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

\+ **Date of Decision: 07.04.2015**

% **<u>BAIL APPLN. 583/2015</u>**

ARUN KUMAR GUPTA ..... Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate along with Mr. Pramod K. Dubey, Mr. Akshay Malik, Ms.Megha & Ms. Swati, Advocates.

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr. Rajat Katyal, APP along with Inspector Sudhir Kumar, SHO and SI Nanag Ram, PS – Jaffarpur Kalan, for the State.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

<u>VIPIN SANGHI, J. (OPEN COURT)</u>

1. At the outset, it is pointed out by Mr. Krishnan, learned senior counsel for the petitioner that in the order dated 26.03.2015, in para 3, there is a typographical error with regard to the date of the status report. The same has been typed as 14.03.2011, whereas the copy of the status report referred to bears the date as 13.03.2011. The said typographical error has been corrected by me today under my initials in the original record.

2. Mr. Krishnan further submits that the date 13.03.2011, as mentioned in the typed copy of the status report placed at pages 93-94 is, in fact, wrong as the same should read as 13.03.2012, and not 13.03.2011.

3. The present bail application has been preferred by the petitioner Arun Kumar Gupta to seek anticipatory bail against his arrest in the case bearing First Information Report (FIR) No.71/2010 dated 30.10.2010 under Section 420 IPC registered at Police Station – Jaffarpur Kalan.

4. As per the FIR, the complainant Sudhir Yadav entered into an agreement to sell dated 13.10.2006 with the petitioner for purchase of agricultural land admeasuring 24 Bighas and 8 Biswas for a consideration of Rs.1,78,75,000/-. The complainant claims to have then paid Rs.31,00,000/-, out of which Rs.12,00,000/- was paid by cheque, and Rs.19,00,000/- was paid in cash, for which a receipt was executed by the petitioner in favour of the complainant. The complainant also claims that the period of completion of the transaction was fixed as three months. However, the petitioner did not get the sale deed of the land in question executed in favour of the complainant and postponed the same on one pretext or the other.

5. The complainant claims that the petitioner received a total amount of Rs.94,00,000/- in installments from the complainant under the agreement. The petitioner accused is alleged to have issued two cheques for Rs.44,00,000/- and Rs.50,00,000/- both dated 30.07.2007 drawn on Punjab National Bank in favour of the complainant, with a view to ward off any suspicion, as the petitioner accused sought extension of time for executing the sale deed.

6. The complainant also claims that he also learnt that there was some bank loan had been taken by mortgaging the land in question, by the petitioner accused Arun Kumar Gupta. On being confronted, the petitioner stated that there was no such loan, and also assured that he would himself be liable to clear the same before the execution of the sale deed, in case any such loan was outstanding.

7. The complainant also claims that the accused required the complainant to come to the office of the Sub-Registrar on 31.03.2008 for execution of the sale deed. However, the accused did not turn up and thereafter stopped meeting the complainant as well.

8. The complainant further claims that on making further efforts, he was able to get the *Khatauni* of the land, as per which, at the time of execution of the agreement, the petitioner was not the sole owner of the land in question because half share of the said land was in the name of his father, namely Mr. K.L. Aggarwal. It was also found that the said land was mortgaged with the State Bank of Patiala, Overseas Branch, Janpath, New Delhi against a loan of Rs.75,00,000/-.

9. It appears that the FIR was not registered on the complaint of the complainant, and consequently, the complainant preferred a petition under Section 156(3) Cr.P.C. before the learned Magistrate, on whose direction the FIR was ultimately registered on 30.10.2010.

10. It appears that the investigation in the case was initially entrusted to SI Naresh Kumar, P.S. Jaffarpur Kalan. Later, on 02.12.2010, the investigation was marked to SI Parveen Kumar. The status report filed by

the Police shows that during the course of investigation, the Investigating Officer (IO) seized the original documents of the property in question and the two cheques of Rs.44,00,000/- and Rs.50,00,000/- aforesaid from the complainant on 07.01.2011. He also examined one Mr. Dharampal, the witness, and the complainant and recorded their statements.

11. In this background, the submission of Mr. Krishnan, learned senior counsel for the petitioner is that the present is a stale case where the complainant did not institute any proceedings for specific performance of the agreement to sell executed as early as in 2006. In fact, according to the petitioner, the civil claim is barred by limitation. He further submits that the FIR came to be registered belatedly on 30.10.2010. The further submission of Mr. Krishnan is that the petitioner has joined the investigation and fully cooperated in the same.

12. On the last date of hearing, Mr. Krishnan had referred to several status reports filed by the Police as also the orders passed by the Court to substantiate his plea at this stage that there was no necessity for custodial interrogation of the petitioner – when proceedings before the concerned Court had taken place on 42 occasions; the IO had filed several status reports which, *inter alia*, indicated that he had also given his specimen signatures, and; joined the investigation. Since the learned APP had disputed the correctness of the status reports relied upon by the petitioner, the following order came to be passed on 26.03.2015 on the present bail application:

> *"3. The submission of Mr. Krishnan, learned senior counsel for the petitioner is that in respect of the First Information*

Report (FIR) registered as early as on 30.10.2010, the proceedings before the concerned Court have been held on about 42 occasions. The Investigating Officer (IO) concerned at the relevant time filed several status reports, which indicate that the petitioner had given his specimen signatures and has joined the investigation. In this regard, specific reference is made to the status report dated 13.03.2011signed by SI Parveen, PS– Jaffarpur Kalan, New Delhi and the status report dated 21.11.2011, again filed by SI Parveen Kumar, PS– Jaffarpur Kalan, New Delhi.

4. He has also referred to the status report filed by the same officer dated 21.05.2012, which records that the specimen signatures of the petitioner have been given and sent to the FSL for comparison with the original document. Reference has been made to the order passed by the learned Magistrate on the same day on the basis of the said status report.

5. Mr. Krishnan submits that in response to the notice issued under Section 160 Cr.P.C. dated 11.10.2011, the petitioner appeared before the I.O. on 14.10.2011. In this regard, he has referred to his representation addressed to the SHO, PS – Jaffarpur Kalan, Delhi.

6. Here itself I may note that this representation is not dated and does not bear any endorsement of receipt.

7. Mr. Katyal submits on the basis of the case diary that the petitioner has never joined the investigation in respect of the notice issued under Section 160 dated 11.10.2011. He refers to the case diary dated 14.10.2011, which shows that the petitioner has not appeared for investigation. He further submits that as per the record, there is nothing to show that the petitioner has ever given his specimen signature, or they have been sent to the FSL.

8. Clearly there is discrepancy between the status reports filed before the Court and the case diary. In these circumstances, the petitioner is directed to file an affidavit specifically disclosing the dates on which the petitioner had *appeared before the IO concerned for investigation, and the date on which he had given the specimen signatures.*

9. Prima-facie, it appears that the status reports do not reflect the correct position and are not true to the record. In these circumstances, the Deputy Commissioner of Police (DCP) concerned is directed to look into the matter as to how discrepant status reports have been filed from time to time in the present case. In case there is any wrongdoing found on behalf of any of the erstwhile IOs who have dealt with the case, the responsibility shall be fixed and the appropriate disciplinary action taken. Progress report in this regard shall also be filed by the DCP concerned on the next date.

10. Status report shall also be filed by the State before the next date.

11. Till the next date, the petitioner shall not be arrested.

12. List on 07.04.2015.

13. Dasti to the parties."

13. In response to the aforesaid order, the petitioner has filed an affidavit and the State has also filed the status report.

14. The petitioner states in his affidavit that he presented himself before the then IO Mr.Parveen Kumar, SI on 14.10.2011 and gave his oral statement, pursuant to which he was asked by the then IO to furnish his statement in writing. The petitioner states that consequently, he appeared *"after some days and furnished his written statement"* to the then IO. He refers to the status report dated 13.03.2012 at pages 93-94 of the record in the present proceedings. The petitioner also states that he facilitated the investigation and appeared before the IO *"as and when directed and furnished his signatures to be sent to the FSL for expert opinion"*. He places

reliance on the status report dated 21.05.2012 filed by the IO and the order of the learned MM dated 21.05.2012, which have also been placed on record. He further states that he had joined the investigation and presented himself before the then IO Mr. Parveen Kumar, SI *"as and when directed by him on 3/4 occasions but cannot recall the exact dates due to long passage of time"*. He further states that he appeared before the IO/ SHO on 03.04.2015, i.e. after the filing of the present bail application.

15. A perusal of the aforesaid affidavit of the petitioner would show that apart from the specific mention of 14.10.2011 as the date when he claims to have appeared before the then IO SI Parveen Kumar, the petitioner is woefully vague and non-specific about the dates on which he appeared before the IO in response to the notices issued for the said purpose. For the purpose of claiming that he has participated in the investigation, he has referred to those very status reports, the correctness of which have been seriously disputed by the Police by placing reliance on the Case Diary.

16. On the other hand, the status report filed by the State records that the accused was issued notices on several occasions requiring him to personally appear for investigation, including before the Court (apparently for the purpose of obtaining his specimen signatures), but that the petitioner did not appear either before the IO, or before the Court.

17. Mr. Katyal, learned APP submits on the basis of the Case Diary, which has been produced before the Court today, and perused that notice under Sections 160 and 175 Cr.P.C. was issued to the petitioner requiring him to appear before the IO on 27.08.2011, which was received by his wife

Sangeeta Gupta on 22.08.2011. However, the petitioner did not appear before the IO for investigation. Once again notice under Section 160 Cr.P.C. was issued requiring the petitioner to appear before the IO on 15.01.2011. The same was served on Ms.Neha Gupta, Advocate for the petitioner on 31.12.2010. Once again, the petitioner did not comply with the said notice. Yet again, the petitioner was required to appear before the IO on 14.10.2011. This notice was received by the petitioner's wife on 11.10.2011. The petitioner, however, did not join the investigation. On two occasions, the petitioner was required to appear before the Court vide *Pabandinama* dated 27.12.2011 and 19.01.2012 requiring the petitioner to appear before the Court on 04.01.2012 and 25.01.2012 respectively, but the petitioner did not so appear.

18. Mr. Katyal submits on the basis of the Case Diary that the same does not support the petitioner's claim that he appeared before the IO SI Parveen Kumar on 14.10.2011. The writing that he claims to have delivered is neither stamped nor dated. There is absolutely nothing on record of the Case Diary to suggest that the petitioner appeared to give his specimen signatures, or that he ever gave his specimen signatures, or that they were sent for forensic examination.

19. Mr. Krishnan has submitted that the arrest cannot be made only with a view to settle a civil dispute; to extract money from the accused, and that too, in relation to a time barred claim. He submits that the petitioner has been and is ready & willing to join the investigation even now and is willing to give his specimen signatures during the course of the day.

20. Having heard learned senior counsel for the petitioner as also Mr.Katyal, the learned APP and perused the case record, it appears to me that the petitioner is not deserving of any protection against arrest in the facts of the present case. It is clear from the Case Diary and its comparison with several status reports filed in Court proceedings and relied upon by the petitioner, that the status reports relied upon by the petitioner, which also appear to be the basis of the order passed by the learned Magistrate with regard to the so-called specimen signatures being sent for forensic examination, are not true to the record.

21. From the affidavit filed by the petitioner, it is evident that he is evasive and non-committal with regard to the specific dates when he appeared before the IO for his interrogation and the date on which he allegedly gave his specimen signatures. He is seeking to place reliance on the very status report and the Court order premised on the status report, which are factually disputed by the State on the basis of the Case Diary. The Case Diary shows that on three occasions the petitioner did not respond to notices issued to him and did not join the investigation on 27.08.2011, 15.01.2011 and 14.10.2011. He also did not appear before the Court on 04.01.2012 and 25.01.2012. It appears that the petitioner was able to pull strings to ensure that the investigation was not properly conducted when the matter was being dealt by the erstwhile IO – which explains the furnishing of the incorrect status reports before the Court and the laxed investigation in the matter. Pertinently, the factum of the petitioner not joining the investigation on the dates aforesaid, and his failure to appear before the Court despite notice, do not appear to have been brought to the notice of the

Ld. Magistrate. So far as the aspect of delay is concerned, it is evident that the FIR was registered only upon the complainant securing orders of the Ld. Magistrate in Section 156(3) proceedings. The delay after the registration of the FIR appears to on account of the lapses of the erstwhile IO and possible complicity of the petitioner. He cannot be heard to take advantage of the same. It is evident that the petitioner has avoided to join the investigation and, since he is the beneficiary of a scuttled and delayed investigation, it appears he is responsible for the delay so far.

22. In these circumstances, in my view, the custodial interrogation of the petitioner is absolutely necessary so that he is not in a position to influence the investigation into the offence alleged against him.

23. I find no merit in this petition and the same is, accordingly, dismissed.

24. Dasti.

VIPIN SANGHI, J

APRIL 07, 2015

B.S. Rohella