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

+ **CRL.M.C. 4094/2016**

SIDHARTH GUPTA

..... Petitioner

Represented by: **Mr. Vijay K. Jain, Adv.**

versus

STATE (NCT OF DELHI) & ANR.

..... Respondent

Represented by: **Ms. Rajni Gupta, APP with SI
Shiv Dev Singh, PS EOW.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **03.11.2016**

Crl.M.As. 17094-17095/2016

Exemption allowed, subject to all just exceptions.

Crl.M.C. 4094/2016 & Crl.M.A. 17096/2016

1. By the present petition, the petitioner challenges the order dated 17th October, 2016 whereby the revision petition filed by him challenging the order of the learned Metropolitan Magistrate dated 20th July, 2016 cancelling his bail was dismissed.

2. A brief exposition of facts. FIR No.135/2013 under Sections 420/120B IPC was registered on the complaint of Mrs. Rajni Jain against Nitin Agarwal, Sidhartha Gupta the petitioner herein, Kailash Nath Gupta, K.K. Yadav and Balveer Singh. The complainant alleged that she was proprietor of M/s Siddi Traders and also Director of M/s Crony Infracom Pvt. Ltd. Nitin Agrawal. Sidharth Gupta and Kailash Nath Gupta came to

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the complainant and represented that they hold a plot at DLF admeasuring 624 sq.yds. in Khasra No.20/17 situated at Rajouri Garden Extn., New Delhi and offered to sell the same for a consideration of ₹2.5 crores. The accused assured her that they would take steps to register the said plot directly from DLF in the name of the complainant and stated that they had talks with K.K. Yadav and Balveer Singh, the officials of DLF. A meeting was arranged by Nitin Agrawal, Sidharth Gupta and Kailash Nath Gupta with the officials of the DLF namely K.K. Yadav and Balveer Singh in the presence of husband of the complainant and the complainant was assured that if she deposited ₹1.5 crores with the DLF then the DLF would execute the sale deed in the name of the complainant. Thus, she went ahead with the agreement of purchase of the plot for a consideration of ₹2.5 crores and handed over two demand drafts of ₹75 lakhs each to Nitin Agrawal, Siddharth Gupta and Kailash Nath Gupta. After the same when the complainant sought for transfer of plot, no steps were taken by Nitin Agrawal, Sidharth Gupta and Kailash Nath Gupta. Finally the complainant sent a letter dated 19th October, 2011 stating that no sale deed should be executed in favour of Nitin Agrawal and Sidharth Gupta as the payment had been made by her. The complainant alleged cheating of ₹1.5 crores.

3. Sidharth Gupta was arrested on 27th August, 2013. On 2nd September, 2013 when his bail application came up for hearing, counsel for both the parties submitted that the matter had been amicably settled and the learned CMM passed the following order granting bail to the petitioner:-

“Further arguments on bail application of accused heard. Record perused. Counsel for complainant and accused submit that both the parties have amicably settled their dispute. It has
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been agreed between the parties that accused will transfer 60% of his share in land admeasuring 522 sq. Meters situated at Khasra no.20/17, Village Titar Pur now known as Rajouri Garden, Delhi to complainant on receiving Rs.25 lacs by way of bank draft from her. Rs.25 lacs is the amount which has admittedly been incurred by accused in the stamp duty and maintenance charges in respect of the plot in dispute. The complainant will also withdraw the suit filed by her against accused before Hon'ble High Court of Delhi. On receiving the amount of Rs.25,00,000/- by accused from complainant, he will execute the sale deed in respect of 60% of his share in favour of complainant within a week. Before execution of Sale Deed, the complainant will move the appropriate application before Hon'ble High Court of Delhi for withdrawal of the suit against accused.

Accused was arrested in the case on 27.08.2013. he was given in police custody for two days. He is running in judicial custody in this case since 30.08.2013. Accused is no more required for his custodial interrogation. Recovery of incriminating material, if any, has already been effected at the instance of accused.

The complainant has already filed a civil suit for Specific Performance, Declaration, Perpetual Injunction and Damages against the present accused and others in respect of the property which is involved in this case. Vide order dated 11.07.2012, Hon'ble High Court of Delhi has already granted ex-parte stay in favour of complainant and against the accused persons in respect of the property in dispute. The civil suit is still pending before Hon'ble High Court. Relief sought in civil suit in respect of the property in question. The same property is involved in this case.

Keeping in view the aforesaid facts into account, amicable settlement of dispute between the parties and entirety of the fact & circumstances of the case, accused is admitted to bail on his furnishing a personal bond in the sum of Rs.1,00,000/- with one surety in the like amount, subject to following terms & conditions:

1. *The accused shall join the investigation in future as and when required.*
2. *The accused shall not tamper the prosecution witnesses and he will not directly or indirectly influence the witnesses.”*

4. After availing the benefit of order, the petitioner did not comply with the terms even though the suit filed by the complainant in this Court being CS(OS) No.1989/2012 was also withdrawn by the complainant. Thus, an application for cancellation of bail was filed by the complainant wherein the petitioner took the pleas that he made expenses for registration fee, stamp duty, upkeep and maintenance of property, security provisions, erection of boundary wall, fee of Architect for preparing plan of building and processing charges to Corporation etc. thus had spent ₹80 lakhs in addition to ₹50 lakhs paid to DLF Ltd. totalling to ₹1.3 crores. It was further stated that the petitioner was in judicial custody and no compromise was finalized or reduced into writing. The letter dated 23rd September, 2012 on the basis of which the complainant claimed 60% of share was not signed by the petitioner. There being no compromise deed filed before this Court, application under Order 23 Rule 3 CPC was not maintainable.

5. Learned CMM vide order dated 20th July, 2016 held that the language of the order dated 25th October, 2013 was clear and bail was granted to the petitioner on the ground of compromise between the parties on 2nd September, 2013 on the joint submissions made before the Court by counsel for complainant and defence counsel. The vakalatnama in favour of the counsel had been executed by the petitioner on 28th August, 2013. Thus, even if the petitioner was in custody, the counsel was acting on his behalf.

Since the petitioner failed to honour the settlement, the bail was cancelled. Similar view was expressed by the revisional Court vide the impugned order dated 17th October, 2016.

6. The primary contention of learned counsel for the petitioner was that since the petitioner was in custody on 2nd September, 2013 and no compromise deed was filed, thus no settlement was effected and the order passed by the learned CMM on 2nd September, 2013 was on merits as the Court also noted that the petitioner had been in custody for two days and in judicial custody from 30th August, 2013 and his custodial interrogation was no more required. Further recovery of incriminating material, if any, had already been effected. Thus the order on bail being on merits, even if settlement was not given effect to the same could not have been cancelled.

7. It is not disputed by learned counsel for the petitioner that counsel for the petitioner who appeared on 2nd September, 2013 at the time of grant of bail had a valid vakalatnama in his favour which was filed before the learned Trial Court. Thus, the counsel had the authority to make the statement on behalf of the petitioner even in his absence. The said statement of learned counsel for the petitioner binds the petitioner and today having taken benefit of the said statement the petitioner cannot retract and say that he is not bound by the said statement of the counsel. Moreover, observations of the learned Trial Court in the order dated 2nd September, 2013 that no more custodial interrogation of the petitioner was required and recovery, if any, had been effected from the petitioner were observations of the learned CMM supplementing the main ground for grant of bail i.e. the settlement arrived at between the parties. By the present petition, the petitioner does not seek

bail dehors the settlement on the merits but is challenging the order dated 20th July, 2016 passed by learned CMM cancelling the bail and the order of the learned Additional Sessions Judge dated 17th October, 2016 dismissing the revision petition.

8. Finding no infirmity in the two orders, the present petition and application are dismissed.

MUKTA GUPTA, J.

NOVEMBER 03, 2016
‘v mittal’