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

Judgment delivered on: 3rd September, 2015

\+ CRL.M.C. 3063/2015

MANU SINGH ..... Petitioner

Represented by: Mr. Pawan Sharma, Mr. Kuber Giri and Mr. Sarvpreet Singh, Advs.

versus

STATE OF NCT OF DELHI & ANR ..... Respondents

Represented by: Mr. Ravi Nayak, APP for State with SI Shailendra Kr., PS-EOW. Mr. Rajesh Chugh and Mr. Pankaj Pareek, Advs. for R2. Mr. Vineet Malhotra, Mr. Vishal Gohri and Mr. S. Kaushik, Advs. for DHFL.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

\+ **CRL.M.C. 3063/2015**

1. Vide the present petition, petitioner / complainant seeks setting aside of order dated 17.07.2015 passed by ld. ASJ-04, South-East District, New Delhi whereby respondent no. 2 was granted bail.

2. Ld. Counsel appearing on behalf of the petitioner submits that aforesaid order was passed on the ground that the petitioner / complainant despite having entered into several Agreements to Sell with respondent no. 2 and her husband had never bothered to invoke

his legal rights and remedies available to him under the law till date for non-compliance of the terms and conditions of those agreements on the part of the accused persons.

3. Ld. Counsel appearing on behalf of the petitioner submits that while granting bail, ld. ASJ has failed to appreciate that the respondent no.2 is a habitual offender involved in four other cases registered in different police stations across the NCT of Delhi. Thus, ld. ASJ ought to have appreciated that respondent no. 2 is a fugitive with bad antecedents. Moreover, she was apprehended at the IGI Airport while on her way back from Malaysia where she was hiding for the last one year. Moreover, co-accused Girish Chopra, husband of respondent no. 2 is still absconding and supposedly in Malaysia and proceedings under Section 82 Cr.P.C. have been initiated against him.

4. Ld. Counsel submits that ld. ASJ has not exercised its power properly by not considering the nature and gravity of the allegations contained in the FIR and the respondent no.2, who is a habitual offender within the meaning of Punjab Police Rules extended to NCT of Delhi deserves to be in custody as there is every likelihood of her tampering with the evidence, influencing the witnesses, leverage her influence and weaken the vade of the prosecution, if enlarged on bail.

5. The facts in brief are that petitioner was sold three mortgaged properties, i.e., at Lajpat Nagar, Hauz Khas and at Sukhdev Vihar. The agreement to sell in respect of property at Lajpat Nagar was executed vide sale deed dated 07.08.2012 in favour of the petitioner

and accordingly, respondent no. 2 and her husband took top up loan of Rs.2 Crore from Deewan Housing Finance Ltd. (DHFL) besides earlier loan of Rs.6 Crore. Thus, the total loan taken was of 8 Crore.

6. In so far as the property of Hauz Khas is concerned, respondent no.2 and her husband Girish Chopra took loan of Rs.3.58 Crore from DHFL. Respondent no. 2 purchased the said property for a total consideration of Rs.4.40 Crore on 07.10.2011 and received Rs.1.22 Crore from the father of the petitioner.

7. In addition to above, in the property of Sukhdev Vihar, respondent no.2 and her husband created equitable mortgage with the Bank of Baroda for an amount of Rs.8.54 Crore and purchased the entire built up property bearing 9, Sukhdev Vihar for Rs.8.25 Crore vide Registered sale deed dated 03.04.2008. In addition to above, number of other documents were executed in favour of DHFL and Bank of Baroda.

8. Ld. Counsel for the petitioner further submits that in the chargesheet it is specifically stated that apart from the petitioner, respondent no. 2 has duped number of other persons including financial institutions and thus misappropriated around 50 Crores from different persons. However, these facts have not been considered by the ld. ASJ while granting bail.

9. To strengthen his arguments, ld Counsel for the petitioner has relied upon a case of ***Tanu Goel and Anr. v. Girish Chopra and Ors. passed in CS (OS) 669/2011*** on 31.03.2011 and order dated 31.03.2014 ***passed in CS (OS) 195/2012 in the case of Rajender***

Kumar Goyal v. Girish Chopra and Anr.

10. Ld. Counsel appearing on behalf of the petitioner submits that in the aforesaid cases also respondent no. 2 and her husband had duped different persons and the cases are pending against them.

11. Ld. Counsel further submits that when the allegations are serious in such cases, the Court has to consider all the facts and thereafter exercised the power available. However, in the case in hand, the seriousness of the case and the character of the respondent no. 2, who is a habitual offender has not been considered and passed the order without giving any reasons.

12. On the other hand, ld. Counsel appearing on behalf of the respondent no. 2 submits that all the transactions with the petitioner were business transactions and that was under the documents executed between them and if any of the terms of the agreement or the document has been violated by respondent no. 2, petitioner was at liberty to challenge the same before the Court of law, however, he filed a complaint, which culminated into FIR in question.

13. Ld. Counsel further submits that respondent no. 2 is in custody since 10.06.2015 and joined the investigation. The matter has been investigated and chargesheet has already been filed. Her custodial interrogation is not required as all these facts have been considered by the ld. ASJ and accordingly admit her on bail.

14. To strengthen his arguments, ld. Counsel has relied upon a case decided by the Coordinate Bench of this Court on 22.04.2015 in ***State***

v. Dhananjay Singh, Crl.M.C. 5789/2014.

15. Ld. Counsel submits that law on granting and rejecting a bail is different. The life and liberty once granted by the Court cannot be subsequently taken away until and unless, the said accused has violated any terms and conditions of the bail. Admittedly, respondent no. 2 has not violated any terms of the bail, since she is still in custody. Therefore, the impugned order may not be disturbed and she may be allowed to be enlarged on bail.

16. Perusal of order dated 17.07.2015, it is revealed that ld. ASJ has rejected the contention of the petitioner that husband of respondent no. 2 is still absconding and if she is released on bail, she may flee from the judicial process and would not be available to face trial and even procurement of presence of her husband shall also become very difficult.

17. As stated by the counsel for the petitioner, the petitioner and his father had paid more than Rs.4 Crore to the respondent no2 / accused. This fact has been disputed by the counsel for the respondent no. 2, who submits that the total transaction was of Rs.2.26 Crore and the said amount has been returned to the petitioner, which has not been disputed by him. However, in reply filed by the respondent no. 2 it is admitted that husband of respondent no. 2 on few occasions while in need of funds on business had taken loan from the petitioner, who used to charge high rate of interest and as a collateral / additional security to the loan so provided by the petitioner. He also used to get certain property papers executed to acquire the property owned by the

respondent no. 2 or her husband. All the transactions entered between respondent no. 2 and petitioner were through banking challan.

18. It is further admitted that respondent no. 2 had executed certain documents in favour of the petitioner which after the transactions were to be returned back to the petitioner, but has not been returned as respondent no. 2 was held up with her son's education and that her husband had already deserted her and she alone was taking care of her minor children. It is further admitted that respondent no. 2 had gone to Malaysia on 08.01.2014 and stayed there for her son's education.

19. It is admitted by the counsel for the respondent no. 2 that the aforesaid case was registered on the complaint of the petitioner. The chargesheet has been filed and it is mentioned therein that since other co-accused are absconding, a supplementary chargesheet would be filed.

20. It is not in dispute that in the chargesheet it is specifically mentioned that the respondent no. 2 is a habitual offender. Four cases are registered against her. She had duped the petitioner and other complainants to the tune of Rs.50 Crore. In such eventuality, while granting the bail, ld. ASJ ought to record the facts of the case, the offence committed by the respondent no. 2, how much money is involved and how many persons were duped.

21. Moreover, it is not in dispute that the transactions with the petitioners were made after the property were mortgaged with the DHFL and Bank of Baroda.

22. Keeping in view the serious allegations levelled against the respondent no. 2 and her involvement in other similar four cases, I am of the considered opinion that if the respondent no. 2 is enlarged on bail, she may tamper with the evidence, influence the witnesses and flee from the judicial process. Moreover, the supplementary chargesheet has to be filed, thus, the case is at the stage of investigation. Therefore, I set aside the order dated 17.07.2015.

23. Accordingly, the petition is allowed.

Crl. M.A. Nos. 11392/2015 & Crl. M.A. 11993/2015

Dismissed as infructuous.

Dasti.

SURESH KAIT, J

SEPTEMBER 03, 2015

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