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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 09.10.2015

BAIL APPLN. 1295/2015

MANISH GHAI

..... Applicant

Through: Ms Kamlesh Mahajan, Advocate.

versus

STATE

..... Respondent

Through: Mr Rajat Katyal, APP with
SI Arun Kumar, PS- Punjabi Bagh.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an application under Section 438 of the Code of Criminal Procedure, 1973 praying for pre-arrest bail in FIR No.438/2015 under Section 420 IPC registered at Police Station- Punjabi Bagh, Delhi.

2. The case of the prosecution is that the applicant induced the complainant to purchase property bearing Plot No.146-149 situated at Village- Bakkarwala, Delhi, for an amount of Rs.7,50,000/- on 11.05.2014. The applicant misrepresented that he was the absolute owner of the subject property having purchased the same from one Sh. Sonu on 30.01.2014, who in turn had purchased the same from one Sh. Ravi Anand on 30.01.2014. The allegation against the applicant is that the subject property does not exist. It has been alleged that the subject property was sold to the complainant for an amount of Rs.1 crore whereas the documents pertaining to the sale of the subject property reflect only an amount of Rs.7,50,000/-. The subject property was stated to have comprised 1000 sq. yards.

3. Ms Mahajan, learned counsel appearing on behalf of the applicant, relies on a decision of the Hon'ble Supreme Court in ***Rakesh Baban Borhade v. State of Maharashtra & Anr.***, (2015) 2 SCC 313, to urge that since the dispute between the parties revolves around sale of a property, it is purely a business transaction and the question as to whether the applicant had a dishonest intention to cheat the complainant can only be gone into after the parties have adduced oral and documentary evidence. It is next urged on behalf of Ms Mahajan, learned counsel appearing on behalf of the applicant,

that the latter has joined investigation and has been co-operating with the police. Counsel submits that upon receipt of notice from the court the applicant made himself available for questioning to the IO in the subject FIR on 19.09.2015 and 20.09.2015. Ms Mahajan lastly states that the applicant is willing to deposit the agreed consideration of Rs.7,50,000/- with this court within two weeks.

4. On the other hand, Mr Katyal, learned APP appearing on behalf of the Police, states that despite repeated notices in this behalf the applicant has lately not joined investigation. Mr Katyal, would then urge that the applicant has steadfastly refused to show any documents with regard to the ownership of the land that he purportedly offered to sell to the complainant. Mr Katyal would next urge that it is an admitted position that the applicant executed the documents pertaining to the subject land in favour of the complainant. Mr Katyal lastly submits that the applicant is also involved in another FIR bearing No.507/2015 under Section 448/420 IPC registered at Police Station-Nihal Vihar, Delhi, wherein also the allegations against the applicant are that he has sold one property to two persons.

5. The decision of the Supreme Court in ***Rakesh Baban Borhade (supra)*** does not come to the aid of the applicant inasmuch as in that case the

property which had been the subject matter of an MOU was in existence. The only question that arose in that case was whether the applicant had sold the subject property as the legal heir of his father or as the representative of a company. It is in these circumstances that the Hon'ble court was pleased to observe that the question of dishonest intention qua the applicant could not be gone into before the parties had led evidence in that behalf. In the present case it is evident that the subject property which has been sold to the complainant is non-existent.

6. In view of the foregoing, since the applicant is not joining investigation and in view of the seriousness of the allegations levelled against him, in my view, the present is not a fit case for grant of pre-arrest bail.

7. The application is accordingly dismissed.

SIDDHARTH MRIDUL, J

OCTOBER 09, 2015

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