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

Judgment delivered on : 31st March 2016

\+   CRL.M.C. 3637/2014

RAJVIR SINGH ..... Petitioner

Through: Mr. Vishwa Pal Singh, Advocate

versus

PANKAJ MADAN & ANR ..... Respondents

Through: Mr. Ajit Kumar Singh, Mr. Kumar Sameer, Advocates for respondent. Mr. Kamal Kumar Ghei, Additional Public Prosecutor for the State with Sub-Inspector Ashwani Kumar, Police Station EOW.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

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P.S. TEJI, J.

1. By this petition filed under Section 482 of Cr. P.C., the petitioner seeks cancellation of bail granted to respondent No. 1 by the learned Additional Session Judge, Patiala House Courts, New Delhi in a case registered as FIR No. 175/2012 under Section 406/409/420/468/471/120-B of IPC, Police Station EOW, New Delhi.

2. In nutshell, the prosecution case is that a complaint was made by Rajvir Singh (hereinafter referred to as the complainant), who deals

in the business of constructions work. The respondent No. 1 was representing himself as MD of M/s. Gen Next Trexim Pvt. Ltd., which intimated the complainant of having imported 500 MT Copper Cathode plates and induced the complainant to purchase the same for which the complainant made the payment of Rs.90 lacs by cheque, however, the goods were never delivered nor the said money was returned to the complainant. Respondent No. 1 thereafter represented himself to be the Director of one other company namely M/s. Gen Next Promoters Pvt. Ltd. dealing in the business of housing, mentioning that he is launching a project at Shimla, agreements have already been executed with the farmers and the FDI was also expected. The accused also introduced one Shailesh Hira Nandani as the representative of a foreign investor in Bangkok and also arranged a meeting with the complainant to make belief that process of taking loan was at the final stage.

3. The complainant was thus made to agree to meet with the routine expenses of the company till the final disbursement of the loan, by the foreign investors. The complainant thus lent a sum of Rs.2.5 crores as loan in instalments between February 2009 and April 2010 in cash and cheque. Thereafter, the respondent No. 1 executed an agreement with the complainant admitting his liability of Rs.4.4 crores as loan and issued three cheques from the company account totalling Rs.4.4 crores and in addition also took a further amount of Rs.2.5 crores in cash on 26.10.2010 from the respondent No. 1. The complainant was also made the Director of the company w.e.f.

01.09.2010 as well as authorized signatory of the bank account of the company. The above said cheques of Rs.4.4 crores bounced on presentation. The complainant was thus cheated to the tune of Rs.5.9 crores by the respondent No. 1 under a well planned conspiracy. The complainant has mentioned the figure of Rs.6.9 crores in FIR after calculating Rs.1 crores as interest and other damages.

4. Respondent No. 1 is stated to be the Director in both the above said companies which are not filing any return with the RoC. The above said cheque of Rs.90 lacs of the complainant was deposited in the bank account of respondent No. 1 company however, neither the Copper Cathode were imported nor was money returned to the complainant. It is further the case of the prosecution that the respondent No. 1 issued three cheques with total amount of Rs.4.4 crores in favour of the complainant after admitting his liability, however, sufficient amount for clearance of the said cheques never remained in the bank account and these cheques returned unpaid on presentation. It has also been stated that the accused entered into a collaboration agreement dated 02.05.2008 with one Mr. Mohender Chauhan, however, as per reply of Mr. Mohender Chauhan he never entered into the said agreement with the respondent No. 1 and has even denied his signatures in the collaboration agreement. The Investigating Officer has submitted the address of single witness Sh. Dharampal on the said collaboration agreement was not found in existence and even as per the reply from Town and Country Planner neither any proposal nor any approval for the project at Shimla was

given.

5. The petitioner is stated to be in custody since 05.07.2013 and during pendency of the investigation, the respondent No. 1 applied bail from the court of learned Metropolitan Magistrate, which was rejected on the ground of pendency of investigation. Another application for bail was rejected by learned Chief Metropolitan Magistrate, Patiala House Court, New Delhi vide order dated 24.07.2013. Further application for bail was rejected by learned Additional Session Judge 01, Patiala House Court vide order dated 27.08.2013. Another application of respondent No. 1 for seeking bail was rejected by learned Chief Metropolitan Magistrate, Patiala House Court, New Delhi while observing the allegations being serious in nature. Thereafter, another application for bail was rejected by learned Additional Session Judge, PHC, New Delhi vide order dated 16.12.2013. Respondent No. 1 also filed a bail application before this court which was withdrawn by the applicant on 25.04.2014.

6. Respondent No. 1 ultimately granted bail by the learned Additional Session Judge 04, / Vacation Judge, Patiala House Court, New Delhi vide order dated 03.06.2014 by observing that the earlier applications filed by respondent No. 1 were rejected as the charge sheet was not filed and also considered the fact that an agreement has been entered into between the parties and there is an acknowledgement and admission on the part of respondent No. 1 that he had taken a sum of Rs.4 crores from the complainant out of which

an amount around Rs.1.7 crore was given by the complainant by way of bank transactions and Rs.2.5 crore was stated to have been paid by him in cash. The learned Additional Session Judge also considered the fact that the investigation qua the present accused was over and charge sheet had been filed and the evidence of the case being rested upon documents, therefore, the bail was granted to the respondent No. 1.

7. Mr. Vishwa Pal Singh, learned counsel for the petitioner contended on behalf of the petitioner that respondent No. 1 had concealed the material fact from the Trial Court while seeking bail vide impugned order as he did not inform that his bail applications were thrice rejected by learned Metropolitan Magistrate and twice by learned Additional Session Judge. It is further contended on behalf of the petitioner that the respondent No. 1 has concealed the fact of filing bail application before this court in which investigation of the case was directed to be conducted by Serious Fraud Investigation Office. Therefore the bail granted to the respondent No. 1 deserves to be cancelled.

8. Mr. Ajit Kumar Singh, learned counsel for the respondent No. 1 contended that respondent No. 1 has not concealed any fact from the Trial Court while applying for bail. In fact, the impugned order itself records the similar contentions raised herein, regarding rejection of respondent No. 1's bail applications by learned Metropolitan Magistrate, learned Chief Metropolitan Magistrate, learned Additional Sessions Judge. So far as filing of bail application before this Court is

concerned, no material proceedings were held before this Court and the same was withdrawn at the very outset. The impugned order further records that the earlier dismissals of bail applications of respondent No. 1 were before filing of the charge sheet. So far as order of dismissal of bail application after filing of charge sheet is concerned, the impugned order records that the respondent No. 1 had not made any offer for return of the amount and therefore the learned Additional Sessions Judge declined to exercise any leniency in his favour. However, as per the impugned order the respondent No. 1 had entered into an agreement between the parties and acknowledged and admitted the liability.

9. Mr. Kamal Kumar Ghei, Additional Public Prosecutor appears on behalf of the State and submitted that the investigation of the case has been completed and the charge sheet has been filed and the matter is pending consideration before the Trial Court.

10. I have heard the contentions raised by learned counsel for the petitioner as well as learned counsel for the respondent No.1 and also gone through the impugned order passed by learned Additional Sessions Judge.

11. The admitted facts of the case are that the charge sheet in this case has been filed. Perusal of the petition also shows that the petitioner has nowhere stated that the respondent No. 1 has disobeyed the direction of the Trial Court granting bail nor is there any averment with regard to the fact that the respondent No. 1 has tried to influence

the witnesses of the case or flouted any direction passed by learned Additional Session Judge in its order granting bail to the respondent No. 1.

12. The Hon'ble Supreme Court in ***Abdul Basit Vs. Abdul Kadir Choudhary, (2014) 10 SCC 754*** held as under:-

> *18. Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody, i.e., the power to cancel the bail granted to an accused person.*
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> *Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive."*

13. This Court observes that the learned Additional Sessions Judge had granted the bail to the respondent No. 1 on the ground that the charge sheet has been filed and also in view of the cardinal principal of criminal jurisprudence that a person without holding him guilty

after conclusion of his trial cannot be punished by detaining him in custody for an indefinite period. This Court further observes that even the State has not raised any contention against the respondent No. 1 stating that he has misused the concession of bail, therefore in the light of the settled principles regarding cancellation of bail, as mentioned above, this Court find no merit in the contentions raised by the petitioner for cancellation of bail already granted to respondent No. 1. Accordingly, the present petition filed by the petitioner is hereby dismissed.

14. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for cancellation of bail made by the petitioners. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

15. In view of the aforesaid directions, the present petition filed by the petitioner is disposed of.

(P.S.TEJI)
JUDGE

MARCH 31, 2016
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