

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

Reserved on: August 12, 2011
Decided on: August 25, 2011

+ **BAIL APPLICATION NO. 1078/2011**
BRAHM ARENJA **....PETITIONER**

Through: Mr. Neeraj K. Kaul, Sr. Advocate with
Mr. Subodh K. Pathak, Advocate &
Mr. Puneet Relan, Advocate.

Versus

GOVT OF NCT OF DELHI **.....RESPONDENT**

Through: Ms. Jasbir Kaur, APP for the respondent.
Mr. Rajiv Nayar, Sr. Advocate with
Mr. Akshay Ringe, Advocate for the
complainant

AND

+ **BAIL APPLICATION NO. 1079/2011**
BRINDA ARENJA **....PETITIONER**

Through: Mr. Vikas Pahwa, Sr. Advocate with
Mr. Subodh K. Pathak, Advocate &
Mr. Puneet Relan, Advocate.

Versus

GOVT OF NCT OF DELHI **.....RESPONDENT**

Through: Ms. Jasbir Kaur, APP for respondent.
Mr. Rajiv Nayar, Sr. Advocate with
Mr. Akshay Ringe, Advocate for the
complainant

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. By this order, I propose to dispose of anticipatory bail applications of Brahm Arenja and his wife Brinda Arenja whereby they are respectively seeking bail in case FIR No.55/2011 under Section 420/406/120B IPC P.S. Economic Office Wing, New Delhi.

2. Briefly stated, background facts for disposal of above two applications are that Shri Rajiv Rattan filed a written complaint with the police claiming that the petitioners, in conspiracy with their co-accused Ajay Ahlawat and Sangeeta Ahlawat, have cheated the complainant of ₹6.45 crores by fraudulently inducing him to agree to purchase a piece of land measuring 7 bighas 9 biswas claiming part of Khasra No.459 (1-15), 460(3-11) and 483(2-3) situated in village Satburi, New Delhi, which land was neither owned by the petitioners nor was free from encumbrances. Rajiv Rattan in his complaint claimed that the land in question was under acquisition since 1980 vide Notification No.F.9(16)/80L&B dated 25.11.1980 issued under Section 4 of the Land Acquisition Act, 1984. It is alleged that the aforesaid fact was also concealed from the complainant, which led him to part with the consideration amount of sale i.e. ₹6.45 crores on different dates. On the basis of said complaint, FIR under Section 420/406/120B IPC was registered against the petitioners and two others.

3. Learned Shri Neeraj K. Kaul, Sr. Advocate appearing on behalf of the petitioner Brahm Arenja and learned Shri Vikas Pahwa, Sr. Advocate appearing on behalf of the petitioner Brinda Arenja have made almost similar submissions. It is submitted on behalf of the petitioners that the transaction under FIR is a purely civil transaction bereft of the ingredients of the offence of cheating or criminal misappropriation. Learned counsels for the petitioners contended that actually Col. Ajay Ahlawat, who has been made co-accused of the petitioners in the FIR, was the representative of the complainant. He negotiated the deal of purchase of the land which is subject matter of FIR with the petitioner Brahm Arenja. The sum of ₹6.45 crores was paid as part payment of the total consideration amount of ₹ 22.5 crores, however, no document but for a *kachcha* receipt dated 28.12.2006 was executed and it was signed by the petitioner Brahm Arenja as also Col. Ajay Ahlawat on behalf of and under instructions of the complainant. It is contended that there was no concealment on behalf of the petitioners. The complainant, who is the Managing Director of M/s India Bulls, a company involved in the real estate business, after due verification and having knowledge of Notification under Section 4 of the Land Acquisition Act had entered into the deal. Learned counsels argued that it was a purely speculative deal entered into by the complainant with a view to make profit and that is why neither an agreement to sell nor a sale deed or a *pucca* receipt of payment was executed. Learned counsels submitted that the element of deception, which is an essential ingredient to constitute offence of cheating, is missing in this case, therefore no offence under Section 420

IPC is, prima facie, made out. It is further argued that ₹ 6.45 crores was paid as earnest money in respect of the agreement to sell of the property, as such, it cannot be said to have been misappropriated by the petitioners to attract Section 406 IPC. Thus, it is contended that the FIR is a ploy to convert a civil dispute into an offence, as such, the petitioners are entitled to anticipatory bail. It is further submitted that the petitioners are ready to abide by any condition which may be imposed by the Court in the event of grant of anticipatory bail.

4. Learned APP as well as learned Shri Rajiv Nayar, Sr. Advocate appearing for the complainant have strongly opposed the bail applications. It is submitted that the petitioners have cheated the complainant of ₹6.45 crores in connivance with their co-accused persons, including Col. Ajay Ahlawat by falsely claiming that petitioner Brinda Arenja was the owner of the property in question, whereas there was no sale deed or document of title in her favour. They also concealed that the land in question was notified for acquisition under Section 4 of the Land Acquisition Act and this deliberate misrepresentation and concealment led the complainant to part with the money, as such the offence of cheating is made out. It is further submitted that the custodial interrogation of the petitioners is necessary for recovering the cheated amount. It is submitted that the petitioners concealed the fact that there was no sale deed in favour of petitioner Brinda Arenja, otherwise the complainant would not have entered into the deal and that the land in question was under notification for acquisition.

5. I have considered the rival contentions and perused the record. There appears to be some merit in the contention of the petitioners that the FIR in question is a ploy to convert a civil dispute into a criminal offence. Undisputedly, the complainant is a businessman. It is not denied that he holds an important position in M/s India Bulls, a company involved in the business of real estate development. Therefore, prima facie, it is not expected of the complainant to part with a huge sum of ₹6.45 crores as full consideration amount for the purchase of the land without verifying the title of the petitioners and without verifying if the land in question was under notification. It is also not, prima facie, probable that a person who is in the business of real estate development would part with entire consideration amount for the purchase of property without insisting on execution of a sale deed in his favour. Further, the complainant, in the FIR apart from other allegations has inter alia claimed thus:

“4. In about 2005 Colonel(Rtd) Ajay Ahlawat met me and introduced himself as a person having close contacts within the Government, DDA, MCD, land revenue officers etc. He told me that he had several projects in mind where I could invest some money. As an example, he told me that some land (measuring about 7 Bighas 9 Biswas) was available for sale in the vicinity of Park Land Restaurant and Bar which runs in Fatehpur Beri area, New Delhi and told me that he had inside information that construction of a road and change of land use was being sanctioned near the land which would result in appreciation of the value of the said land in the immediate future. Colonel (Rtd) Ajay Ahlawat also told me that he personally knew the owners of the aforesaid land, Mr. Brahm Arenja and Mrs. Brinda Arenja and would use his relations with them to have the transaction of land carried out swiftly and smoothly....”

6. On reading of the above, it is prima facie, apparent that the complainant had actually entered into a speculative transaction to make

profit in anticipation of the withdrawal of Notification under Section 4 of the Land Acquisition Act. Otherwise, there was no reason for seeking an assurance about the close contacts of Col. Ajay Ahlawat with the “Government, DDA, MCD and State revenue officers etc.” From this, it appears that the complainant, at the time of the deal, was aware of the Notification under Section 4 of the Land Acquisition Act and that is why the government connections assumed importance. It may not be out of place to mention that the alleged transaction of cheating took place in the year 2006-07, but the FIR in question was lodged much later on 23.03.2011 i.e. after the dismissal of the SLP by the Supreme Court challenging the Notification issued under the Land Acquisition Act.

7. Taking into account the above factors, I allow both the petitions and direct that the petitioners, in the event of their respective arrest, be released on bail on furnishing a personal bond in the sum of ₹1 lakh with one surety each in the like amount to the satisfaction of the arresting officer. This, however, is subject to the condition that neither of the petitioners shall leave the country without the permission of the court and that the petitioners shall join the investigation as and when required.

8. Bail applications stand disposed of.

(AJIT BHARIHOKE)
JUDGE

AUGUST 25, 2011
pst