits as she was in control of the business and was manipulating the accounts. That he was residing in Panchkula, Haryana. That Neena Gulati induced him to retire from the partnership and instead received a minimum guarantee of Rs.63,820/- per month. He further stated that certain post dated cheques which were issued by Neena Gulati, when presented for encashment were dishonoured. That in furtherance of her intention to cheat him Neena Gulati dissipated all the assets of The Perfect Ten.

9. As regards the bank, allegation is that Neena Gulati obtained 2 facilities i.e. Cash Credit and Term Loan totalling Rs.48 lacs. She availed the benefit under the 2 sanctions granted to her. That the machinery and equipment at the beauty, slimming and fitness centres at Greater Kailash and Hauz Khas which were hypothecated to the bank were dissipated. Further, equitable mortgage credited by one Harpal Singh Ahuja pertaining to Flat No.108-C, Plot No.6, Naseer Pur, Dwarka by means of an equitable mortgage when loan was advanced was frustrated inasmuch as Harpal Singh Ahuja sold the flat to a third party.

10. Rival versions of Neena Gulati is that due to the sealing drive in Delhi she has to close the fitness slimming centres. That the loss was a business loss.

11. Pertaining to the machinery, equipment and other allied things at the fitness and slimming centres, the equipment was found in the custody of one Ashok Mittal who claimed ownership thereof on account of the fact that Neena Gulati had taken from him a loan in sum of Rs.70 lacs in 2 installments of Rs.50 lacs and Rs.20 lacs.

12. Neena Gulati seeks to explain the custody of the equipment and other movables at the fitness and slimming centres with Ashok Mittal by placing reliance on a letter dated 28.2.2006 addressed to the SHO, Vasant Kunj Police Station. She further takes refuge on the fact that she is suffering from Brain Tuberculosis.

13. In her complaint dated 28.2.2006 Neena Gulati has informed the SHO PS Vasant Kunj that due to her ill health and nature of infirmity, she is required to take strong medicines which keep her drowsy and sleepy. That Ashok Mittal accompanied by one P.S.Gulati, one Harpreet Gulati and one C.M.Thapar came to her flat and compelled her to sign blank papers some of which were stamp papers. In her complaint dated 28.2.2006 she has informed the SHO that

equipments of the centres have been taken possession of by Ashok Mittal and his henchman.

14. Is it a case of a civil transaction not meeting the expectations of the complainants? Is it a case where due to the sealing drive in Delhi fitness and slimming centres being required to be closed down have resulted in business losses?

15. Prima facie, the answer has to be in the negative.

16. It is not in dispute that the entire investment of Mr.Tomar as also substantial part of the loans taken from the bank have not been returned.

17. Neena Gulati has not explained as to how and on what account for the same set of equipments she took money from Tomars as also from the bank. Prima facie it is a case of taking money from 2 persons and purchasing the same equipments.

18. That is not the end.

19. Pertaining to Mr.Ashok Mittal it would be interesting to note that he has handed over to the police a loan agreement dated 14.2.2005; a hypothecation agreement of even date as also a loan agreement dated 6.4.2005.

20. The loan agreement dated 14.2.2005 records that Neena Gulati proprietor of The Perfect Ten has taken a loan of Rs.50 lacs from M/s.AGM Management Services Ltd. through its

Director Ashok Mittal. The second loan agreement dated 6.4.2005 likewise record a similar loan but in sum of Rs.20 lacs.

21. Neena Gulati has prima facie tried to create evidence in her favour by causing to be sent to the SHO PS Vasant Kunj the complaint dated 28.2.2006, contents whereof have been noted briefly in para 13 above, for the simple reason the 2 loan agreements refer to the loans being advanced by means of cheque No.717656 dated 14.2.2005 (Rs.50 lacs) and cheque No.723628 dated 15.3.2005 (Rs.10 lacs) and cheque No.725608 dated 6.4.2005 (Rs.10 lacs).

22. The loan by M/s.AGM Management Services Ltd. through Ashok Mittal are by means of cheques issued in the months of February, March and April 2005, much before the date when Neena Gulati wrote the complaint dated 28.2.2006.

23. Prima facie, Neena Gulati has duly executed the loan agreements relied upon by Ashok Mittal. The loan agreements are contemporaneous documents. They find inherent sustenance with reference to the dates of the negotiable instrument i.e. the cheques by means of which loan in sum of Rs.70 lacs was taken by Neena Gulati.

24. Thus, it is not a case where, for the same equipments, Neena Gulati has duped 2 persons but it is a case where for the same equipments Neena Gulati has duped 3

persons.

25. Not only that. An account was opened with State Bank of Patiala, Patel Nagar Branch in the name of PM Enterprises showing one Mr.Rajan as the sole proprietor thereof. Address of PM Enterprises disclosed to the bank is premises No.6/15 East Patel Nagar, New Delhi.

26. It is not in dispute that Neena Gulati was operating a fitness and slimming centre from said place. I find a reference to said address in Neena Gulati's complaint dated 28.2.2006 made to the SHO PS Vasant Kunj.

27. Money was transferred to the account in the name of PM Enterprises from the account of The Perfect Ten with the Central Bank of India, Greater Kailash Branch and was withdrawn from the said account.

28. It would be interesting to note that the account with State Bank of Patiala was opened on 1.10.2004. The account was closed on 30.12.2004. Rs.55,31,450/- which were credited in the account were withdrawn between 29.10.2004 to 30.12.2004 i.e. in 2 months.

29. Prima facie, the account in question with State Bank of Patiala was opened to siphon away the money from the account of The Perfect Ten by transferring money to the account at State Bank of Patiala and thereafter withdraw the

same.

30. Rajan, the stated sole proprietor of PM Enterprises is absconding. In her disclosure statement made to the police on 25.7.2007 Neena Gulati has stated that Rajan was her employee.

31. Neena Gulati has taken Rs.70 lacs from the company of Ashok Mittal. She has taken Rs.56.729 lacs from K.S.Tomar. She has availed of credit facilities worth nearly Rs.50 lacs from the Central Bank of India. She has prima facie taken money from 3 parties for purchase of same equipments. Opening of the account by Rajan in the name of PM Enterprises and transfer of funds to said account and withdrawal of the funds in less than 2 months makes it a serious offence. Rajan is absconding. Harpal Singh Ahuja who credited the equitable mortgage of the flat is absconding. If Neena Gulati is released on bail there is every possibility that either she would abscond or would connive with the co-accused persons.

32. I may note that charge-sheet has been filed in FIR No.435/06.

33. Notwithstanding investigation being complete in said FIR, considering the seriousness of the charges against Neena Gulati and the fact that nearly Rs.1.5 crores has been misappropriated by her I hold that no case is made out to

release Neena Gulati on bail.

34. Both the applications are dismissed.

September 28, 2007
dk

(PRADEEP NANDRAJOG)
JUDGE