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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 7th September, 2018

+ CRL.M.C. 3544/2016 & CRL.M.A. 14954/2016

RISHAB GUPTA

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Gurpreet Singh, Mr.
Bakul Jain & Mr. Jatin S. Sethi,
Advts.

Versus

STATE & ANR.

..... Respondents

Through: Mr. Mukesh Kumar, APP for
the State.
Mr. Umakant Kataria, Adv. for
R-2 along with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the basis of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C) submitted on conclusion of investigation into FIR No. 219/2014 of police station Amar Colony involving offences punishable under Sections 420/467/468/471/120B/34 of Indian Penal Code, 1860 (IPC), the second respondent (accused) is facing trial in the court of Metropolitan Magistrate, the gravamen whereof in a nutshell is that he had purportedly sold to the petitioner (the complainant of the case) certain parcel of land, for consideration, receiving in the process Rs. 2.10

crore directly or indirectly, the later revelations showing the land did not vest in him, it rather belonging to Delhi Development Authority (DDA).

2. It appears that the second respondent (accused) had earlier been arrested and was released on interim bail. He, however, jumped bail and eventually came to be declared a proclaimed offender after publication under Section 82 Cr.P.C. After his presence had been secured, a supplementary charge-sheet was laid in the Court of Metropolitan Magistrate leading to the trial. He had earlier applied for bail before this Court by moving bail application no. 919/2016, which was however, withdrawn and dismissed accordingly by order dated 19.07.2016, he having taken the liberty to approach the trial court/Sessions Court instead. He approached the Metropolitan Magistrate by bail application which was dismissed by order dated 23.03.2016. He then moved the court of Sessions by bail application (CF 1399/2016) which was dismissed by a detailed reasoned order dated 18.04.2016 taking note, *inter alia*, of the dismissal of the earlier bail application and the past conduct. After the dismissal of his bail application by the court of Sessions he moved yet another application before the same Magistrate. This fresh application was allowed by a very cryptic order dated 11.08.2016:-

“11.08.2016

Bail Application moved on behalf of accused Dheeraj Prasad.

Present: Ld. APP for State.

Accused not present.

Arguments on the bail application already heard. Arguments on behalf of the complainant were heard on last date of hearing.

Accused has already spent more than 300 days in custody. All the other accused persons have already been granted bail. Considering that accused has not engaged any counsel and is fighting his own case, in order to afford him an opportunity of a fair trial so that he may be able to gather evidence in his defence and also considering the grounds on parity, this court deems it fit to grant bail to the accused on furnishing of bail bonds in the sum of Rs. 50,000/- with one surety in like amount. However, he is to appear in court on each and every date of hearing and no exemption shall be entertained on his behalf till the conclusion of trial in the present case.

Copy of the order be sent to Jail Superintendent, Tihar Jail for intimation to the inmate/accused Dheeraj Prasad”.

3. Challenging the above mentioned order and seeking cancellation of the bail, invoking the jurisdiction under Section 439 (2) Cr.P.C., the complainant of the case has approached this court by the petition at hand. It has been, *inter alia*, pointed out that the impugned order dated 11.08.2016 not only suffers from the vice of it being cryptic but also that it omits reference to any of the incriminating facts nor takes note of the gravity of the offences involved, failing conspicuously to take into account the objection of the State that the petitioner is involved in a series of such crimes, his role having come to light (by then) in at least three other such cases, their particulars (as given in the status report dated 07.10.2016) being

case FIR No. 146/12 under Sections 420/465/468/471/474 IPC, PS Pandav Nagar, Delhi; case FIR No. 20/14, under Sections 406/420/506 IPC, PS Kotwali Nai Mandi, Mujaffarnagar, UP; and case FIR No. 87/15 under Sections 420/468/471/120-B IPC, PS C.R. Park, New Delhi. The learned senior counsel appearing for the petitioner submitted that there is yet another case in which the accused is involved it being FIR 3/2017 police station EOW involving offences under Sections 406/120B/34/420 IPC.

4. After some hearing, the learned counsel for the second respondent, on instructions from the second respondent, who is present in person, submitted that he fairly concedes that the impugned order dated 11.08.2016 is deficient in above aspects, it not having been passed by taking comprehensive note of the facts and circumstances. He submitted that the second respondent is ready and willing to forgo and forfeit the benefit of the impugned order dated 11.08.2016 which, he concedes, may be cancelled under Section 439 (2) Cr.P.C. though he seeks liberty to apply afresh to the Court of Sessions or this Court, if need be thereafter, for release on regular bail. He undertakes that the second respondent is ready to surrender to custody forthwith and that he shall make an application to this effect by presenting himself in person before the trial court on or before 12th September, 2018.

5. Binding the second respondent with this undertaking and setting aside the impugned order dated 11.08.2016, the petition is disposed of.

Needless to add, the trial court would take all consequent measures in light of this decision.

6. Copy of the order be given *dasti* to all sides.

R.K.GAUBA, J.

SEPTEMBER 07, 2018

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