

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1244 of 2017

Rakesh Pandey S/o S.N. Pandey Aged About 48 Years R/o Smriti Nagar, Road No. 24 - A, Plot No. B / 446, Bhilai, District Durg Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Police Station Supela, District Durg Chhattisgarh.
2. Akhilesh Kumar Singh, R/o Plat- B/384, Smriti Nagar, Bhilai, Tahsil And District Durg, Chhattisgarh

---- Respondent

CRMP No. 1479 of 2017

Akhilesh Kumar Singh S/o Shri Gorakh Nath Singh, Aged About 42 Years R/o House No. 384, Street No. 26 Smriti Nagar Bhilai Tehsil And District Durg Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The District Magistrate, Station House Officer Supela Bhilai, District Durg Chhattisgarh.
2. Rakesh Pandey S/o S. N. Pandey Aged About 48 Years R/o Smriti Nagar, Road No. 24 A, Plot No. B / 446, Bhilai, District Durg Chhattisgarh.

---- Respondent

Cr.M.P. No.1244 of 2017

For petitioner – Shri Shailendra Dubey with Shri N. Naha Roy, Advocates.
For State-Shri S.R.J. Jaiswal, PL.
For respondent No.2- Shri Goutam Khetrapal, Advocate.

Cr.M.P. No.1479 of 2017

For petitioner-Shri Goutam Khetrapal, Advocate.
For State – Shri S.R.J. Jaiswal, PL.
For respondent No.2-Shri Shailendra Dubey with Shri N. Naha Roy, Advocates.

Hon'ble Shri Justice Goutam Bhaduri

Order

12/03/2018

Heard.

1. Both the petitions are being heard together being off shoot of order dated 11/05/2017 passed in M.Cr.C. No.2568 of 2017 whereby Rakesh Pandey was enlarged on bail by this court. Herein one Cr.M.P. No.1479 of 2017 is by Akhilesh Kumar Singh the complainant, and the respondent is

Rakesh Pandey the accused for cancellation of bail. The another Cr.M.P. No.1244 of 2017 is by Rakesh Pandey the accused for modification of the bail order dated 11/05/2017.

2. Case of the prosecution, in brief, is that a report was made by Akhilesh Kumar Singh that the applicant-Rakesh Pandey having known the fact that the complainant has earned money from the South Africa started visiting home and allured him to invest the amount with Astha Developers, which was managed by Manish Rao, Solanke, Ezaz Niyazi and Mohd. Sabir Ali and on different point of time deposited Rs.1,03,00,000/- and assurance was given that high interest would be paid and the amount would be doubled within three years. Subsequently, when the amount was not paid back after exerting pressure the accused Rakesh Pandey along with other namely Manish Rao, Solanke, Ezaz Niyazi and Mohd. Sabir Ali had given a power of attorney to complainant in respect of the land, wherein the Rakesh Pandey also scribed his signature to give impression of correctness of transaction. Subsequently, when the ownership of the land was enquired, it was found that the firm do not own any land. Thereby the Rakesh Pandey along with other co-accused has deceived and the applicant was also in his possession certain land papers of Kurud. Thereby has committed fraud.

3. Earlier after arrest a bail petition was preferred by Rakesh Pandey. In such M.Cr.C. the court has passed the following orders granting bail to the accused on the following submission at para 7 to 10 of order.

7.From perusal of the documents, it appears that agreement has been executed by the wife of the present applicant Smt. Urmila Pandey along with the complainant Akhilesh Kumar Singh. The complainant who is present in Court agrees the same.

8. Taking into consideration the facts and circumstances of the case and further considering the fact and submission of the parties on the basis

of agreement which is not in dispute and further considering the fact that promise has been extended to the Court that the applicant would pay Rs.72 lakhs to the complainant within a further period of four months, this court is inclined to release the applicant on bail.

9. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed and it is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial court. He shall also appear before the trial Court as and when directed.

10. It is made clear that if the applicant fails to comply the aforesaid submission, the complainant shall be free to move a suitable application for cancellation of bail granted to the applicant.

4. One Cr.M.P. has been filed by accused Rakesh Pandey for modification of the order on the ground that the petitioner herein is not able to sell the land which was promised and the land which was promised to be sold is worth Rs.2 crores and only Rs.72 lakhs was to be paid to the complainant as per agreement. Consequently, order may be accordingly modified.

5. Learned counsel for the accused would submit that initially while bail was granted agreement was entered with the wife of the accused/petitioner Rakesh Pandey and it was only at the behest of the complainant as the complainant had pressurized the accused with a coercion that no objection would be made in bail if only agreement is executed. It is further stated that accused Rakesh Pandey has appeared before the court and in the eventuality Rs.72 lakhs if are paid and if at last the accused is acquitted of the charges then in such case, the accused would not be able to recover the amount of Rs.72 lakhs. Learned counsel for the accused further submits that under the circumstances since the petitioner is not able to pay back, therefore complainant may take charge

of the land and condition may also be imposed that in the eventuality of payment of Rs.72 lakhs the same may be taken back.

6. Learned counsel for the complainant vehemently opposes the argument and would submit that false promise was extended to the court while coming out from the custody. It is stated the moment the accused has come out of the custody he has denied his stand and different defence has been taken. He referred to the order sheet and would submit that on the earlier occasion number of times court has extended the time on representation of the petitioner on promise to pay but eventually till today nothing has been paid except bald promises.

7. I have heard learned counsel for the parties and also perused the documents.

8. Bail was granted to the petitioner on 11/05/2017. During argument before the bail agreement was referred which is also part of the record Annexure A-2 which was executed by wife of the accused and it was stated that land bearing khasra No.1178/1, area 0.13 hectare and khasra no.1175/20, area 3000 sq.ft. would be sold and amount of Rs.72 lakhs would be paid to the complainant and such payment would be made within 4 months. The agreement is dated 4/05/2017. On that basis while M.Cr.C. No.2568 of 2017 was heard, reference was made that of the agreement and this court considering the promise made, extended the benefit of bail to the accused Rakesh Pandey. Apparently till today amount has not been paid. Period of four months have admittedly lapsed in the month of September, 2017 and the present Cr.M.P. No.1244/2017 for modification of the bail was filed on 4/09/2017. Perusal of the order sheet would show that on 13/10/2017 the issue was referred to the mediator but mediation too failed and report came that settlement could not be arrived at. Subsequently, when matter again came up for hearing on 12/02/2018 submission was made by the petitioner that negotiation were going on and

as per instruction date has been fixed for payment on 22/02/2018. It was further stated that if the petitioner is not able to pay the amount, he will execute the sale deed for which an advertisement has already been made in the paper for sale.

9. Again the case came up for hearing on 23/02/2018 wherein for want of counsel case was adjourned and lastly the case came up for hearing on 1/03/2018 wherein submission was made on behalf of the petitioner that the petitioner may be given further a week's time to pay amount of Rs.72 lakhs as the property value which was stated to be sold was more than Rs. 1 crore 70 lakhs. The court therefore on the request made on behalf of the accused gave last chance to the accused to pay amount of Rs.72 lakhs to the complainant.

10. Submission as was made on behalf of the accused agreement was made at the behest of the complainant by arm twisting method and therefore the agreement to sale was executed cannot be appreciated at this stage as thereafter on several occasions petitioner/accused came up before the court and promised to pay amount of Rs.72 lakhs. Such stand apparently is made to change the track to suit to the convenience of accused. Therefore the question arises whether such melo drama was on the basis of fraud? Bail order of 11/05/2017 would show that promise was made that the amount would be paid within a period of four months and on that basis bail was granted.

11. Considering the nature of the allegation made, it appears that after the bail was obtained on 11/05/2017 petitioner/accused took somersault and ventured into new idea to avoid payment and develop another defence. It appears that fraud was played on the court while bail was obtained on 11/05/2017 and entire projection was made as if the petitioner/accused with all bonafide is ready and willing to pay the amount obtained but the moment he came out of the jail, entire promises were

shelved and all sort of defence came to fore. Even before this court in this Cr.M.P. No.1244/2017 which is for modification, several dates were given for making payment. Necessarily if the court has extended benefit of bail on the promise extended by the accused in the like nature same cannot be misused at the behest at the will of the accused to his convenience. Plight of the complainant also cannot be side lined by taking defence of the accused only.

12. Considering the same, Cr.M.P. No.1479 of 2017 for cancellation of the bail is allowed and bail granted to the petitioner/accused Rakesh Pandey on 11/05/2017 in M.Cr.C. No.2568 of 2017 is cancelled. Petitioner Rakesh Pandey be immediately taken into custody forthwith by the concerned police/court. In view of cancellation of order for bail Cr.M.P. No.1244/2017 which is for modification of the bail order is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE