

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

Judgment delivered on : June 13, 2016

+ CRL.M.C. 4144/2015 & CrI.M.A. No.14821/2015 (Stay)
SATISH KUMAR AGGARWAL & ORS Petitioner
Through: Mr.Kuber Giri, Mr.S. Singh,
Advocates
versus
STATE OF NCT OF DELHI & ANR Respondent
Through: Mr.Rajat Katyal, Additional Public
Prosecutor for the State.
Mr.Vineet Malhotra, Mr.Vishal Gohri,
Advocates for respondent No. 2.

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

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 439(2) read with Section 482 of Cr. P.C. the petitioners seeks cancellation of bail granted to respondent No.2 - Ms. Ashima Chopra vide order dated 13.08.2015 passed by learned CMM, Saket courts, Delhi which was confirmed by order dated 29.09.2015 passed by learned Additional Sessions Judge, Saket Courts.

2. The FIR in present case is registered for committing cheating and forgery for the purpose of cheating, extortion, criminal intimidation, criminal breach of trust, fraud and criminal conspiracy is that the complainant Mr. Rupinder Singh Bhatia alleged that he alongwith his wife Mrs. Rajinder Kaur are the bonafide owners of a

flat at 3rd floor (with terrace rights) building No.3, Block L, Lajpat Nagar III, New Delhi. It is stated that they purchased this flat in June 2012 and registration papers were executed by Shri Rajiv Verma and Mr. Sanjay Sachdeva who were holder of GPA of accused Ashima Chopra, the owner of the plot. It is further stated by the complainant in his complaint that they were shocked to know on 24.03.2014 that a possession notice was pasted outside the building by M/s. Dewan Housing Finance Corporation Limited under Section 13(4) of SARFAESI Act taking symbolic possession of the flat/property, on the ground that this land was mortgaged by the owner accused herein Ashima Chopra with Mr. Girish Chopra (her husband) as co-borrower with M/s. Dewan Housing Finance Corporation Limited for a loan of Rs.6,34,31,460/- and Rs.2,13,73,227/- and as they have failed to repay the said amount this property belongs to M/s. Dewan Housing Finance Corporation Limited. It is alleged that the complainant has suffered wrongful loss at the hands of accused persons. The complainant lodged a complaint with EOW Mandir Marg Police Station and on the basis of the complaint, present FIR was registered.

3. During investigation, it was found that three other complaints with similar allegations leveled against Shri Rupinder Singh Bhatia were received at EOW. All the complaints were clubbed together and were investigated into. It was found that the accused Ashima Chopra (respondent No. 2 herein) knowingly concealed the fact of mortgage and misrepresented the purchasers that the original documents have been lost. In this regard, the respondent No. 2 also got registered false

report vide No.967/2012 dated 05.06.2012 at Police Station Mehrauli, regarding loss of her original document in respect of property No.L-3/3, Lajpat Nagar, Part II, New Delhi.

4. The learned CMM observed that the accused was arrested on 10.06.2015 and produced before the duty MM on 11.06.2015 wherein she was remanded to police custody for two days and thereafter she was sent to judicial custody on 13.06.2015 and since then she is in judicial custody. It was also observed that the investigation in the present case is complete and charge sheet has also been filed, and the fact that no further police custody of Ashima Chopra is sought by the investigating agency, no fruitful purpose will be served by keeping the accused behind the bars. Accordingly, the learned CMM passed an order dated 13.08.2015 whereby the accused/respondent No. 2 was ordered to be released on bail subject to furnishing personal bond in the sum of Rs.1 lac with a surety in the like amount.

5. Aggrieved by the aforesaid order passed by the learned Chief Metropolitan Magistrate, the petitioners preferred an application under Section 439(2) of Cr. P.C. for cancellation of the bail granted to respondent No. 2 before the Court of learned Additional Sessions Judge, Saket Courts, Delhi. The learned Additional Sessions Judge after hearing the arguments and going through the judgments cited on behalf of petitioners as well as of the accused/respondent No. 2 observed that the grounds taken in the application seeking cancellation of bail are based on mere whims, fancies, surmises and conjunctures

of the applicants, as nowhere it has been stated that respondent No. 2 had indulged into commission of similar kind of offences or had attempted to either hamper the investigation or had intimidated the witnesses in this case. Mere fact that the husband of the respondent No. 2 is absconding and had run away to Malaysia, cannot be a ground for cancellation of bail. Accordingly, finding no illegality or infirmity in the order passed by learned Chief Metropolitan Magistrate, the learned Additional Sessions Judge dismissed the application filed by the petitioners.

6. Aggrieved by the order passed by learned Chief Metropolitan Magistrate as well as learned Additional Sessions Judge the petitioners have preferred the present petition for seeking cancellation of bail granted to respondent No. 2 by setting aside of the orders dated 13.08.2015 and 29.09.2015.

7. Mr. Kuber Giri, learned counsel for the petitioners contended that respondent No. 2 is involved in more than five cases registered at Police Station EOW, Police Station Mehrauli and in one of such FIRs, this Court has cancelled the bail granted to respondent No. 2. Against the cancellation of bail, the respondent No. 2 preferred SLP before the Hon'ble Supreme Court, which was dismissed vide order dated 14.09.2015. It is further contended on behalf of the petitioners that the accused/respondent No. 2 has not disclosed that the property has been mortgaged with M/s. Dewan Housing Finance Limited, rather she alongwith her husband represented that the respondent No. 2 is the

lawful owner of the property and has full right and authority to sell the property in whole or in parts and the property is free from all sorts of encumbrances such as prior sale, gift, mortgage, disputes, litigation, acquisition, attachment in the decree of any court, lien, court injunction, Will, Trust, exchange, lease, legal flaws, claims, prior agreement to sell, etc. However, the fact is that the respondent No. 2 alongwith her husband Girish Chopra have mortgaged the property with M/s. Dewan Housing Finance Corporation Limited and in lieu thereof, they have taken loan of Rs.6,34,31,460/- and Rs.2,13,73,227/- and since they have failed to repay the said amount, the M/s. Dewan Housing Finance Corporation Limited has taken symbolic possession of the entire property in terms of Section 13(4) read with Rule 8(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

8. It is also alleged that Mr. Kapil Wadhawan, who is a relative of respondent No. 2 and her husband, alongwith other staff members of M/s. Dewan Housing Finance Corporation Limited, in connivance with each other have defrauded the petitioners and other purchasers by inducing them to purchase the properties and part away from their hard earned money and duped the money totaling to more than 50 crores. In support of the submissions made by the petitioners, the following judgments have been relied:

- i) ***Puran v. Rambilas and Anr., (2001) 6 SCC 338;***
- ii) ***Masroor v. State of Uttar Pradesh and Anr., (2009) 14 SCC 286;***

- iii) *Anwari Begum v. Sher Mohamman & Anr., (2005) 7 SCC 326;*
- iv) *Nimmagadda Prasad v. Central Bureau of Investigation, (2013) 7 SCC 466;*
- v) *Dr. Vinod Bhandari v. State of M.P., 2015 (2) SCALE 195;*
- vi) *State vs. Sumeet Suri, III (2013) DLT Crl. 932;*
- vii) *State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21;*
- viii) *Bail Application No.2179/2009, titled as Mukesh Jain v. CBI, decided by Delhi High Court on 21.12.2009.*

9. Mr. Vineet Malhotra, learned counsel for the respondent No. 2 filed a reply stating therein that the petitioners have already invoked the remedy available to them before the learned Additional Session Judge and as such the present petition under Section 439(2) of Cr.P.C. is not maintainable and therefore the same be dismissed. It is further contended on behalf of respondent No. 2 that the bail once granted can be cancelled only on the ground which has arisen after the bail was granted. It is generally presumed that at the time of hearing of the bail application, the prosecution had raised all possible grounds which could go against the accused in the matter of bail and therefore, once the bail is granted, the prosecution cannot have the bail cancelled on some circumstances, which may have existed before the grant of bail. In support of his argument, learned counsel for the respondent No. 2 relied upon the judgment in *Dolat Ram vs. State of Haryana, (1995) 1 SCC 349* highlighting the principle regarding cancellation of bail.

10. It is further contended that there is nothing on record to suggest that respondent No. 2 has even tried to interfere or attempted to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to respondent No. 2 in any manner. Moreover, all the grounds have already been raised before the learned Additional Session Judge while arguing the application for cancellation of bail and after considering all the grounds, the application for cancellation of bail to respondent No. 2 was dismissed.

11. Learned counsel for the respondent No2 further urged that the present is primarily a case of civil nature and the nature of evidence is documentary only and the same are already in custody of the police. More so, the charge sheet has already been filed. It is further urged that by present petition the petitioners seek to review the decision already made by learned Additional Session Judge. In support of his submissions, learned counsel for the respondent No. 2 relied on the following judgments:

- i) ***Dolat Ram & Ors. v. State of Haryana, (1995) 1 SCC 349;***
- ii) ***Ashok Dhingra v. NCT of Delhi, (2000) 9 SCC 533;***
- iii) ***Sanjay Chandra v. CBI, (2012) 1 SCC 40;***
- iv) ***State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21;***
- v) ***Arulvelu & Anr. V. State, (2009) 10 SCC 206.***

12. I have heard the submission made by both the sides and also

gone through the contents of the petition as well as the reply filed on behalf of respondent No. 2. I have also gone through the impugned orders passed by the learned Chief Metropolitan Magistrate as well as learned Additional Session Judge in this case.

13. Indisputably, the learned Chief Metropolitan Magistrate granted bail by passing a reasoned order on the basis of custody of the accused since 13.06.2015, completion of investigation and no more requirement of custodial interrogation. The challenge to the order does not reflect any misuse of concession of grant of bail to the accused. Moreover, application for cancellation of bail already declined by learned Additional Sessions Judge culminates into dismissal of the present petition for cancellation of bail.

14. After perusing the impugned orders passed by the learned Chief Metropolitan Magistrate and the learned Additional Sessions Judge, this Court does not find any illegality or infirmity in the impugned orders. This Court finds no reason to take a different view from the order passed by learned Additional Session Judge.

15. In view of the aforesaid discussion and the facts and circumstances of the present case, the revision petition filed on behalf of the petitioners is dismissed and the orders dated 13.08.2015 passed by learned Chief Metropolitan Magistrate and the order dated 29.09.2015 passed by the learned Additional Sessions Judge are upheld.

16. 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 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.

17. With aforesaid direction, the present petition as well as pending application as filed by the petitioner are dismissed.

JUNE 13, 2016
pkb

(P.S.TEJI)
JUDGE

