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

Judgment delivered on: 29th September, 2015

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CRL.M.C. 663/2015

VIKAS JAIN

..... Petitioner

Represented by:Mr. Apurb Lal, Ms. Meenu
Pandey and Ms. Mariya Mumtaz Hashmi, Advs.
versus

GOVT OF NCT OF DELHI AND ANR

..... Respondents

Represented by:Mr.Amit Chadha, APP for the
State with SHO Jeewat Ram Parmar, DIU/East.
Mr. Rahul Sharma, Adv. for R-2.

AND

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CRL.M.C. 732/2015

VIKAS JAIN

..... Petitioner

Represented by:Mr. Apurb Lal, Ms. Meenu
Pandey and Ms. Mariya Mumtaz Hashmi, Advs.
versus

GOVT OF NCT OF DELHI AND ANR

..... Respondents

Represented by:Mr.Amit Chadha, APP for the
State with SHO Jeewat Ram Parmar, DIU/East.
Mr. Rahul Sharma, Adv. for R-2 to 5.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide Crl.M.C.No.663/2015, the petitioner seeks direction thereby setting aside the order dated 21.01.2015 passed by learned Addl. Sessions Judge-03, (East), Karkardooma Courts, Delhi in Bail Application No.11779/2014 whereby the respondent no.2 Mrs. Phoolwati was granted bail. In Crl. M.C. No.732/2015, the petitioner seeks setting aside the

order dated 21.01.2015 passed by the aforesaid Judge in Bail Application no.130/2015. Since both the petitions have arisen from order dated 21.01.2015 and involve common issue, this Court has decided to dispose of these petitions by this common judgment.

2. Learned counsel appearing on behalf of the petitioner submits that the learned Judge has ignored the facts brought on record by the Investigating Officer in Status Report whereby stated that during the course of the investigation original agreement to sell dated 09.02.2012 in favour of complainant, receipt of payment of Rs.1,38,00,000/-, copy of affidavit, GPA and Will executed by the allottees accused persons in favour of the complainant obtained and verified from SR-III Office, Noida. Witness Pradeep Chauhan was also interrogated, who supported the version of the complainant. Payment of Rs.1,38,00,000/- was made to the accused persons by the complainant on various dates through cheque and cash. In this regard detail of cheque also obtained from Corporation Bank, in which it was found that Rs.28 lac was encashed in the account of co-accused persons. Certified copy of GPA & Sale Deed in regard to the property was also obtained from Dadri Authority from which it was found that husband of the accused Phoolwati Devi, namely, Ganga Ram had already sold the same plot to Mahirishi Ved Vigyan Vidhyapeeth. In this regard, land record keeper of Mahirishi Aashram was also interrogated, who submitted that property in question has already been purchased by Mahirishi Ashram in 1986 and is in physical possession and inside the boundary wall of the said Aashram. Only on the basis of mutation accused persons took compensation against acquirement of the said plot and in this regard objection already made by Mahirishi Aashram before

the ADM (LA) Noida.

3. In the aforesaid report it was also submitted that the accused persons not only cheated the complainant but also the Noida Authority as well. Accordingly, an FIR no.109/2015 was registered against the accused persons on 04.03.2015 under section 420/467/468/471 IPC at PS Kasna, Gautambudh Nagar, U.P. Learned counsel He asserted that the learned ASJ has not considered all these facts while granting bail to the accused persons.

4. Learned counsel for the petitioner relies upon the judgment of the Supreme Court in the case of ***Jai Prakash Singh vs. State of Bihar and Another (2012) 2 SCC (Cri) 468*** in which the Apex Court has held as under:-

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty.”

5. Learned counsel for the petitioner further relies upon the judgment of the Supreme Court in the case of ***Puran vs. Rambilas and another 2001 SCC (Cri.) 1124*** in which the Apex Court has held as under:-

“8. He submitted that in view of these observations the learned Additional Sessions Judge did not give reasons whilst granting bail. He submitted that in these circumstances the Additional Sessions Judge cannot be faulted. He submitted that the High Court could not cancel bail on this ground. We see no

substance in this contention. Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done, in the Order dated 11th September, 2000 was to discuss the merits and de-merits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated.

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*10. Mr. Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relied upon the authority in the case of **Dolat Ram & Ors. State of Haryana**. In this case it has been held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons.*

Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.”

6. On perusal of the impugned order dated 21.01.2015, it appears that counsel for the accused submitted that the accused persons had taken loan of Rs. 30 Lacs from the petitioner/complainant as they were in urgent need of money. Petitioner/complainant asked them to give surety of the plot which was to be allotted by NOIDA Authority. Accordingly, accused persons agreed for the same. It was further submitted that the petitioner/complainant in the garb of executing surety documents fraudulently obtained signatures of accused persons on an Agreement to Sell and other documents. He also submitted that accused persons are illiterate persons. The accused had already repaid the loan amount along with interest in July, 2014. They requested the petitioner/complainant to cancel the surety documents but came to know that petitioner/complainant had played fraud with them to grab their property. Accordingly, a civil suit has also been filed in this respect.

7. It was further stated that accused persons were the owners of the land. They were not aware of any sale deed dated 21.10.1986. In the revenue records, accused persons were the recorded owners. Petitioner/complainant is false which is evident from the fact that he has not disclosed the source of alleged payment of Rs. 1.38 Crores. Besides the above, the accused have joined the investigation in pursuance to the notice of the IO.

8. It is not in dispute that one of the accused persons, namely, Rajmal has been granted regular bail by learned MM. While granting bail to these accused persons, the learned ASJ has recorded that the Agreement was admittedly in respect of a plot which was yet to be allotted. Thus, legality of the agreement itself is in question. The accused have taken the stand that Agreement to Sell was got signed fraudulently and a civil suit has been filed in this respect. As per the report of the IO, accused admitted their signatures on the documents but denied receiving Rs. 1.38 Crores as alleged by the complainant.

9. The learned ASJ further recorded that consideration amount of Rs. 45 Lacs was increased to Rs. 1.38 Crores merely on the asking of the accused persons. The Agreement to Sell was a registered one. Therefore, any variation or modification of the terms and the conditions of the said Agreement could have been made only by another registered document and not otherwise. The receipt purportedly issued by the accused persons is not registered one. It is also surprising that complete payment of Rs. 1.38 Crores was made before execution of any sale deed. The receipt shows payment of Rs. 1.08 Crores in cash.

10. Moreover, the learned ASJ has noted that the land in question is situated at NOIDA. Territorial jurisdiction is another issue which has to be looked into. The accused persons were paid compensation in lieu of acquisition of their land by NOIDA Authority. This shows that accused persons were the recorded owners. The Maharishi Ved Vigyan Vidyapeeth kept silent since 1986 and did not seek any mutation in the records.

11. The case of the petitioner is that the learned ASJ without giving any reasons and without considering the status report filed by the police has passed the impugned order. Whereas after going through the said order, I note that the learned Judge noted all the facts and passed the order after giving reasons.

12. In view of the above, I find no illegality and perversity in the impugned order dated 21.01.2015 passed by learned ASJ.

13. Consequently, instant petitions are hereby dismissed being devoid of any merit.

**SURESH KAIT
(JUDGE)**

**SEPTEMBER 29, 2015
RS**