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

Decided on: 30th May, 2017

\+ BAIL APPL. 2626/2014

NITIN KUMAR AGGARWAL ..... Petitioner

Through: Mr. Mukul Gupta, Sr. Adv. with Mr. Sunil K. Goel, Mr. Tushar Gupta, Advocates

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Amit Chadha, APP for State with SI Madhurendra Kumar, PS EOW. Mr. Sanjay Manchanda, Adv. for complainant.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. This application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was moved on 01.12.2014 in the context of allegations made in investigation being carried out into First Information Report (FIR) No.136/2013 under Sections 406/420/120-B of the Indian Penal Code, 1860 (IPC) of Police Station Economic Offence Wing (EOW) (North-West), registered at the instance of Om Prakash son of Dwarka Dass (the first informant). By order dated 4.12.2014, interim protection against coercive action was granted in favour of the petitioner. By subsequent

order dated 03.07.2015 the said interim order was made absolute and the petition for grant of anticipatory bail was favourably disposed of. In the wake of proceedings arising out of applications moved in the wake of said orders, however, the said order was recalled and vacated by order dated 25.05.2017.

2. It is necessary to take note of the afore-said order dated 25.05.2017, *in extenso,* as under:-

> *"The petitioner Nitin Kumar Aggarwal is accused of certain acts of commission and omission in the FIR No. 136/2013 involving offences punishable under Sections 420/120B IPC under investigation with police station EOW, the investigation, going by the status report dated 18.5.2017 having already been concluded, a charge-sheet having been prepared it presently being under scrutiny with the prosecution branch. He had moved this Court by Bail Application No. 2626/2014 in December, 2014 invoking Section 438 read with Section 482 Cr.P.C. praying for anticipatory bail. The said application came up on 04.12.2014 when the complainant (the first informant) also appeared with counsel.*
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> *The order dated 4.12.2014 would show that during the hearing, the petitioner had submitted, in order to demonstrate his bona fides, his willingness to deposit the amount of money which the complainant claimed to have been wrongfully forfeited, also assuring that he would cooperate in the investigation. Against such backdrop, the petitioner was directed to deposit the disputed amount of Rs.2,10,00,000/- in two equal instalments in the form of fixed deposit receipts in the name of the petitioner with the investigating officer, the timeline for such instalments having been specified. Subject to such direction being complied with and the petitioner appearing before the investigating officer as and when required and further to take certain other steps, it was directed that no coercive steps shall be taken against him till next date of hearing.*

The subsequent proceedings would show that by 10.2.2015, the petitioner had handed over a fixed deposit receipt in the sum of Rs.50,00,000/- which had been deposited with the investigating officer, the petitioner being allowed further time to make arrangement for the remaining amount. On 5.3.2015, the parties informed the Court that they had entered into a settlement in terms of which the petitioner had agreed and had undertaken to pay Rs.2,10,00,000/- to the complainant with interest @ 8 per cent per annum for the entire period. On the joint submission of both parties, the fixed deposit receipt of Rs.50,00,000/- earlier handed over to the investigating officer was allowed to be released to the complainant upon liquidation. Suitable directions in this regard were issued.

Against above backdrop, when the matter reached the hearing on 27.5.2015, the Court was informed that the petitioner had made payment of Rs.90,00,000/-, the balance amount payable being Rs. 70,00,000 along with interest @ 8 per cent per annum which in all had accrued to Rs.1,64,74,952/- as on 31.5.2015. Time was granted for the balance money to be paid.

Eventually on 3.7.2015 it was submitted on behalf of the petitioner that he was willing to pay the outstanding amount of Rs. 70,00,000 with interest accrued thereon in terms of order dated 5.3.2015. Against this backdrop, the interim order dated 4.12.2014 was made absolute and directions were passed for the petitioner to be released on bail in the event of being arrested thereby disposing of the application for anticipatory bail.

The subsequent proceedings arising out of, inter alia, the three captioned applications would show that the settlement did not reach fruition. The amount which was outstanding as on the date of the anticipatory bail order being passed was not paid. On 2.12.2015, in the context of Crl.M.A. 16769/2015 whereby the prayer was made for cancellation or vacation or modification of the order dated 3.7.2015, it was conceded by the petitioner that he owed an amount of Rs.1,70,00,000/- as on said date, it being the *balance amount with interest accrued till then thereupon. He gave assurances to pay the said amount in instalments, such assurances having been accepted though with a direction that he would submit an understanding supported by an affidavit, which, however, was never filed.*

By application Crl.M.A. 1711/2016, the complainant seeks vacation of the order dated 3.7.2015. By his application Crl.M.A. 4361/2017, the petitioner seeks enlargement of time. Earlier, by his application Crl. M.A. 5178/2016 he had raised questions as to the merits of the allegations in the FIR and, inter alia, prayed for directions to the complainant to pay back the amount of Rs. 1.4 crore which has been paid to him pursuant to orders of this Court in these proceedings.

Having heard the learned counsel on both sides, this Court is of the view that the purported settlement, as indicated to the Court on various dates, some of which have been referred to above has not worked out. The petitioner continues to be unwilling to pay the balance amount. Though he has tried to show having taken certain steps, including by handing over title deeds of certain property, but this Court cannot be converted into forum for recovery.

Since the complainant is now no longer ready to accede to the request for further time, the petitioner himself having made submissions touching upon the merits of the allegations in the FIR, his argument being that the dispute is civil in nature which has been given a colour of criminality, the continuation of the anticipatory bail order dated 3.7.2015 would not be just or fair.

The order being conditional, the conditions not having been fully complied with, the petitioner cannot take advantage of the same. The said order, therefore, is hereby vacated.

This disposes of the above-mentioned applications. This would revive the bail application no.2626/2014, which will have to be considered on its merits.

BAIL APPLN. 2626/2014

Heard for some time.

The learned counsel for the complainant (first informant) seeks to refer to proceedings in writ petition (crl.) 1425/2016 which was disposed of on 13.07.2016. The record of the said writ petition shall be called for.

Be listed on 30th May, 2017.

No coercive steps shall be taken against the petitioner till then.

It is made clear there shall be no adjournment."

3. The application has been taken up for hearing afresh pursuant to the directions in the above order. The learned senior counsel for the petitioner, the learned counsel for the complainant as also the Additional Public Prosecutor for respondent/State have been heard at length. Record has been perused.

4. Before approaching this court, the petitioner had moved similar application in the court of sessions, it being bail application 11068/RC which was dismissed by order dated 27.11.2014.

5. Having regard to the allegations made in the FIR, copy of which has been submitted and the result of the investigation carried out thus far, as summarised in the status reports, the allegations against the petitioner have been narrated as under:-

"It has been alleged by the complainant that he was approached by one Nitin Aggarwal, who claimed himself as approved purchaser in the record of DLF, of a land measuring 624 sq. yards located at village Titarpur, Rajouri Garden, New Delhi and showed a letter dated 07.05.10, issued by DLF whereby it has been claimed that DLF would sell the land to any third party upon the recommendation of Nitin Aggarwal. Thereafter, he took the complainant to the residence of Sh. Kailash Nath Gupta. It was represented to the complainant that the plot is free from all encumbrances.

Thereafter, an agreement to sell dated 03.08.2010 was executed by Nitin Aggarwal, the present petitioner in respect of half of the plot admeasuring 624 sq. yards for total sale consideration of Rs.6.25 crores. As per the said agreement, complainant made payment of Rs.3.10 crore, out of which 2.10 crores was received by Nitin Kumar and 1 crore allegedly was received by Kailash Nath Gupta against duly issued receipt.

Investigation reveals that the present petitioner in conspiracy with other accused persons namely Kailash Nath Gupta and Sidharth Gupta conspired to induce the complainant to make investment against the proposed transaction. However, the accused persons even after taking huge amount from the complainant, did not get the sale deed executed in favour of present petitioner Nitin Aggarwal & Siddharth Gupta.

Another agreement to sale dated 24.08.2011 was executed between DLF Limited and present petitioner Nitin Aggarwal. Thereafter, the sale deed was executed by DLF Limited in favour of Nitin Aggarwal & Siddharth Gupta. A sum of Rs.25,00,000/- was remitted into the account of present petitioner Siddharth Gupta by one Vijay Luthra, who is the friend of the complainant, against the proposed transaction. However, the said amount was later returned by the petitioner during the course of proceedings in a cheque bouncing case.

The accused persons utilized the amount taken from the complainant and one Rajni Jain, the complainant of FIR No.135/13, P.S. EOW and got the sale deed executed in their favour. The present petitioner Nitin Aggarwal is the registered owner of half portion of the property in question.

Later on, Sidharth Gupta's father Kailash Nath agreed to cancel the agreement to sell executed with the complainant with issuance of cheques against the investment made by the complainant. The cheques were dishonored on presentation. Even during the course of proceedings u/s. 138 N.I. Act, Kailash Nath, the father of present petitioner issued further cheques of M/s. Oil & Oil Seeds Exchange Ltd. in *which he is one of the Directors. The same were also dishonored on presentation."*

6. It has been pointed out in the course of submissions that the letter dated 07.05.2010 which was primarily used for the purpose of inducing the complainant to part with money has been found during investigation to be forged document, there being no corresponding record in the office of DLF and the signatory of the said document having demitted office in 2010 itself. It is further pointed out that in the agreement to sell executed by the petitioner on 03.08.2010 as a step in the process of cheating, it was dishonestly claimed that the petitioner was the owner of the parcel of land it having been purchased from DLF vide agreement dated 07.05.2010, the document entering upon arrangement with DLF having been executed much later in 2012.

7. It does appear that the petitioner had served a notice on 23.02.2011 on the complainant indicating intention to forfeit the earnest money paid under the agreement dated 03.08.2010. But then the record gathered from the complainant during investigation shows also that the said party had also sent legal notices around the same time putting across the counter version, the controversy also surrounding the fact that in the document dated 07.05.2010 there was reference to arrangement with DLF concerning a plot of land measuring 624 sq. meters only whereas what had been offered to be sold to the complaint was a plot of land with area of 624 sq. yds.

8. The petitioner's arguments that the facts alleged in the FIR primarily represent a civil dispute to which a colour of criminality has been given, cannot be accepted, in as much as his writ petition

(criminal) No.1425/2016 with similar contentions seeking quashing of the FIR in question was dismissed by this court by order dated 13.07.2016. Even otherwise, such contentions cannot be accepted in the facts and circumstances of the case, particularly in the teeth of the evidence gathered showing that the document dated 07.05.2010 was forged and fabricated, it having used by the petitioner to induce the complainant to part with money.

9. The submissions of the learned senior counsel for the petitioner that since the investigation is more or less complete and report under Section 173 Cr.P.C. is likely to be filed in the court of Metropolitan Magistrate in near future also does not appeal to this court as a good reason to enlarge the petitioner on bail in view of his conduct during these proceedings as noted at length in the order dated 25.05.2017 extracted above.

10. For the foregoing reasons, the interim protection stands withdrawn.

11. The petition is dismissed.

R.K.GAUBA, J.

MAY 30, 2017
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