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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 9th October, 2013

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CRL.M.C.2430/2013

DEVINDER PAL SINGH

..... Petitioner

Through: Mr. Mohit Mathur, Ms. Daman Kohli
and Mr. Sahil Bhattacharya, Advs.
along with petitioner in person.

versus

STATE & ANR.

..... Respondent

Through Ms. Kusum Dhalla, APP for the State
with Inspector M.L.Meena, DIG/South
Distt., P.S. Defence Colony.
Mr. A. Mohanty, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a petition u/s 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 moved by the petitioner for quashing the order dated 22.05.2013 whereby respondent no.2 was granted anticipatory bail. It is the case of the petitioner that accused/respondent no.2 sold a plot bearing No.J-262, New Alipore, Kolkata for a consideration of Rs. 60 lakhs and further took another Rs. 33 lakhs on the pretext of helping the complainant to obtain possession of the plot. When the possession was not delivered, then on inquiry the complainant came to know that he has been cheated by the accused as the papers turned out to be forged and fabricated, as such, a

complaint was made to the police on 15.12.2009. However, no action was taken on the complaint and a report was submitted that no cognizable case was made out. Thereupon a complaint was made by the complainant before learned Metropolitan Magistrate. Vide order dated 30.08.2012, the SHO, P.S. Defence Colony was directed by the learned Metropolitan Magistrate to register FIR and investigate into the offences alleged by the complainant. Pursuant thereof FIR No.93/2012 was registered u/s 420/467/468/471/120-B IPC. Despite registration of the case, the true status was not brought forth by the Investigating Officer. This led to change of investigation which was transferred to District Investigation Unit, Malviya Nagar, New Delhi.

2. Apprehending his arrest, the respondent moved an application seeking anticipatory bail before the High Court on 14.05.2013 which was withdrawn on 20.05.2013. Thereafter an application was moved before the District Courts. Vide order dated 22.05.2013, the application was allowed and the respondent no.2 accused was ordered to be released on bail on furnishing a personal bond in the sum of Rs. One lakh with one surety in the like amount to the satisfaction of the SHO/IO concerned. He was further directed to submit his passport and not to leave the country without the permission of the Court. He was also directed to join investigation whenever required by the Investigating Officer.

3. Aggrieved by this order, the present petition has been filed seeking setting aside of the order on the ground that the learned Judge ignored the

fact that the Investigating Officer along with the APP had opposed the bail and agitated before the Court that accused is not co-operating in the investigation. Various important factors were ignored while granting bail. The respondent had gone to the extent of forging and fabricating documents pertaining to Government authorities. He has forged the title deeds as well as demand notices purportedly issued by the Kolkatta Municipal Corporation to induce the complainant to believe in the genuineness of the transaction. The assessee number was also forged as it belonged to some Mukesh Jain. A false case was registered by the respondent accused before the learned Executive Magistrate, Alipore upon non-existing facts only in pursuance of his ulterior design to cheat the complainant. After obtaining an ex parte injunction against the opposite party, the suit was dismissed in default without service to the opposite party. Custodial interrogation of the accused is essential to recover the original forged and fabricated documents; to know modus operandi as to how he prepared and forged the fabricated documents; to know the persons from Kolkata Municipal Corporation and other persons who have aided and participated in colluding with respondent no.2 in the commission of the offences. Respondent no.2 is a master mind which is evident from the fact that the complainant has been cheated in a planned way. He first won over the trust of the complainant and then after forging various documents cheated the complainant, as such it was prayed that the order dated 22.05.2013 be set aside.

4. Respondent no.1/State has filed the status report. It was submitted that in pursuance to the order passed by learned Additional Sessions Judge, Saket whereby the respondent no.2 was ordered to be released on bail, he was asked to bring the surety but he came along with his Advocate Mr. Patnaik and assured to come back with the surety and to join investigation. Despite telephonic reminder, nobody came till 03.07.2013 when accused again came with his Advocate. He was not giving satisfactory replies to the questions put by the Investigating Officer, as such a questionnaire was prepared and he was asked to give necessary information. Mr. Patnaik, Advocate submitted a written request on 10.07.2013 seeking more time for answering the questions. Every time the accused avoided to bring surety. Even his lawyer who had promised to get the accused to comply with the request of the Investigating Officer failed to do the needful. The accused is not co-operating with the investigation. The reply given by him is vague and is basically a lawyer's drafting. The accused is avoiding to give adequate surety despite several calls made to him. His attitude is totally of non-cooperation. The location of the property or its very existence has to be ascertained. The original copy of notices and documents of Calcutta Municipal Corporation and Life Insurance Corporation have to be collected from Calcutta. The accused is avoiding to give the place where he is residing. There is information that accused has in past and is also presently facing other criminal cases including cheating and forgery but he is not giving details

thereof, as such his custodial interrogation is necessary for further course of investigation and it is also to be ascertained about the other persons who had helped in making forged papers.

5. In the subsequent status report, it is mentioned that investigation in this case has not moved further as the accused has not made himself available for investigation. The accused was called telephonically to join investigation to which he said that a notice u/s 160 Cr.P.C should be sent to his address. Thereafter notice u/s 160 Cr.P.C was sent to his available addresses at Kolkatta and Pinjore but he did not join investigation. He was again contacted on telephone because the report was received that he was not residing on those available addresses. On one pretext or the other he did not join investigation and also avoided to bring surety. In response to one telephonic call he has given his address as Gurgaon, as such, a notice u/s 160 Cr.P.C was sent through HC Raghubir. On 17.09.2013, he was asked to join investigation but he sent a medical certificate and as such avoided to join investigation, as such, it is clear that accused is deliberately avoiding to join investigation.

6. Learned counsel for the petitioner placed reliance on ***Brij Nandan Jaiswal vs. Munna @ Munna Jaiswal & Anr.***, AIR 2009 SC 1021 where it was held that it is settled law that complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any Court, the only way is to get it cancelled on account of its

misuse. The bail order can be tested on merits also. The complainant can question the merits of the order granting bail. Reliance was also placed on *Kanwar Singh Meena v. State of Rajasthan and Another*, (2012) 12 SCC 180 where it was held that while cancelling bail u/s 439(2) Cr.P.C, the primary considerations which weigh with the Court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant materials indicting prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice etc. would not deter the Court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society.

7. Reliance was also placed on *Maruti Nivrutti Navale vs. State of Maharashtra and Another*, ((2013) 9 SCC 235 where the application for grant of anticipatory bail was dismissed by the Sessions Court and the High Court in a forgery case. SLP was preferred before Hon'ble Supreme Court and it was held that in order to bring out all the material information and documents, custodial interrogation is required, more particularly, to ascertain the documents which were alleged to have been forged and fabricated. The allegations against the accused was that he had made false representation before the public authority on the basis of those documents. As such his custodial interrogation was necessary and application was rightly rejected by the learned ASJ and by High Court.

8. In the instant case, the entire background of the case was referred as to how the complainant was induced initially to part with money by the accused and later on was compelled to purchase the property on false representation. Although a sale deed was got registered wherein it was stated that the land is not acquired by any government scheme and it is not requisitioned or acquisitioned and is free from all encumbrances; the vendor has full power and absolute authority to sell and transfer the property. However, the case ultimately turned out to be otherwise. A sum of Rs.92 lakhs was parted with by the petitioner on the inducement of respondent no.2, who forged demand letters from Calcutta Municipal Corporation. No encumbrance certificate purportedly taken from Naresh Chatterjee, Advocate was shown and now it

transpires that the land in question even does not exist for which the sale deed has been executed, as such it was submitted that without going into all these aspects the respondent was ordered to be released on bail, which is liable to be cancelled.

9. Learned APP for the State supported the complainant by submitting that the respondent has not even complied with the terms and conditions of the bail order inasmuch as he has neither furnished the bail bond despite repeated requests nor is joining the investigation. Moreover he is not cooperating in investigation and gives vague replies. In pursuance to his request, a questionnaire was given to him and copy of the reply has been placed on record to show that in fact it is a legal drafting and not the reply by the respondent. Custodial interrogation of the accused is required, as such his bail is liable to be cancelled.

10. Opposing the submissions of learned counsel for the petitioner and APP for the State, it was submitted by learned counsel for the respondent/accused No.2 that no material has been ignored by learned ASJ while granting bail. The statement of the witnesses recorded u/s 161 Cr.P.C are not substantive evidence and cannot be made the basis of conviction. Moreover, the offence is punishable upto seven years only, as such, the accused is not facing any grave charge. He is not a dreaded criminal, he is joining investigation as and when called upon to do so; there are no grounds for cancellation of bail, as such application is liable to be dismissed.

11. Rebutting the submission of learned counsel for accused/respondent no.2, it was submitted by learned counsel for the petitioner that at the stage of considering the bail application, the statement of witnesses recorded u/s 161 Cr.P.C are to be considered as only a prima facie view is required to be taken and in case same are not to be considered then on what basis the application will be decided? It was submitted that the impugned order be set aside.

12. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

13. The present application has been moved u/s 439 Cr.P.C for cancellation of bail. At the outset, it may be mentioned that in case the accused fails to abide by the terms and conditions on which he is granted the benefit of bail, the bail is liable to be cancelled. Vide impugned order dated 22.05.2013, respondent no.2/accused was ordered to be released on bail:

- (i) on furnishing personal bond in the sum of Rs. One lakh with one surety in the like amount to the satisfaction of the SHO/IO concerned;
- (ii) the applicant to submit his passport before the IO and will not leave the country without the permission of the Court;
- (iii) he will join investigation whenever required by the I.O.

14. In the status report, it is submitted by the IO of the case that despite repeated asking, the accused has failed to furnish the surety bond. The respondent has submitted a reply to the status report wherein it is not disputed that till date the respondent/accused has not furnished the surety bond. The

only plea taken is that when accused asked the IO whether his son or wife would be acceptable to him as surety, the IO refused to accept his wife or son as surety. Instead he wanted him to produce a local surety. In the event the I.O is not satisfied with the surety which the accused is offering he shall be forced to move the learned ASJ who was pleased to grant him anticipatory bail, for appropriate direction. The fact remains that despite the fact that the order was passed as far back as on 22.05.2013 till date, the respondent accused has failed to furnish surety bond. Although in the reply, it is stated that he will be constrained to move the learned ASJ for appropriate direction but no such application was moved before the learned ASJ. The fact remains that in the absence of furnishing the surety bond as directed by the Court, since the accused has failed to comply with the terms and conditions of the bail order, his bail is liable to be cancelled.

15. Not only that, he was also directed to join investigation as and when required by the IO of the case. Here again, a perusal of status report reflects that the accused has failed to join investigation. On 04.06.2013, he joined investigation and was asked to bring surety but he came along with his Advocate Mr. Patnaik and assured to come back with the surety and to join investigation. Till 03.07.2013, he did not turn up. On telephonic reminder, he came along with his Advocate Mr. Patnaik but was not giving satisfactory replies to the questions put by the I.O. As such a questionnaire was prepared and he was asked to give necessary information. Immediately the

information was not supplied, rather, a written request was made by his Advocate on 10.07.2013 seeking more time for answering the questionnaire. On 02.08.2013, accused came with his lawyer Mr. Patnaik and when they were asked to wait for some time they left within ten minutes without informing the I.O. On 03.08.2013, Mr. Acharya, another lawyer of the accused met the IO and submitted a reply to the questionnaire. The accused himself has placed on record copy of the reply to the questionnaire given by the IO of the case and a perusal of the same goes to show that there is force in the submission of learned APP that this is a legal drafting inasmuch as the accused was supposed to reply on the factual matrix of the case. However, in the reply, Section 103 of the Indian Evidence Act, Section 162 of the Criminal Procedure Code and Section 25 of the Indian Evidence Act has been incorporated which clearly reflects that the drafting of the reply is by an Advocate. Furthermore, as per the subsequent status report when the accused was asked telephonically to join investigation, he demanded service of notice u/s 160 Cr.P.C upon him. Thereupon notice was sent to his available address at Calcutta and Pinjore but the same was returned back with the report that he was not residing at those available addresses. In pursuance to one telephone call, he gave his address at Gurgaon, then notice was sent u/s 160 Cr.P.C on that address. Instead of joining investigation he sent a medical certificate. All these goes to show that the accused is not even joining investigation

which was one of the condition for grant of bail, as such on this ground also his bail is liable to be cancelled.

16. Even on factual matrix of the case, the averments made in the petition are not specifically denied by the accused. A perusal of the sale deed goes to show that it was specifically stipulated that the property is not acquired under any government scheme and it is not requisitioned or acquisitioned and is free from all encumbrances and the vendor has full power and absolute authority to sell, transfer, assign and convey the said property. However, surprisingly in reply to the application it is averred:

“Therefore, it is respectfully submitted to your lordship that the complainant had full knowledge of the fact that, neither the accused had legal title to the property nor had actual possession of the property, the complainant was purchasing from the accused. He had full knowledge of the fact that the Life Insurance Corporation of India at Kolkata was the true legal owner of the property which alone had absolute title to and right and interest in the said property and the complainant had also full knowledge of the fact that the Life Insurance Corporation of India at Kolkata had itself not been in possession of the said property, the said property having been requisitioned by the Defence Department of the Government of India and later by the State Government of West Bengal. Therefore, the complainant was a practicing lawyer of high standing in Delhi, ought to have met the concerned officers of the competent authority, namely the Life Insurance Corporation of India at Kolkata, which alone had absolute title to the property, to know what ought to be done to purchase that property, lawfully from the Life Insurance Corporation of India at Kolkata. Instead of pursuing the legal course, a lawyer of high standing has been chasing the accused who is clearly innocent because of his ignorance in law. The accused was being able to make huge profit out of the money of

the complainant, only because the complainant, though a practicing lawyer of high standing was keeping himself deliberately ignorant in law, for the reasons best known to him.

17. These averments are clearly reflective of the fact that according to the respondent accused he had no legal title to the property. If that was the case why a sum of Rs. 92 lakhs was received by him for sale of the property from the complainant. It is the case of the complainant as to how he was compelled by the accused to purchase the property for a consideration of Rs. 60 lakhs. At that time the accused had also shown the certificate from Mr. Naresh Chatterjee Advocate. However, during the course of investigation, it transpired that Naresh Chatterjee, Advocate stated to the I.O of the case that he had given the certificate as per the information collected by his clerk. Thereafter also, apart from the sale consideration, the complainant was made to pay a sum of Rs. 33 lakhs on various other counts and ultimately it transpired that the plot in question even does not exist. According to the IO of the case, the location of the property or its very existence has to be ascertained. The original copy of the notices and documents of Kolkata Municipal Corporation and Life Insurance Corporation have to be collected from Kolkata; antecedents of accused are required to be ascertained. It is also required to be seen as to who were the other persons who had helped him in making forged papers. A perusal of the impugned order goes to show that

these aspects of the matter were not gone into by the learned ASJ while granting relief to the respondent.

18. Keeping in view the fact that while granting bail, relevant materials indicating prima facie involvement of the accused were not taken into consideration, coupled with the fact that the respondent has even otherwise failed to comply with the terms and conditions of the bail order, I am inclined to set aside the order of the learned ASJ. Accordingly, the petition is allowed. The impugned order dated 22.05.2013 of the learned ASJ is set aside.

SUNITA GUPTA
[JUDGE]

OCTOBER 09, 2013
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