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

+ **W.P.(CRL) 500/2018 and Crl. M.A. No. 2954/2018**

SUSHIL KUMAR BHOLA

..... Petitioner

Represented by: **Mr. Rajiv K. Garg and Mr.
Rajeev Kapoor, Advocates.**

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Represented by: **Mr. Rajesh Mahajan,
Additional Standing Counsel
for State with SI Vinay Kumar,
PS Neb Sarai.
Mr. B.S. Joon, Mr. Neeraj
Balhara and Mr. Siddharth
Joon, Advocates for the
complainant.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

09.03.2018

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1. Aggrieved by the order dated 9th February, 2018 whereby while granting regular bail to the petitioner, the learned Trial Court imposed the condition of deposit of ₹40 lakhs received by him from the complainant by way of FDR in the name of the Court within ten day, the petitioner prefers the present petition.

2. Learned counsel for the petitioner fairly states that the petitioner has since deposited ₹20 lakhs pursuant to the directions of the learned Metropolitan Magistrate dated 9th February, 2018, however, he is not in a position to deposit the balance ₹20 lakhs and the condition imposed of

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deposit of the amount was in the teeth of the order dated 6th February, 2018 passed by this Court.

3. Petitioner and his two brothers namely Pradeep Bhola and Robin Bhola, all sons of Asharaj Bhola are alleged to have approached one property dealer namely Shailender Shelly and offered to sell property bearing DE-65, Tagore Garden, Delhi measuring 200 sq. yards. The complainant alleged that the three brothers visited the house of Rubaljeet Singh at Sainik Farms and deal was finalised for ₹12.37 crores. The complainant paid a sum of ₹1.42 lakhs as earnest money by three chques of ₹40 lakhs each and ₹22 lakhs in cash. However, at the time when the deal was to be finalised none came forward on behalf of the accused. Later it was revealed that the accused had entered into an agreement dated 5th November, 2014 for sale of property.

4. While granting bail to the co-accused Pradeep Kumar Bhola this Court noted as under:

“3. Learned counsel for the petitioner has taken this Court to the agreement to sell/purchase entered into between the parties. As per the said agreement to sell, in clause (3) part payment of ₹5 crores was to be made by the complainant when the petitioner and other accused were to hand over physical vacant possession of the left side ground floor shop area to the complainant followed by a payment of ₹6 crores on or before 28th February, 2015 when physical vacant possession of the entire property was to be handed over and the sale deed executed in the Sub-Registrar’s office.

4. A perusal of the record reveals that first notice given by the complainant to the petitioner showing his willingness to make the balance payment was dated 1st September, 2016 well beyond the date of 28th February, 2015 fixed between the
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parties. On a specific query put by this Court to the Investigating Officer as to whether the complainant had liquidity of around 11 crores from November, 2014 to February, 2015 it has been revealed that on selling a property on 26th February, 2015 the cash liquidity with the complainant was ₹5.49 crores. It is thus evident that as on 28th February, 2015 the complainant did not have complete liquidity of ₹11 crores. Further it is not disputed that the petitioner and his brothers were the owner of the property on the demise of the mother as the sisters had already relinquished their shares in the property.”

5. The above noted transaction between the parties was pursuant to the Agreement to Sell and admittedly the complainant failed to comply with the terms which he was obliged to do and as noted in the previous order dated 6th February, 2018 the complainant did not have the liquidity of ₹11 crores from November, 2014 to February, 2015 when he was to purchase the property. Thus considering the delay on the part of the complainant to show willingness to make balance payment at the time fixed, this Court granted bail to Pradeep Kumar Bhola. The petitioner, who has been assigned similar role as that of his brother Pradeep Kumar Bhola is also required to be treated on parity. Consequently the order dated 9th February, 2018 passed by the learned Metropolitan Magistrate is modified and the interim bail granted to the petitioner subject to the condition of ₹40 lakhs to be deposited in FDR in the name of the Court is modified. The petitioner is granted regular bail on his furnishing a personal bond in the sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, further subject to the condition that the petitioner will not leave the country without

prior permission of the Court concerned and in case of change of residential address the same will be intimated to the Court concerned. Petitioner has already deposited a sum of ₹20 lakhs with the learned Trial Court, which would remain deposited, subject to the final outcome of the trial or any settlement arrived at between the parties. Learned Trial Court is directed to keep the amount of ₹20 lakhs deposited by the petitioner before the Trial Court in a fixed deposit so as to earn interest.

6. Petition and application are disposed of. Order dasti.

MUKTA GUPTA, J.

MARCH 09, 2018

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