

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 921 of 2018

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 District Magistrate, Raipur, Chhattisgarh.
2. 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 & District- Durg, Chhattisgarh.

---- Respondents

For Petitioner	:	Ms. Sharmila Singhai, Advocate
For State/Respondent No.1	:	Mr. S.R.J.Jaiswal, Panel Lawyer
For Respondent No.2	:	Mr. Goutam Khetrapal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

25.07.2018

Heard

1. The present petition has been preferred under Section 482 of Cr.P.C. wherein prayer has been made before this Court to recall the order dated 12.03.2018 whereby the bail granted to the petitioner was canceled.
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. This Court in MCRC No.2568/2017 by an order dated 11.05.2017 has granted the bail to the petitioner on the following condition, which are reproduced herein below :

“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.”

4. Thereafter, as promised an amount of Rs.72 Lakhs was not paid to the complainant within a period of four months, as such, a petition was filed by Akhilesh Kumar Singh, the complainant, bearing CRMP No.1479 of 2017 for cancellation of the bail. The same was heard by this Court along-with CRMP No.1244 of 2017 filed by the accused/petitioner. This Court, by its order dated 12.03.2018, has canceled the bail and it was directed to take the petitioner in custody forthwith and observed as under :

“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 canceled. 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.”

5. Thereafter, the said cancellation was subject of challenge in SLP Criminal No.2991 of 2018 before the Hon'ble Supreme Court which was dismissed as withdrawn and liberty was given to the petitioner to move to High Court as the petitioner was willing to transfer the land offered as security earlier to the complainant and as per her, land value is more than the amount involved. Thereafter, the facts shows though the transfer of land was not made yet, it appears that the amount of Rs.72 Lakhs was paid to the complainant which was credited to the Account of the complainant on 05.02.2018 as per the copy of the Account.
6. Learned counsel for the petitioner would submit that the entire nature of allegation is civil in nature and furthermore specially it was emphasized by referring to the ratio of case reported in **AIR 2008 SC 527** in case of **Didigam Bikshapathi & Anr. v. State of A.P.** and would submit that an amount of Rs.72 Lakhs having been paid, the cancellation of warrant is prayed for.
7. Per contra, learned counsel for the complainant would submit that the bail having been canceled once, this Court cannot exercise its power for recall of the warrant and the proper course is only to file another bail petition.
8. Perused the documents. At present, it is not in dispute that the amount of Rs.72 Lakhs has been paid to the complainant by the applicant which also finds place in the Account book. Undoubtedly the cancellation of the earlier bail was made by this Court on

12.03.2018. Thereafter, the petitioner went to the Supreme Court and came back with a liberty to transfer certain land which was offered as a security earlier to the complainant. Subsequently, an amount of Rs.72 Lakhs was deposited on 02.05.2018. This Court by an order dated 12.03.2018 while canceling the bail observed that since the amount of Rs.72 Lakhs was not paid, as such, the observation was made. The fact that the amount was paid lately in the month of May, 2018 also cannot be ignored, as from September, 2017 till May, 2018, the delay of 9 months approximately is committed by the petitioner. The quantum of the amount has also holds some significance though it was paid late, therefore, under the facts and circumstances of this case, taking into nature of allegations, in exercise of power under Section 482 of Cr.P.C., it is directed that the petitioner if surrenders before the Court below and furnishes a bail bond of Rs.25,000/- with one surety and further to pay an amount of Rs.20,000/- as cost to be given to the complainant or deposit the same before the Court, he would be released on bail in Crime No.1124 of 2016 registered at Police Station Supela, Bhilai, District Durg for the offence under Section 420, 409, 120-B, 34 of I.P.C. and Section 10 of the C.G. Protection of Depositor's Interest Act, 2005.

9. With such observation, the petition stands disposed off.

Ashok

Sd/-
(Goutam Bhaduri)
Judge