

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

Reserved on: 17th September, 2014
Date of Decision: 01st October, 2014

+ CRL. M.C. 3202/2014

DHARAMVIR SINGH Petitioner
Through: Mr. Sanjeev Kumar and Mr. Deepak
Kumar Singh, Advocates.

versus

STATE & ORS. Respondents
Through: Mr. Feroz Khan Gazi, APP for the
State with SI Shiv Dev Singh, P.S.
Defence Colony.
Mr. K.K. Manan and Mr. I.S. Kapoor,
Advocates for respondent No.2

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of the present petition filed under Section 439(2) read with Section 482 of Code of Criminal Procedure, 1973 (hereinafter after referred to as 'Cr.P.C.') the petitioner has assailed the order dated 20.06.2014 passed by learned Additional Sessions Judge, Saket Courts, Delhi whereby respondent Nos.2 and 3 have been granted anticipatory bail in case FIR No.92/2014 under Sections 420/34 IPC registered at P.S. Defence Colony, New Delhi.

2. The contextual matrix of the case as set out in the petition is that the petitioner registered a complaint against respondent Nos.2 and 3 on account of the fact that both these respondents conspired against the petitioner and in furtherance to that conspiracy, they subjected him to

cheating, criminal breach of trust, and also usurped and misappropriated his money. Respondent Nos.2 and 3 allured the petitioner to buy a property bearing No.C-93, Defence Colony, New Delhi – 110024 for which he paid Rs.1,50,00,000 /- (Rupees one crore fifty lakhs). This alleged conspiracy commenced during March/April 2013, when the accused i.e. respondent Nos.2 and 3 approached the petitioner with an intent to sell the aforementioned property comprising of entire basement floor and entire ground floor with one servant quarter with servant's W.C. and with two car parking space, with structure standing therein, fitting and fixtures installed therein, of the freehold property, measuring 401 sq. yards along with proportionate undivided, indivisible and impartible share of ownership rights in the land underneath and he will confer legal, perfect and marketable title coupled with delivery of vacant peaceful physical possession upon the petitioner. The title documents of the said property shown to the petitioner were in the name of Jagmohan Bahl i.e. respondent No.2. On the basis of negotiations the petitioner and respondent No.2 entered into an oral agreement on the basis of which the accused agreed to sell the above mentioned property for Rs.6,00,00,000 /- (Rupees six crores) with a part sale consideration to be paid at the time of entering into such an oral agreement. Thereafter, on 30.04.2013 an agreement to sell was duly executed between the petitioner and respondent No.2 upon agreed terms and conditions. On the basis of this agreement the petitioner paid a sum of Rs.1,50,00,000 /- (Rupees one crore and fifty lakhs) as advance money to the accused. Out of the stated amount Rs.1,28,00,000 /- (Rupees one crore and twenty eight lakhs) were paid

in cash and Rs.22,00,000 /- (Rupees twenty two lakhs) were paid by way of RTGS vide U.T.R. No. CB1NH1230030281, Central Bank of India, South Extension Branch, New Delhi. The remaining Rs.4,50,00,000 /- (Rupees four crore fifty lakhs) was to be paid to the accused at the time of registration of the sale deed, in the favour of either the petitioner or his nominee in the Sub-Registrar's Office, New Delhi, on or before 26.10.2013. However, after receiving the part payment, the accused started delaying the execution of the sale deed and failed to execute the same even on the last date of execution. On enquiry the petitioner came to know about the agreement to sell of the same property executed by the accused with some third person.

3. Thereafter, the petitioner filed a complaint dated 07.01.2014. Another complaint dated 14.03.2014 was filed by the petitioner in order to establish the fact that respondent No.2 had already transferred the ownership of the subject property to petitioner's wife vide gift deed dated 20.06.2011. Subsequent to this an FIR bearing No. 92/2014 was registered on 04.04.2014 at P.S. Defence Colony, New Delhi.

4. The respondent Nos.2 and 3 moved an application seeking anticipatory bail which was dismissed by learned Additional Sessions Judge-6, South East, Saket Courts, New Delhi vide order dated 26.05.2014.

5. Thereafter, respondent Nos.2 and 3 moved second applications under Section 438 of Cr.P.C. seeking anticipatory bail which were allowed by learned Additional Sessions Judge-04 (Special Judge NDPS), South East, New Delhi vide impugned order dated 20.06.2014.

6. Aggrieved by the order dated 20.06.2014, the petitioner has filed the present petition.

7. Learned counsel for the petitioner urged that the first application for anticipatory bail filed on behalf of respondent Nos.2 and 3 was dismissed by learned Additional Sessions Judge-06 (South East), Saket Courts, New Delhi on 26.05.2014. There was no change in circumstance and the second application seeking anticipatory bail was not maintainable before learned Additional Sessions Judge, New Delhi. He has also submitted that the second application should have been listed before the same Judge. He further submits that respondent Nos.2 and 3 obtained the impugned order dated 20.06.2014 by misrepresenting the facts. The petitioner/ complainant has already stated before the investigating officer on 05.04.2014 that the petitioner had paid a sum of Rs.1.28 crores in cash to respondent No.2 as per the terms of settlement between them in respect of property in question and the respondent No.2 had assured the petitioner to execute the agreement to sell after six months and a sum of Rs.4.5 crores were to be paid by the petitioner at the time of execution of the agreement to sell. The petitioner in his statement also stated that he came to know about the fact that no mortgaged or gift deed is in the name of respondent No.2 rather the respondent No.2 had already executed a Will in respect of the property in question in favour of her wife. He also submits that the respondent Nos.2 and 3 were evading to join investigation and their custodial interrogation was required.

8. Learned counsel for the petitioner has relied upon judgments in

‘State of Maharashtra vs. Captain Buddhikota Subha Rao’, *AIR 1989 SC 2292*; **‘Kalidas Mitra vs. State’**, decided on 11.08.1988; **‘Chanchal Dutta vs. State’**, *1999 LawSuit (Cal) 471*; **‘Maya Rani Guin vs. State of West Bengal’**, *2003 Cri.L.J. 1*; **‘Ganesh Raj vs. State of Rajasthan’**, *2005 Cri.L.J. 2086*; **‘Suresh Chand vs. State of Rajasthan’**, *II (2001) DMC 17*; **‘Balbir Kaur vs. State’**, *132 (2006) DLT 622*; **‘Vinod Bakshi vs. The State (GNCT Delhi)’**, *Bail Application No.1740/2004 decided on 06.01.2005*; **‘Bhupendra Kumar vs. State’**, *1010 (10) AD (Delhi) 466*; **‘Padam Chand Jain vs. State of Rajasthan’**, *1991 Cri.L.J. 736* and **‘Vikas Kumar vs. Directorate of Revenue Intelligence’**, *Bail Application No.2133/2004 decided on 08.04.2005*.

9. Per contra learned counsel for respondent Nos.2 and 3 contended that the petitioner had concealed the fact that the complainant had paid Rs.22,00,000/- to respondents through RTGS on 26.06.2014 which proves that the complainant had fabricated the entire version at the time of lodging the FIR. According to him the petitioner had obtained signatures of the respondents on blank agreement to sell and there was no proof of having paid a sum of Rs.1,28,00,000/- by the complainant. He has relied upon **‘State (Government of NCT of Delhi) vs. Dr. Anil Khetrpal’**, *2006 (131) DLT 507*.

10. I have given my thoughtful consideration to the submissions made by learned counsel for the petitioner as well as learned counsel for respondent Nos.2 and 3.

11. The law in regard to grant or refusal of bail is very well settled.

The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of merit of the case need not be undertaken, there is need to indicate in such orders the reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.

12. In '**Brij Nandan Jaiswal v. Munna Jaiswal and Anr.**', *AIR 2009 SC 1021*, 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 made by the learned counsel for the petitioner on '**Kamar Singh Meena vs. State of Rajasthan**', *(2012) 12 SCC 180*, wherein it was observed that while cancelling bail under Section 439(2) of 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 recognized 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 accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society.

13. In another case '**Nivrutti Navale vs. State of Maharashtra and Another**', (2013) 9 SCC 235, 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 observed 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 representations before the public authority on the basis of those documents. As such his custodial interrogation was necessary and the application was rightly rejected by learned Additional Sessions Judge and by the High Court.

14. In **State of Maharashtra's** case (supra), it was held that: -

“7. Liberty occupies a place of pride in our socio-political order. And who knew the value of liberty more than the founding fathers of our Constitution whose

liberty was curtailed time and again under Draconian laws by the colonial rulers. That is why they provided in Article 21 of the Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. It follows therefore that the personal liberty of an individual can be curbed by procedure established by law. The Code of Criminal Procedure, 1973, is one such procedural law. That law permits curtailment of liberty of anti-social and anti-national elements. Article 22 casts certain obligations on the authorities in the event of arrest of an individual accused of the commission of a crime against society or the Nation. In cases of under trials charged with the commission of an offence or offences the court is generally called upon to decide whether to release him on bail or to commit him to jail. This decision has to be made, mainly in non-bailable cases, having regard to the nature of the crime, the circumstances in which it was committed, the background of the accused, the possibility of his jumping bail, the impact that his release may make on the prosecution witnesses, its impact on society and the possibility of retribution, etc. In the present case the successive bail applications preferred by the respondent were rejected on merits having regard to the gravity of the offence alleged to have been committed. One such application No.36 of 1989 was rejected by Suresh, J. himself. Undeterred the respondent went on preferring successive applications for bail. All such pending bail applications were rejected by Puranik, J. by a common order on 6th June, 1989. Unfortunately, Puranik, J. was not aware of the pendency of yet another bail application No.995/89 otherwise he would have disposed it of by the very same common Order. Before the ink was dry on Puranik, J.'s order, it was upturned by the impugned order. It is not as if the court passing the impugned order was not aware of the decision of Puranik, J., in fact there is a reference to the same in the impugned order. Could this be done in the absence of new facts

and changed circumstances? What is important to realise is that in Criminal Application No.375 of 1989, the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made therein. Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J. only a couple of days before, in the absence of any substantial change in the fact-situation. In such cases it is necessary to act with restraint and circumspection so that the process of the Court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one Judge or selected another to secure an order which had hitherto eluded him. In such a situation the proper course, we think, is to direct that the matter be placed before the same learned Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the Court's time as a Judge familiar with the facts would be able to dispose of the subsequent application with dispatch. It will also result in consistency. In this view that we take we are

fortified by the observations of this Court in paragraph 5 of the judgment in *Shahzad Hasan Khan v. Ishtiaq Hasan Khan*, (1987) 2 SCC 684. For the above reasons we are of the view that there was no justification for passing the impugned order in the absence of a substantial change in the fact-situation. That is what prompted Shetty, J. to describe the impugned order as 'a bit out of the ordinary'. Judicial restraint demands that we say no more.”

15. In the case of ‘**Kalidas Mitra vs. The State**’ (supra), it was held that: -

“4. Under section 438 he is given right to apply when he reasonably apprehends that he may be arrested on some particular accusation of having committed a non-bailable offence. It has already been noted that this accusation of a particular case cannot vary from time to time. That being the position once he applied he cannot make any further application on his apprehension on the same accusation in a particular case. In the circumstances a second petition for an anticipatory bail in the same case is not maintainable.”

16. The Full Bench of Calcutta High Court in ‘**Maya Rani Guin’s** case (supra), it was held that: -

“20. We have heard the learned advocates for the respective parties. We have also gone through the judgments referred to above. We find sufficient merit in the submission of Mr. Kazi Saifullah. Ld. Public Prosecutor and Mr. Moitra, learned Additional Public Prosecutor. We do not find any reason to differ from views of the earlier Division Benches in the case of *Kalidas Mitra*, (1989) 3 Crimes 652, *Ekkari Ghosh*, 1994 Cal Cri LR (Cal) 218 and the case of *Pawan Kumar Beriwal*, 1998 (1) Cal. LJ. 470, and are in

respectful agreement with the views expressed therein. We are of the view that entertaining a second application for anticipatory bail would amount to review or reconsideration of the earlier order passed by a Division Bench having co-ordinate jurisdiction, as the accusation remains unchanged. We also find merit in the submission of Mr. Moitra that the 'accusation' being the sine qua non and which remains the same, there cannot be any revival of "reasons to believe" or apprehension of arrest which was considered by the Court in the earlier application for anticipatory bail.

21. Accordingly, the first question under the present reference is answered in the negative. We are of the view that the second application for anticipatory bail, even if new circumstances develop after rejection or disposal of the earlier application, is not maintainable.”

17. In the instant case the petitioner/ complainant lodged a complaint on the allegations that the respondent Nos.2 and 3 induced the petitioner to purchase property bearing No.C-93, Defence Colony, New Delhi – 110024 for a total consideration of Rs.6 crores and the petitioner paid a sum of Rs.1,50,00,000/- (Rupees One crore fifty lakhs) (Rs.1.28 crores in cash and Rs.22 lakhs by RTGS) towards earnest money and the balance amount was to be paid on or before 26.10.2013 vide agreement to sell dated 30.04.2013. The respondents did not execute the Sale Deed. The petitioner lodged the complaint dated 17.01.2014 and thereafter additional complaint was filed on 14.03.2014 stating that respondent No.2 had already transferred ownership of the property in question to his wife vide Gift Deed dated 20.06.2011. Learned counsel for the petitioner submitted that respondent has no right, title in the said property on the date of

Agreement to Sell and the respondents made a false statement that they are owners of the said property. Learned counsel for the petitioner pointed out that statement of the petitioner/ Dharamvir Singh under Section 161 of Cr.P.C. was recorded on 05.04.2014, wherein he stated that he had sold his property and out of sale proceeds of the said property he has paid Rs.1.28 crores in cash to respondent No.2 in the presence of Mr. Deepak Singh and Agreement to Sell dated 30.04.2013 was filled by Mr. Deepak Singh. He had also stated that respondent Nos.2 and 3 moved an application for anticipatory bail, which was dismissed by learned Additional Sessions Judge-06 (South East), Saket Courts, New Delhi vide order dated 26.05.2014. About three weeks thereafter second application seeking anticipatory bail was filed on behalf of respondent Nos.2 and 3 which was listed before learned Additional Sessions Judge-04 (Special Judge NDPS), South East, New Delhi and the same was allowed vide order dated 20.06.2014. In view of the judgment, second application for bail was to be listed before the same Judge.

18. Learned APP for the State has pointed out that at the time of entering into Agreement to Sell dated 30.04.2013, the respondents handed over original title deeds of the said property. During investigation, it was revealed that the property was already transferred by the accused to his wife Amarjeet Behl by way of registered Gift Deed dated 20.06.2011. He also pointed out that during investigation, offence under Section 467/468/471 of IPC have been added.

19. On the factual matrix of the case shows that respondent Nos.2

and 3 executed an agreement to sell dated 30.04.2013 in favour of the petitioner in respect of property bearing No.C-93, Defence Colony, New Delhi. The said property was already transferred by respondent No.2 in favour of his wife, Smt. Amarjeet Behl by virtue of registered Gift Deed dated 20.06.2011 i.e. before the execution of agreement to sell in favour of petitioner. The petitioner had made payment of Rs.1.5 crore. The first application for anticipatory bail was dismissed by learned Additional Sessions Judge-06 (South East), Saket Courts, New Delhi on 26.05.2014. However, second application for anticipatory bail was filed after a period of about three weeks, after change of roster, the same was listed before another Additional Sessions Judge, New Delhi and was allowed on 20.06.2014. To bring out all the material information, particularly, to ascertain the documents which were alleged to have been executed by respondent nos. 2 & 3/accused with some other person in respect of the same property, custodial interrogation was required.

20. In view of aforesaid discussion, I am inclined to set aside order dated 20.06.2014 passed by learned Additional Sessions Judge-04 (Special Judge NDPS), South East, New Delhi. Accordingly, the impugned order dated 20.06.2014 passed by learned Additional Sessions Judge-04 (Special Judge NDPS), South East, New Delhi is set aside.

21. Accordingly, the petition stands disposed of.

(VED PRAKASH VAISH)

JUDGE

OCTOBER 01st, 2014

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