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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 253/2015**

Date of Decision : September 28th, 2015

JAGDISH GUPTA

..... Petitioner

Through: Mr.Rakesh Tiku, Sr. Adv. with
Mr.Vivek Ojha, Mr.Sagar
Aggarwal and Mr.Sandeep
Kumar, Advs.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Ms.Manjeet Arya, APP for the
State.
Mr.C.S.S. Tomar, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1908 for the grant of bail in FIR No.183/2010, Police Station Economic Offences Wing, under Sections 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860.

2. The allegations levelled against the applicant/accused are that

the firm of the complainant purchased a plot measuring 1600 sq. Yards out of Khasra No.138, situated in the area of Village Siraspur, Delhi from the applicant vide registered sale deed on 08.05.1989 for the consideration of Rs.20,000/-. The actual physical possession of the land was given to the complainant. When the complainant visited the site on 24.01.2010, he found some godowns on the said plot. One Satya Parkash grabbed the land and mutation had been done in favour of Satya Parkash Rana, Jagdish, Rohtash and Arun. It revealed that sale documents were executed by the applicant/accused on 22.03.2004 in favour of co-accused Rohtash. Further Satya Parkash Rana got executed Sale Deed from Rohtash in his favour on 31.12.2008 for a sum of Rs.27,06,600/-.

3. On the basis of complaint made by the complainant, FIR of the present case was registered. The applicant/accused was arrested on 26.08.2014 and he disclosed that he sold the land in question to the complainant in the year 1989 and then in 2009 to Sat Parkash. After completion of investigation, charge sheet was filed in the Court.

4. The argument advanced by the learned Senior Counsel for the applicant is that the applicant is languishing in jail since 26.08.2014;

two co-accused have been granted anticipatory bail, while the third co-accused has been granted regular bail by the Trial Court; all the documents have already been seized by the police; charge sheet has already been filed; specimen handwriting of the applicant has been taken and sent to Forensic Science Laboratory; the trial is likely to take time; present case is a civil dispute which has been given a colour of criminal dispute.

5. In support of the above contentions, the applicant has relied upon judgment of Hon'ble Apex Court in the case of ***Arun Bhandari v. State of U.P. and others (Criminal Appeal No.78/2013 decided on 10.01.2013)*** in which it has been observed that in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating. Next judgment relied upon is in case of ***Dipak Shubhashchandra Mehta v. C.B.I. & Anr. (Criminal Appeal No.348/2012)*** in which it has been observed that the Court while

granting bail has to consider the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; prima facie satisfaction of the Court in support of the charge; likelihood of the accused fleeing from justice and tampering with the prosecution witnesses.

6. The bail application has been opposed by the learned counsel for the complainant and learned APP for the State. It has been argued that the applicant/accused has committed cheating by forging documents. The applicant firstly sold the land in question to the complainant and then sold it again to co-accused persons. It is argued that the allegations of cheating and forgery are there which are serious in nature and the applicant does not deserve the concession of bail.

7. Learned counsel for the complainant has referred to judgment in the case of *Mukesh Jain v. CBI 2010 (1) JCC 417* in which the bail was refused while observing that the economic offences having deep rooted conspiracies and involving huge loss of public funds whether of nationalized banks or of the State and its instrumentalities need to be viewed seriously and considered as grave offences

affecting the economy of the country as a whole and thereby posing serious threat to the financial health of our country. On similar proposition of law, judgments in case of *Sanjay Kapoor v. State 2009 (2) JCC 1071* and *M.S. Saini v. State 2009 (4) JCC 2950* have been referred.

8. The law laid down by the Hon'ble Apex Court is not in dispute.

9. The undisputed fact in the present case is that the applicant sold the land to the complainant for a sum of Rs.20,000/- along with the possession and the complainant was put into possession. As per the complainant, he visited the land and found that some construction was available and on enquiry, it revealed that subsequently the applicant had sold the land in question to one Rohtash for a sum of Rs.8,98,866/- and thereafter Rohtash sold the land to Satya Prakash Rana for a sum of Rs.27,06,600/-. One Special Power of Attorney was also executed from Rohtash in favour of Arun and they had been raising the construction in the year 2010. The FIR was lodged in the present case on 22.12.2010 and thereafter the investigation commenced. The investigating agency filed the charge-sheet before the Court of Chief Metropolitan Magistrate, but the report of the FSL

is still awaited.

10. On the other hand, the case of the applicant is that he had already conceded to the framing of charges against him on 22.01.2015, but the case is not being proceeded with for the want of FSL report. The other limb of argument is that the co-accused Satya Prakash and Arun Kumar have been granted anticipatory bail, whereas co-accused Jaipal has been granted regular bail. The applicant is behind the bar since 26.08.2014 and he has already spent more than one year behind the bars.

11. The gravity of the offence is definitely a vital part for consideration of the grant of bail, but while considering the gravity of the offence the other circumstances need not to be ignored, particularly when the personal liberty of a person is at stake.

12. As discussed above, in the present case, the land in question was sold to the complainant in the year 1989 and handing over of possession is not in dispute. The complainant has not made any claim that subsequently at any point of time the applicant happened to be in possession of the land in question and the allegations levelled are that subsequently, he sold the land to one Rohtash which is being denied

by the applicant that he ever executed any such sale document. Though, the charge sheet has been filed but still the Court is unable to consider the case for framing of charge on account of non-availability of FSL report, though the petitioner has already conceded to the framing of charge. The fact of grant of anticipatory bail to co-accused Rohtash and Arun and the grant of regular bail to Jaipal is not in dispute. So, basically the claim of the applicant seeking regular bail is on the basis of parity as well as taking of long time by the Trial Court and having being behind the bars for the last more than one year.

13. Due to this undisputed position, this Court is of the considered opinion that this is a fit case where the applicant is entitled to be enlarged on regular bail during the pendency of the trial.

14. Consequently, it is hereby ordered that the applicant be released on bail on furnishing the personal bond in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of the Trial Court, subject to the condition that he shall not tamper with the evidence, not to influence the prosecution witnesses and shall not leave the country without prior permission of the Trial Court.

15. However, it is made clear that the observations made above shall not affect the merits of the case.

(P.S.TEJI)
JUDGE

SEPTEMBER 28, 2015
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