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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and Order : July 28, 2016

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BAIL APPLN. 1232/2016

AMARDEEP SHARMA

..... Petitioner

Through: Mr. Manish, Advocate

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, Additional Public
Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE P.S. TEJI

ORDER

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12.07.2016

P.S. TEJI, J. (Oral)

1. By this petition filed under Section 438 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.), the petitioner is seeking bail in FIR No. 2028/2015 under Section 420 of Indian Penal Code, at Police Station Rajouri Garden, New Delhi.

2. It is alleged in the FIR that the accused entered into an agreement with the complainant for sale of property No.B-8, Mohan Garden, Uttam Nagar, Delhi and against which a sum of Rs. 13 lacs was taken as an earnest money but subsequently the property was not transferred to the complainant. It has been further alleged that the complainant found that the property does not belong to the petitioner. Therefore the case of cheating was registered against the petitioner.

3. Learned counsel for the petitioner submitted that he took a sum of Rs.10 lacs from the complainant and not Rs.13 lacs and

subsequently, he offered the other property as the property was not with the petitioner. It is further contended on behalf of the petitioner that the recovery of the money could not be a ground for rejection of the bail. In support of his contention, he relied upon the judgment of the Supreme Court in *M.R. Narayanan vs. State, 2003 (66) DRJ 48 (DB)*.

4. Mr. Amit Chadha, Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions made on behalf of the petitioner and contended that there are recordings of conversations between the complainant and the petitioner during the period of November 2014, wherein the complainant demanded his money back from the petitioner and the petitioner gave him assurance that he shall return the money. Not only this, but there is a proof of payment and bayana receipt on record and during investigation it was revealed that the petitioner was not the owner of the property in dispute against which he had received Rs.13 lacs from the complainant by representing himself as the owner of the property. The whereabouts of the petitioner could be traced with great difficulty and after long efforts for months. Notice was also served upon the petitioner on 03.04.2016 to join the investigation but even then he did not join the investigation. It is further submitted that the petitioner has filed an application for seeking anticipatory bail before the learned Additional Sessions Judge and upon expressing his willingness to settle the matter, petitioner and the complainant were referred to the mediation and the petitioner was directed to join the investigation. During interrogation, the petitioner disclosed that he was constructing the

building at B-8, Mohan Garden Uttam Nagar, under a Collaboration Agreement with owner Jagdish Chander, according to which he was entitled to sell the second and third floor of built up property. But, he did not produce any collaboration agreement with the owner of the property. Lastly, it is submitted that since the mediation between the parties has failed, and the petitioner has not returned the amount to the complainant till date, therefore in the facts of the case, the present bail application filed by the petitioner be rejected.

5. I have heard counsel for the petitioner as well as learned Additional Public Prosecutor for the State and also gone through the material on record. It is an admitted fact that initially the anticipatory bail was granted to the petitioner and the matter was sent for mediation, which ultimately ended as a 'non-settlement'.

6. During the course of arguments, the Court made an inquiry from the counsel for the petitioner as to whether he was ready to perform his part of agreement regarding sale of property No. B-8, Mohan Garden, Uttam Nagar, Delhi, to which he replied that he is offering the other property to the complainant to which he did not agree.

7. In the facts and circumstances of the present case, this Court observes the fact that the petitioner had took the money but did not deliver the possession of any property to the complainant till date. The petitioner having taken the money in October 2012, has not performed his part of the contract and is sitting over it.

8. After hearing counsel for the parties, it is apparent that the petitioner took the money for sale of property which he is not in a

position to sell, even today. On the other hand, the complainant had lost his money and does not have the property till date. In the considered opinion of this Court, this is a clear cut case of cheating under Section 420 of IPC, in which the petitioner has taken the money for selling the property and till date neither possession of any property has been delivered to the complainant nor has he returned the money. In such a situation, in the considered opinion of the Court, the petitioner is not entitled to concession for grant of anticipatory bail.

9. Resultantly, in the considered opinion of this Court, the facts emerging from the record culminate into the dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed.

10. 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 bail made by the petitioner. 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.

11. With aforesaid direction, the present bail application stands disposed of.

P.S.TEJI, J

JULY 28, 2016

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