

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

Judgment delivered on : January 06, 2016

+ **BAIL APPLN. 2820/2014**

RAM BHARDWAJ

..... Petitioner

Through: Mr.A.V. Shukla, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Manjeet Arya, Additional Public
Prosecutor for the State with WSI
Renu, Police Station Sarai Rohilla.
Mr.P.P. Ahuja & Mr.J.S. Kohli,
Advocates for Respondent No. 2 with
respondent no.2 in person.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

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 the anticipatory bail in a case registered as FIR No. 975/2014 under Section 448/506/380 of IPC registered at Police Station Sarai Rohilla, Delhi.

2. The background of instant dispute arises out of an agreement for sale of property by the complainant – C.S. Ahluwalia in favour of

the applicant. As there was loan against the property, one Mr. Avtar Singh entered into an agreement with the complainant and repaid the loan in respect of the disputed property bearing No.9935, K.L. Gupta Complex, New Rohtak Road, Delhi. The possession of the property was already with the petitioner. To have the sale deed registered in the name of the petitioner, he filed a civil suit before the Senior Civil Judge, Tis Hazari Courts, Delhi, seeking injunction, in which summons have been issued in the name of complainant and Mr. Avtar Singh.

3. The instant case has been registered against the applicant at the instance of complainant – C.S. Ahluwalia, who is the owner of property bearing No.9935, K.L. Gupta Complex, New Rohtak Road, Delhi and agreed to sell the same to the applicant for a consideration of Rs.70 lacs, out of which he has received Rs.5 lacs as token money. In this regard a 'Receipt' was executed between them on 29.12.2012 and on the same day, the possession of the property was handed over to the applicant.

4. Record of this case also shows that there is a 'Bayan karta' duly signed by the complainant on 22.11.2013, stating therein that he has

handed over the possession of the property to the petitioner and he has no concern over the said property.

5. Mr. A.V.Shukla, counsel for the petitioner contended that the complainant even after signing the 'bayan karta' on 22.11.2013, he filed the instant complaint at the instance of Mr. Avtar Singh. It is further contended on behalf of the petitioner that a notice under Section 160 of Cr. P.C. has been received by the petitioner and he had also joined the investigation. It is further contended on behalf of the petitioner that initially the FIR was registered under Section 448/506 of IPC, which are bailable offence but in order to harass the petitioner, the offence punishable under Section 380 of IPC was included for the reasons best known to the Police Authorities.

6. While referring to the order dated 23.12.2014, passed by the learned Additional Sessions Judge, dismissing his bail application, it is contended that the said application has been rejected solely upon considering the copy of the 'Bayan Karta' and mentioning the witnesses thereon, however it is undeniable that the statement has been written and signed by the Complainant.

7. Order sheet dated 08.01.2015, reveals that the counsel for the

petitioner on instructions submitted that by handing over the possession of the premises in question to the Complainant, his civil suit would be rendered infructuous and without prejudice to his rights, a sum of Rs.65 lacs would be deposited with the Registrar General of this Court within four weeks and the property dispute can be amicably resolved through intervention of Avtar Singh, whose name finds mention in the statement recorded on 22.11.2013 of the Complainant. Additional Public Prosecutor for the State also did not averse the possibility of an amicable resolution of the dispute. Accordingly, subject to petitioner depositing a sum of Rs.65 lacs with the Registrar General of this Court within four weeks, parties alongwith Avtar Singh were directed to appear before Delhi High Court Mediation and Conciliation Centre on 7th February 2015 at 11:00 a.m. and thereafter as and when called.

8. Perusal of order sheet dated 25.3.2015 reveals that Mediated Settlement Agreement of 03.03.2015 was arrived at and counsel for the petitioner submitted that the settlement between the parties has been enacted upon. Accordingly, in the event of arrest, petitioner was admitted to bail upon furnishing his bail bond in the sum of

Rs.10,000/- with one local surety in the like amount to the satisfaction of the Investigating Officer.

9. On 28.04.2015, an application being CrI.M.A. No.6209/2015 under Section 439(2) of Cr.P.C. was filed on behalf of Avtar Singh seeking cancellation of interim protection granted to the petitioner vide order dated 25.03.2015. On 03.08.2015, petitioner had paid a sum of Rs.10 lac in cash to respondent No.2 – Avtar Singh and counsel for the petitioner on instructions submitted that outstanding amount of Rs.55 lac will be paid to respondent No. 2 within a period of three months and respondent No. 3 – C.S. Ahluwalia, submitted that after receiving 'No objection' from respondent No.2, he will transfer the title of the property in question in favour of the petitioner before the next date of hearing.

10. Ultimately, on 04.12.2015 this Court while perusing the previous order sheets, recalled the order dated 25.03.2015 granting concession of anticipatory bail to the petitioner and fixed the bail application for re-hearing on 14th December 2015.

11. Ms. Manjeet Arya, Additional Public Prosecutor for the State submitted that the petitioner is charged under Section 380 IPC which

is a non-bailable offence and the petitioner has not complied with the terms of settlement arrived at between the parties through the medium of Delhi High Court Mediation & Conciliation Centre, and the case is at an initial stage, therefore, the petitioner ought not be granted bail in this case.

12. I have heard the submissions made by counsel for the petitioner and the learned Additional Public Prosecutor for the State and also gone through the material placed on record.

13. Upon careful scrutiny of the case what this Court observes is that the petitioner was granted interim protection only on the ground of settlement being arrived at between the parties before the Delhi High Court Mediation & Conciliation Centre on 3rd March 2015 and on non-compliance of the terms of the settlement only, the application for cancellation of bail was allowed.

14. This Court is conscious of the fact that the grounds for rejection of bail in a non-bailable case at the initial stage and for the cancellation of bail granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already

granted. While cancelling the bail, the Court must see whether the accused attempted to interfere with the due course of administration of justice or evaded or attempted to evade the due course of justice or abused the concession granted to the accused in any manner.

15. This Court observes that it is admitted fact between the parties that the petitioner was granted bail primarily on the ground of settlement agreement arrived at between the parties through the medium of Delhi High Court Mediation & Conciliation Centre. This Court also observes that on 3rd August 2015, counsel for the petitioner on instructions submitted that the outstanding amount of Rs.55 lac would be tendered to respondent No. 2 within a period of three months. It also records that complainant - respondent No. 3 herein submitted that after receiving 'no objection' from respondent No. 2, he will transfer the title of the property in question in favour of the petitioner. Order dated 4th December 2015 records the undertaking of the petitioner that he has paid a sum of Rs.10 lac to respondent No. 2 and the balance amount would be paid within a period of three months and the fact is that the petitioner has failed to deposit any amount till date.

16. No doubt, there are civil litigations pending between the parties and the same can be adjudicated by leading cogent evidence. The bail granted to the petitioner vide order dated 8th January 2015 was based on undertaking of the petitioner and despite sufficient time being granted to the petitioner, he has failed to perform his part of obligation and the petitioner has not come forward to explain the circumstances, due to which he could not perform his part of settlement.

17. In the considered opinion of this Court, if a party is permitted to resile from an undertaking given to the Court, the same would completely destroy the sanctity to such solemn undertaking and would encourage dishonesty and disrespect for the judicial process. It would also undermine the majesty and authority of Courts, and instill doubts in the minds of the litigating public with regard to the efficacy of the judicial process and, in particular, with regard to the process of accepting undertaking by the Court and of the efficacy of the undertaking given to the Court by a party.

18. In view of the aforesaid discussion and the facts and circumstances of the present case, this Court finds that the petitioner

has not complied with the terms of the settlement arrived at before Delhi High Court Mediation & Conciliation Centre, and the petitioner cannot be allowed to wriggle out from performing his part of obligation. Therefore, in the considered opinion of this Court, the petitioner is not entitled to have the benefit of concession of anticipatory bail. Accordingly, the bail application filed by the petitioner is dismissed.

19. Needless to say that anything observed in this petition, shall not have any bearing on the merit of the case during trial.

20. With aforesaid directions, the bail application stand disposed of.

(P.S.TEJI)
JUDGE

JANUARY 06, 2016
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