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

\+ BAIL APPLN. 2242/2015

SHIVENDER SINGH ..... Petitioner

Through Mr.S.P. Singh, Adv.

versus

STATE ..... Respondent

Through Ms.Alpana Pandey, APP.
Insp.Sanjeev Dhodi EOW.
Mr.A.K. Gupta, Adv. for complainant

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% 24.11.2015

The petitioner seeks bail in connection with FIR No.79/2011 (PS EOW) instituted for offences under Sections 406/420/467/468/471/120-B of the IPC.

It has been submitted on behalf of the petitioner that he is in custody in the present case since 08.11.2013 and there is no possibility of trial being concluded in the near future.

This Court has been apprised of the fact that charges have been framed against the petitioner and other accused persons in this case. However, no prosecution witness has been examined as yet.

The petitioner along with other accused persons including his father who is absconding is alleged to have defrauded the complainant company of Rs.12.50 crores. The petitioner and his father impressed upon the complainant that they are the Directors of M/s. Sarveshwari Estates Pvt. Ltd.

and that they had obtained a large tract of land in Gautam Budh Nagar, U.P. Due to paucity of funds, as was misrepresented by the petitioner and his father, the development of township over the acquired area could not be started. The complainant company became agreeable for funding the aforesaid venture. As part of initial payment regarding the project of developing a township, Rs.12.50 crores was paid in cash and cheque to the company of which the petitioner is one of directors. Subsequently, it was discerned by the complainant that M/s. Sarveshwari Estates Pvt. Ltd. did not have any license and NOC was never issued to them for developing any township in Gautam Budh Nagar, U.P.

When the fraud was detected, the parties entered into a Memorandum of Understanding in the year 2009 wherein the accused persons including the petitioner agreed to pay a sum of Rs.25 crores to the complainant by March 2010. Such a promise/understanding was never respected.

During investigation, it transpired that out of Rs.12.50 crores, Rs.66 lacs was transferred to a company run under the name and style of M/s. Radha Madhav Estates Pvt. Ltd. The petitioner is alleged to be one of the directors of the aforesaid M/s. Radha Madhav Estates Pvt. Ltd. It was further detected that the amount so received by M/s.Radha Madhav Estates Pvt. Ltd. was used by the petitioner for liquidating his personal liabilities.

Learned counsel for the petitioner, however, submits that as on date, the petitioner does not have anything to do with M/s.Radha Madhav Estates Pvt. Ltd. and that he left the company long time ago.

Learned counsel for the complainant has seriously opposed the prayer for bail of the petitioner. It has been submitted the ingredients of all the offences for which the petitioner has been charged are made out and hence the petitioner does not deserve the privilege of bail.

Learned counsel for the complainant, however, brought to the notice of this Court an order passed by learned Additional Sessions Judge-03, North-West, Rohini, New Delhi, in bail application no.9183, wherein one of the accused persons of this case namely Pramod Sharma has been granted bail. The order granting bail to co-accused Pramod Sharma takes note of the fact that an understanding has been arrived at between Pramod Sharma and the complainant and pursuant to such understanding, certain amount of money has also been paid to the complainant.

Be it noted that Pramod Sharma was not named in the FIR and his name transpired only during the course of investigation when it was learnt that out of Rs.12.50 crores which was paid to the M/s. Sarveshwari Estates Pvt. Ltd., Rs.5.50 crores was transferred in the account of Mr.Pramod Sharma.

The wife of the petitioner is present in the Court.

She has submitted that she is willing to vacate the IIIrd floor of House No.67, situated in Pandav Nagar, Delhi-91, which property has been purchased by the complainant company from M/s.Radha Madhav Estates Pvt. Ltd. who was also the beneficiary in the aforesaid fraud. Admittedly, the property does not belong to the petitioner or his wife. Such an undertaking/offer has been made for the purposes of securing bail for the petitioner. It has further been submitted that the petitioner be allowed to hand over the property, to the authorised representative of the complainant company, totally unencumbered and after paying all the electricity dues positively by 15.04.2016.

On the aforesaid offer, learned counsel for the complainant, on instructions, submitted that if that be done and such undertaking is respected in its entirety, he would have no objection if the petitioner is released on bail.

Considering such undertaking given by the wife, though orally, in the Court and which offer has been accepted by the complainant, as also taking into account the fact that petitioner has remained in custody for about 2 years even before the trial has commenced, this Court is inclined to grant bail to him subject to the conditions that if the undertaking given by the wife of the petitioner of handing over the IIIrd floor of House No.67, at Pandav Nagar, is not complied with by the stipulated date, the concession of bail would be withdrawn and the petitioner would be taken into custody.

Let the petitioner be released on bail on his furnishing a bond in the sum of Rs.25,000/- with two sureties of the like amount to the satisfaction of the Trial Court.

The aforesaid order has been passed on the undertaking of the wife of the petitioner namely Ms.Payal Singh.

The petitioner, it has been submitted, would be bound by such undertaking and in the event of such undertaking not being respected, it would be open for the complainant/Mr.Satish Luthra, Authorised Representative of the complainant company to prefer a two pages affidavit before this Court for having the privilege the bail withdrawn.

The vacant and unencumbered possession of the property aforestated ought to be handed over to Mr.Satish Luthra, AR of the complainant company by 15.04.2016.

The petitioner will not absent himself, without a valid cause, for two consecutive dates, before the Trial Court.

The application is allowed and disposed of accordingly.

ASHUTOSH KUMAR, J

NOVEMBER 24, 2015
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