

\$~8

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

+ **CRL. REV. 436/2017**

%

Date of Judgment: 2nd June, 2017

MAYUR PASRICHA

.... Petitioner

Through: Mr. Rajive Bakshi, Advocate with Ms.
Gagandeep Chauhan, Advocate.

Versus

STATE & ANR.

.... Respondents

Through : Mr. G.M. Farooqui, APP for State
with SI Manish Kumar, EOW.
Complainant in person.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

Crl.M.A. 9851/2017 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CRL. REV. 436/2017 & Crl.M.A. 9850/2017

1. This criminal revision petition has been filed by the petitioner Mayur Pasricha under Section 397/401 of the Code of Criminal Procedure, 1973 (in short as 'Code') against the order dated 29.05.2017 passed by the learned

Additional Sessions Judge-04, North-West District, Rohini Courts, Delhi in Bail Application No. 16/17 in FIR No. 730/2015, PS Maurya Enclave U/s. 419/420/467/468/471/120B of IPC.

2. In fact three separate applications under Section 438 of the Code for grant of anticipatory bail were filed by accused Mayur Pasricha, Manik Pasricha and Savita Pasricha. Their applications were taken up together by the learned ASJ/Special Judge, NDPS, North West, Rohini Courts, Delhi and disposed of by an order dated 09.03.2017.

3. As per the complaint the father of the petitioner namely Sh. Trilok Nath Pasricha owed Rs.10,00,000/- to the father of the complainant namely late T.R. Vij and instead of making repayment of Rs.10,00,000/-, Sh. Trilok Nath Pasricha delivered the physical possession of house No. B-439, Gali No. 5, Majlis Park, Delhi, measuring 100 sq.yds. Sh. Trilok Nath Pasricha had received Rs.4,01,000/- from the complainant and executed an Agreement to Sell on 07.10.2003. The total sale consideration was agreed to be Rs.25,00,000/- and the complainant was to make the payment of balance consideration of Rs.11,79,000/-. In fact the mother of Trilok Nath Pasricha namely Smt. Raj Rani was the owner of this property, who had bequeathed the said property to late Sh. Trilok Nath Pasricha vide Will dated 12.11.1999. However, the complainant requested that he may be provided Relinquishment Deed from the other legal heirs of Smt. Raj Rani. Relinquishment Deed dated 04.03.2013 bears the forged signatures of the executants. The executants shown are Mr. Kamal Pasricha, Ms. Kiran Arora and Mr. Janak Chhabra and in fact their signatures were forged by the accused persons namely Manik Pasricha, Savita Pasricha and Ritu Arora. This fact was brought to the notice of Trilok Nath Pasricha by the complainant, who handed over another Relinquishment Deed dated

10.10.2003, which was also found to bear forged signatures of Ms. Kiran Arora and Mr. Janak Chhabra.

4. It was contended before the learned ASJ by the petitioner and co-accused that the complainant is in unlawful possession of the above said property for the last 14 years without making the complete payment of the sale consideration. They also pleaded that dispute raised by the complainant is of civil nature.

5. The petitioner along with co-accused Manik Pasricha and Savita Pasricha were present in person before the learned ASJ with their counsel Sh. Nitin Mehta. They submitted that they are willing to pay the admitted amount of Rs.4,00,000/- to the complainant without prejudice to their rights. However, they sought time to make the payment upto 15.04.2017. Learned APP and the learned counsel for the complainant requested for dismissal of the applications for anticipatory bail since the accused persons have committed forgery in order to cheat the complainant. However, the learned counsel for the complainant submitted that the complainant was willing to accept Rs.4,00,000/- without prejudice to his rights. After considering the facts and circumstances of the case, learned ASJ granted anticipatory bail to them on furnishing bail bonds for Rs.25,000/- each with one surety in the like amount to the satisfaction of the SHO/IO. They were also directed to hand over Rs.4,00,000/- by demand draft to the complainant against receipt before the IO on 15.04.2017 at 12.00 Noon without prejudice to the rights of both the parties.

6. The accused persons filed a criminal revision petition no. 361/2017 before this court, which was withdrawn with liberty to file review before the trial court.

7. The application for modification/review/recall of the order dated

09.03.2017 in the bail applications no. 779/2017, 780/2017 and 781/2017 of Mayur Pasricha, Manik Pasricha and Savita Pasricha respectively, were considered and disposed of by the learned ASJ on 29.05.2017.

8. It was contended before learned ASJ that imposition of pre-deposit of an amount as condition precedent for grant of bail has been deprecated by the Hon'ble Supreme Court. They further submitted that the payment will tantamount to satisfy the time barred claim of the complainant for recovery of earnest money. It was also submitted that the complainant has been enjoying the illegal possession of the property for the last 14 years.

9. It was noticed by the learned ASJ that application of petitioners to extend the time to deposit was decided on 19.04.2017 but there was no whisper that the willingness of the accused persons to pay Rs.4,00,000/- was extracted. That application was also moved by their counsel Sh. Nitin Mehta, Advocate.

10. I have heard the learned counsel for the petitioner, leaned APP as also the complainant.

11. The order of the learned ASJ dated 09.03.2017 reflects that all three accused persons were present in person with their counsel Sh. Nitin Mehta, Advocate. The bail application was opposed by the learned APP and the counsel for the complainant. However the accused persons through their counsel submitted to the court that they are willing to pay the admitted amount of Rs.4,00,000/- to the complainant without prejudice to their rights and they sought time to make the payment till 15.04.2017. This was accepted by the complainant without prejudice to his rights. In the facts and circumstances of the case the learned ASJ granted anticipatory bail to the accused persons subject to furnishing bail bond with one surety each and they were also directed to hand over a draft of Rs.4,00,000/- to the

complainant against the receipt before the IO on 15.04.2017. Thereafter, the accused persons even sought an extension of time to make the payment, which was disposed of on 19.04.2017. In this application also they have not alleged that they were put to coercion to make offer for payment. Even this court has also given option to the learned counsel for the petitioner that if he is willing, let the order dated 09.03.2017 and 29.05.2017 be set-aside and the three bail applications be considered afresh by the learned ASJ. However, learned counsel for the petitioner submits that instead of making the payment of Rs.4,00,000/- to the complainant, the same may be ordered to be deposited in the court.

12. Learned counsel for the petitioner has relied upon Para 9 of the judgment of this titled as **Manoj Kumar Vs. State (Govt. of NCT of Delhi, Crl.Rev.P 184/2009**, decided on 17.09.2008, in which it was observed by this court that judicial principle, which was laid down by the court is that a criminal prosecution and threat of incarceration cannot be utilised as a tool for recovery of money from a person who is implicated in the case. However, this judgment is distinguishable. In the present case, there was no threat of incarceration to the petitioner and the co-accused persons. They of their own free will offered in the court to pay Rs.4,00,000/- to the complainant without prejudice to their right, which was accepted by the complainant also without prejudice to his rights. Even the extension of time was sought subsequently by the petitioner and co-accused persons, which was disposed of on 19.04.2017. It appears that the application for review/modification was filed by the petitioner is an afterthought. It is noticed that by order dated 29.05.2017, the learned ASJ has granted time to the accused persons to fulfil the bail condition on or before 05.06.2017.

13. I find no merit in the present criminal revision petition. The same is

dismissed with no order as to costs.

14. All applications are also disposed of.

VINOD GOEL, J.
(VACATION JUDGE)

JUNE 02, 2017
“sk”

