

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

Date of Decision: January 19, 2015

+ **CRL.M.C. 4622/2014 & Crl.M.A.No.15771/2014**

RAKESH RAJ Petitioner

Through: Ms. Geeta Luthra, Sr. Advocate
with Mr. V.NJha & Mr. Priyesh
Mishra, Advocates

versus

STATE OF DELHI Respondent

Through: Mr. Navin Sharma, Additional
Public Prosecutor for State with SI
Arun, EOW, Delhi
Mr. Sunil Chaudhary, Advocate for
Complainant

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **(ORAL)**

Vide impugned order of 22nd September, 2014 petitioner has been declined bail in FIR No. 51/2013 under Section 420/120B/467/408/468/409/471 IPC registered at Police Station Economic Office Wing, Delhi. Interim bail granted to petitioner vide order of 22nd August, 2014 was extended from time to time till passing of the impugned order and the purpose to grant interim bail was to facilitate selling of properties by the petitioner so that the amount of ₹9.66 crores could be deposited by petitioner.

Quashing of the impugned order is sought by learned senior counsel for petitioner on the ground that after grant of interim bail to petitioner, he had advertised in various newspapers, but the time was too short to enable him to sell his properties and so refusal of trial court to extend interim bail of petitioner was unjustified. It was pointed out by learned senior counsel for petitioner that impugned order does not deny bail to petitioner on merits and the undertaking of petitioner to deposit the amount in question was obtained while he was in custody. To contend so, attention of this Court is drawn to copy of petitioner's affidavit of 20th August, 2014 (*Annexure P-7*) and it was submitted that this affidavit was got attested in July. Reliance was placed upon decision in *Shashi Kapoor & Ors. v. State of NCT of Delhi* 2008 Cri L.J.1261 to submit that such a settlement has to be taken with a little pinch of salt and petitioner's bail application ought to have been heard on merits. Reliance was placed upon a decision of a coordinate bench of this Court in *Sandeep Chaudhary & Anr. v. State & Ors.* 2007 (94) DRJ 604 to submit that the bail had to be heard on merits and in *Sandeep Chaudhary* (supra) interim protection was extended for a period of two weeks to enable petitioner to seek bail on merits. Thus, quashing of impugned order is sought with direction to trial court to hear the petitioner's bail application on merits.

Learned Additional Public Prosecutor for State as well as learned counsel for complainant has drawn the attention of this Court to the trial court's orders of 26th August, 2014 and 29th August, 2014 to point out that petitioner had no bonafide intention to sell any of the properties and petitioner is enjoying interim bail without any bonafide intention to pay up the cheated amount. It was submitted that there is no objection of

hearing of petitioner's bail application on merits but to show his bonafides petitioner be directed to deposit a sum of ₹4.5 crores before it is done.

Upon hearing both the parties and on perusal of the impugned order and various other orders of trial court as pointed out above, the decisions cited and the status report filed by the respondent-State, I find that trial court was justified in not extending the bail of petitioner as there appears to be clear lack of bonafides on the part of petitioner to deposit the amount in question. Since petitioner's bail application has not been decided by trial court on merits, therefore, it is directed that petitioner's bail application be decided by the trial court on merits after giving opportunity of hearing to both the sides. So far as the question of interim protection is concerned, this Court finds that in case of *Sandeep Chaudhary* (supra) there is an interim protection granted by a Coordinate Bench of this Court in the facts of the said case as it pertained to a Memorandum of Understanding relating to an amount of ₹77 lacs odd, whereas in the instant case, no protection has been granted to petitioner and rightly so because of lack of bonafides on the part of petitioner to deposit the amount of ₹9 crores odd. Otherwise also, no premium can be placed on the conduct of the accused on his first obtaining interim bail while undertaking to pay the amount in question and later on not making any bonafide attempt to do so.

In the facts and circumstances of this case this Court is not inclined to interfere with the impugned order. However, trial court is directed to hear petitioner's bail application on merits after taking petitioner into custody.

Needless to say upon petitioner appearing before trial court and on filing a fresh comprehensive bail application, let it be decided by the trial court within four weeks from the date of filing of such application.

This petition is disposed with aforesaid direction and without commenting upon merits of this case, lest it may prejudice either side before trial court.

(SUNIL GAUR)
Judge

JANUARY 19, 2015
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