

HIGH COURT OF DELHI : NEW DELHI

Bail Appl. No.2251 of 2007

Judgment reserved on: 13th December, 2007

Judgment delivered on: 18th February, 2008

Rakesh Jain
s/o Shri A.K. Jain
R/o B-154, Yojna Vihar
Delhi-110092

..... Petitioner
Through: Mr.Siddharth Luthra,
Sr.Adv. with Mr.Yogesh Sharma
and Mohd. Feroz, Advs.

Versus.

The State of NCT of Delhi
Through Ministry of Home Affairs,
New Delhi
5-Shamnath Marg, Delhi

..... Respondent
Through : Mr.R.N. Vats, Adv.
Mr.Nitesh Sharma,
Adv. for the
complainant.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B. GUPTA, I.

Petitioner is seeking anticipatory bail in this case.

2. The brief facts of this case are that the present petitioner along with his co-accused Mr.S.N. Sharma floated a company under the name and style of M/s Boutanika Infrastructure Pvt. Ltd. They were not having sufficient land and in spite of that they got money from the investors by making false assurances. Both of them mislead the investors stating that they are the fastest growing company whereas the record shows that company was incorporated only on 11th May, 2006. Further, it was also projected that they have 280 acres of land for the township and the minimum requirements of 150 acres of land for getting the license, whereas, in fact they were having only a few acres of land which was purchased by them. It goes on to show the deep-rooted conspiracy to cheat the investors and they have duped the investors of their hard earned money.

3. It has been contended by learned counsel for the petitioner that the complainant has agreed to purchase the plots from the petitioner and the agreement has also been between the parties. Thereafter, the complainant started selling these plots without any permission/authority from the petitioner and the complainant also served a notice for return of the money which shows that there was a civil dispute between the parties and no criminal liability is there. The petitioner is not connected with the commission of the offence as alleged and the complainant himself was part of the business. The complainant had given the company two cheques worth Rs.71 Lacs as token money and has agreed to buy 300 plots in the proposed township and agreed to make the payment for the same by 19th May, 2006, but due to some mala fide intention he is not inclined to honour the above offer. Further, the company was basically being run by the other accused Mr.S.N. Sharma and petitioner acted upon the representations made by the co-accused and joined the company and invested huge sum

of Rs.45 Lacs and Mr.S.N. Sharma used to look after the sale and purchase of the land. In the month of July, 2006 petitioner came to know that company is not having the land required for the purpose of township, so he decided to leave the company and asked the co-accused Mr. Sharma to reconcile the accounts and ultimately, the petitioner resigned from the company on 14th August, 2006 and he was discharged from the liability of the company. There has been no siphoning off funds during the period when the petitioner was director and he has not used even a single paisa from the account of the company and petitioner has never been in control of affairs of the company. Further, a sum of Rs.60 Lacs has already been deposited with the Court by Mr.S.N. Sharma and the petitioner is ready to join the investigation as and when directed.

4. On the other hand, it has been argued by learned counsel for the State that petitioner along with co-accused Mr.S.N. Sharma floated a company in the name of M/s Boutanika Infrastructure Pvt. Ltd. and this company was

not having sufficient funds despite that, they got money from the investors by concealing the relevant facts. Further, the company was not having sufficient land with it and the petitioner and co-accused have cheated the complainant by making mis-representation that they are real estate developer in NCR having various townships and a big group having 300 acres of land whereas in fact there was nothing in existence and since the custodial interrogation of the petitioner is required, the petitioner should not be granted anticipatory bail.

5. Admittedly, the petitioner was the director and according to averments made in the present petition, it was Mr.S.N. Sharma who is the main culprit and Mr.S.N. Sharma used to look after the sale and purchase of the land. The petitioner himself has admitted in the petition that in the month of July, 2006 he came to know that the company is not having the land required for the purpose of township and therefore, he decided to leave the company and asked Mr.Sharma to reconcile the accounts. All these

averments, prima facie, goes on to show the involvement of petitioner in this case.

6. In ***Bal Chand Jain v. State of M.P. AIR 1977 SC 366***, the Apex Court has laid down the following proposition with regard to grant of anticipatory bail:-

“(i) The power under Section 438 Cr.P.C. is of an extraordinary character and must be exercised sparingly and in exceptional cases only.

(ii) The said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437 Cr.P.C., are implicit therein and must be read into Section 438 as well.

(iii) In addition to the limitations imposed in Section 437, the petitioner must further make out a special case for the exercise of the power to grant anticipatory bail.”

7. Further, in the present case, petitioner earlier moved an application for anticipatory bail before this Court and to demonstrate his bona fides, petitioner gave his willingness to deposit a sum of Rs.60 Lacs with the Registrar of this Court.

8. If petitioner has no concern with the present case or if he is not involved in the commission of offence, then there was no occasion for him to deposit Rs.60 Lacs in this Court. Moreover, on 1st March, 2007 petitioner sought liberty to withdraw his application for anticipatory bail. There is nothing on record to show that after withdrawal of the earlier bail application, there has been any change in circumstances which necessitated the petitioner to file the present bail application.

9. So, keeping in view the facts and circumstances of the case, and the gravity and seriousness and nature of the offence, no ground is made out for granting anticipatory bail to the petitioner.

10. Under these circumstances, the present application for anticipatory bail is hereby dismissed.

18th February, 2008
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(V.B.GUPTA)
JUDGE