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

\+ CRL.M.C. 2433/2017

RAJESH J AEREN ..... Petitioner

Through: Mr. Jayant K. Sud, Sr. Advocate with Mr.Siddharth Bhatli, Mr. Honey Khanna, Ms. Vaishali Soni and Mr. Umang Singh, Advocates.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Ms. Aashaa Tiwari, APP for the State with Insp. Sanjeev Dhodi, EOW.
Mr. Rebecca John, Sr. Advocate with Mr. Vishnu Anand, Advocate.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

<u>O R D E R</u>

% **07.06.2017**

<u>Crl.M.A.9890/2017 & 9891/2017 (exemptions)</u>

Exemption allowed subject to all just exceptions.

Applications are disposed of.

<u>CRL.M.C. 2433/2017 & Crl.M.A. 9809/2017 (stay)</u>

1. Notice. Learned counsel for the State accepts notice.

2. The petitioner has approached this court under Section 482 of the Code of Criminal Procedure, 1973 for quashing of directions contained in the order dated 14.02.2017 granting him bail with the direction to deposit of FDR of Rs.2 Crores in the court subject to the outcome of the criminal case.

3. The FIR No. 0006/2015 was registered with PS EOW on the complaint of one Deepak Kumar, alleging therein that in June, 2008 he was

approached by the petitioner and his wife with the representation that they are developing 11.34 acres of land in a Village Quadian and Fagguwal, G.T. Road (NH-1), Ludhiana, Punjab owned by one AVM Land Developers Private Limited by constructing "Mega Mall". On their representation, the complainant purchased 23 shops in the area measuring 36,742 sq.ft. for a sum of Rs.8,45,36,122/-. This amount was paid by the complainant with assurance of return @ Rs.18,38,588/- per month. The project land was taken over by consortium of banks due to non payment of loan of Rs.100 crores. On seeing the public notice dated 01.10.2014 for online e-auction of the project mall issued by M/s. Phoenix ARC Pvt. Ltd. (being the assignee of the Banks), it was revealed to the complainant that the shops purchased by him were under auction. The complainant felt cheated by the accused persons including the petitioner herein.

4. The petitioner was arrested on 06.10.2016. By order dated 14.02.2017, learned ASJ granted bail to the petitioner on furnishing personal bond to the tune of Rs.10,00,000/- with two local sureties of the like amount to the satisfaction of the concerned CMM/ACMM/MM/DM subject to the following conditions: -

> "1. That he will join the investigation as and when required by the investigation agency.
> 2. That he will surrender his passport to the court concerned and will not leave the country without prior permission of court concerned.
> 3. That he will not thwart the fair course of investigation."

5. Learned ASJ further directed that in order to secure the interest of the victims, the petitioner shall deposit an FDR to the tune of Rs.2 crores within 10 days in the name of the court concerned, which shall be subject to the

outcome of the criminal case.

6. Mr. Sud, learned senior counsel for the petitioner argued that the dispute is of civil nature. He submits that it was a commercial transaction and a case of civil nature is being given the colour of criminality. He submits that FIR is subjudice between the parties before the civil courts and company court. He submits that winding up order has been passed in the company petition No. 482/2009 on 18.03.2016. He further argued that false and frivolous allegations have been levelled against the petitioner in the FIR. Learned senior counsel further argued that operative part of the impugned order dated 14.02.2017 is in two parts and the petitioner has complied with the first part of the order by furnishing personal bond of Rs.10,00,000/- with two local sureties of the like amount to the satisfaction of the trial court and he was released on bail on 08.03.2017. The petitioner has also fulfilled the other conditions like joining of investigation as and when required before the IO and surrendered the passport to the court concerned and has not interfered in any manner with the investigation. Learned senior counsel further submits that the second part of operative portion of the impugned order is erroneous and amounts to buying the bail. Learned senior counsel has relied upon the judgments of the Apex Court titled as ***(1) Sumit Mehta Vs. State (NCT of Delhi),*** **(2013) 15 Supreme Court Cases 570,** ***(2) Shyam Singh Vs. State through CBI,*** **(2006) 9 Supreme Court Cases 169,** ***(3) Sheikh Ayub Vs. State of M.P.,*** **(2004) 13 Supreme Court Cases 457** and a judgment of this court in ***M.R. Narayanan vs. State,*** **2003 Cri.L.J 1472.**

7. Per contra, it is argued by Ms. John, learned senior counsel for the complainant that subsequent to the passing of the order dated 14.02.2017, the petitioner filed an application for extension of time by six months to

deposit the FDR to the tune of Rs.2 crores and that application was taken up for consideration on 21.02.2017. After hearing the parties and taking into consideration the family circumstances of the petitioner and the fact that he was in judicial custody for four months, learned ASJ modified the order dated 14.02.2017 to the extent that the petitioner can deposit the FDR to the tune of Rs.2 crores within three months from the date of his release. Admittedly, the petitioner was released on bail on 08.03.2017. She argued that the petitioner has not challenged the order dated 14.02.2017 and accepted the same by filing application to extend the time which was extended by three months. Now he cannot challenge the order. She further argued that amount ordered to be deposited is a drop in an ocean. She prayed that the petition be dismissed.

8. Learned APP for the State argued that there are total 22 similar victims of the petitioner and co-accused and approximately a sum of Rs.70 crores have been invested by them. During investigation, it has come that in the agreements to sell executed with the victims, the fact of the Term Loan taken from the various banks was mentioned but the fact that the area in question was mortgaged with the consortium of banks was dishonestly and deliberately concealed therefrom. The company of the petitioner was to open separate Escrow account through which all the transactions were to be routed. They were also to maintain another account wherein the requisite fund for servicing the interest account during the construction period was to be maintained with the lead bank. It was also mandatory for the petitioner and the co-accused that all sale proceeds shall be deposited in the Escrow account and the amount shall be utilized only for the "project mall". The accused company had dishonestly received the sale consideration and

deposited the same in a secret account without informing the banks. During investigation, it was also found that a new account in State Bank of Saurashtra, Lodhi Colony, New Delhi was opened by the petitioner and co-accused and the amount was diverted and misappropriated to avoid their liabilities. The petitioner through his company M/s. Aeren Entertainment Zone Private Limited received Rs.219 crores from the foreign investor Mondon Investment Limited, Rs.90 crores from consortium of banks and Rs.120 crores from the investors. The company of the petitioner has purchased 95 acres of land under different name of the relatives of the promoters.

9. I have heard the rival submissions of the parties and have perused the records.

10. Pursuant to order dated 14.02.2017, the petitioner was released on bail on 08.03.2017. The petitioner also filed an application for extension of time to deposit Rs.2 crores by FDR by six months through his counsel. By order dated 21.02.2017, time to deposit was extended by three months by learned ASJ. The petitioner is bound by his act, conduct and acquiescence. The present petition is nothing but an afterthought to avoid compliance of the directions of the ld. ASJ. The judgment relied upon by the learned counsel for petitioner are distinguishable and are decided on the facts & circumstances of each case. It is trite that the judgments of the High Court and Hon'ble Supreme Court are given in the facts & circumstances of each case and are not to be read as statute. Each case represents its own problem adjudicated upon by the Court. Reference can be given to the decisions of Hon'ble Supreme Court in ***(1) Ramesh Singh @ Photti Vs. State of A.P. AIR 2004 SC 4545, (2) Punjab National Bank Vs. R.L. Vaid and Others,***

AIR 2004 SC 4269 and (3) Parasa Raja Manikyala Rao and Anr. Vs. State of A.P. AIR 2004 SC 132.

11. In view of the above facts and circumstances, I do not find any merit in the petition. The same is accordingly dismissed.

12. In view of the above, all pending applications are disposed of.

13. Copy of this order be given *Dasti* to all the parties, as prayed.

VINOD GOEL, J.
(VACATION JUDGE)

JUNE 07, 2017
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