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

+ **BAIL APPLN. 1609/2016**

PAWAN TYAGI

..... Petitioner

Represented by: Mr. Bharat Sharma, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Mr. Ravi Nayak, APP with
Insp. Umesh Sharma, EOW.
Mr. Subodh K. Pathak, Adv.
for complainant.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

07.11.2016

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1. By the present petition, the petitioner seeks anticipatory bail in case FIR No.151/2015 under Sections 406/120B IPC registered at PS Economic Offences Wing.
2. The allegations of the complainant in the FIR were that he had joined a firm namely Balaji Constructions as a partner with Sachin Dutta, his mother Tripta Dutt and father R.K. Dutta who were also the partners of the said firm. The complainant started making investment in M/s Balaji Constructions besides the other newly incorporated company M/s Build Serve Pvt. Ltd. On the inducement of Duttas, Narender Barmecha i.e. the complainant invested crores of rupees in the last four years and finally realized that all the assurances made by the accused were false and no projects as assured were launched by them. On feeling cheated, he

expressed his desire to retire on 15th October, 2014 and sought rendition of accounts. Vide retirement deed dated 3rd November, 2014, he quit the firm and his account was settled for an amount of ₹11.5 crores. To secure the interest of the complainant till payment were made, four properties belonging to the firm were mortgaged in favour of the complainant in terms of letter dated 5th November, 2014. However, the possession of these properties continued with Duttas. The original title deeds of all the four properties were handed over to the complainant. Later on the complainant came to know that those properties which were mortgaged to him were fraudulently transferred to one Nathu Singh Tyagi and his son Pawan Tyagi i.e. the petitioner herein vide sale deeds dated 11th March, 2015, 24th March, 2015 and 30th March, 2015.

3. This Court has already granted anticipatory bail to Nathu Singh Tyagi considering the facts noted above. However, when Nathu Singh Tyagi approached this Court, he was not declared proclaimed offender and proceedings under Section 82 Cr.P.C. were instituted but not finalized. In the present case when the petitioner approached this Court, he had been declared proclaimed offender. Notice was issued only on the count that when the matter was pending before the learned Trial Court during interim protection, the petitioner was not called to join the investigation. A perusal of the status report would reveal that the process under Section 82 Cr.P.C. was initiated against the petitioner on 3rd March, 2016 and report was to be filed on 23rd April, 2016 which was duly filed. Statement of the process server was recorded on 10th May, 2016 and the petitioner was declared proclaimed offender on 10th June, 2016. Learned Trial Court had granted interim protection to the petitioner on 5th May, 2016 which continued till 2nd

June, 2016 and after withdrawal of the interim protection, he was declared proclaimed offender on 10th June, 2016. Merely because the petitioner was not called to join the investigation during the period he was granted interim protection, it cannot be held that the order declaring him proclaimed offender was illegal or not valid. Though on facts the petitioner can claim parity with Nathu Singh Tyagi his father however in view of the decision of the Supreme Court reported as (2014) 2 SCC 171 State of Madhya Pradesh Vs. Pradeep Sharma which holds that no anticipatory bail can be granted once a person is declared proclaimed offender, the present petition is liable to be dismissed.

4. Consequently, the petition is dismissed.

MUKTA GUPTA, J.

NOVEMBER 07, 2016
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