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

+ CRL.M.C. 876/2016 and Crl.M.A.16279/2017, 2808/2018

RAGHUBIR SINGH CHHABRA Petitioner

Through: Mr. P.S. Bindra, Advocate with
Ms. Rishika Arora, &
Mr. Bhuvneshwar Tyagi, Advs.

versus

PRADEEP PALIWAL & ANR. Respondents

Through: Mr. Vikas Pahwa, Senior Advocate
with Mr. Rakesh Malhotra, Adv.
Mr. K.S. Ahuja, APP for the State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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23.10.2018

On his bail application (BA No.2441/2015) the first respondent (the accused) was granted the benefit of release on anticipatory bail by order dated 23.12.2015, primarily on the basis of memorandum of understanding (MOU) dated 23.12.2015 entered upon by him on one hand and the petitioner (the complainant of the case) on the other in relation to First Information Report No.494/2015 of Police Station Karol Bagh involving offences punishable under Sections 420/467/468/471 of the Indian Penal Code, 1860 (IPC). While releasing the accused on anticipatory bail, the court had directed (para 3) the parties to comply with the terms and conditions of the said MOU “*without demur*”. It was one of the terms and conditions of the said MOU that in case the accused were to fail to get Sale Deed executed in its terms, the said MOU would become “*null and void*”.

The accused failed to comply with the terms and conditions of the MOU as the Sale Deed of the property in question could not be executed nor money agreed to be paid was remitted, the position taken by the accused being that his liability to execute the Sale Deed was dependant on a board resolution being obtained from MVM Developers Pvt. Ltd., the said company not having agreed to such transaction.

For completion of narration, it may be added that the complainant had earlier come up to this court by Contempt case (Civil) No.316/2016 during the course of hearing of which the parties entered into a modified MOU/undertaking on 17.05.2016. The terms and conditions of the settlement, thus, stood partially modified by the said fresh MOU (Ex.C-1), which was taken on record by order dated 17.05.2016. The contempt proceedings are stated to be still pending.

It is against the above backdrop that the complainant has approached this court seeking cancellation of the bail order dated 23.12.2015 invoking jurisdiction of this court under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

After some hearing, the learned senior counsel representing the accused, on instructions, submitted that he concedes that since the MOU on the basis of which said order of anticipatory bail was granted has become null and void and consequently cannot be availed of by him, he concedes that the petition may be allowed and the order dated 23.12.2015 may be vacated, though he reserving the right to move a fresh application for appropriate relief on merits of the case for which he requests for time of four weeks to be granted and in the meanwhile, the protection of the order earlier

granted to continue.

The learned counsel for the petitioner agrees to the request made by the counsel for the respondent accused, though disputing the submission and reserving all his contentions *vis-a-vis* import, effect or enforceability of the MOUs and reserving the right to oppose the request for release on bail on merits.

The order dated 23.12.2015 passed on bail application No.2441/2015 is hereby cancelled, though its benefit will continue to be availed by the accused/respondent for a period of four weeks from today.

The accused has the liberty to move fresh application which shall be considered in accordance with law.

The petition and the applications filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 23, 2018

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