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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 10th August, 2018

+ CRL.M.C. 1987/2016
KULWINDER SINGH Petitioner

Through: Mr. Abhik Kumar with Mr. Rinku
Mathur, Advocates.

versus

STATE OF NCT & ANR Respondents

Through: Mr. Akshai Malik, APP for State with
SI Madhurendra Kumar, P.S. EOW.
Mr. Rakesh Wadhwa, Advocate for
R-2.

+ CRL.M.C. 4155/2016
RESHAM SINGH LALLY Petitioner

Through: Mr. Rakesh Wadhwa, Advocate.

versus

STATE & ANR Respondents

Through: Mr. Akshai Malik, APP for State with
SI Madhurendra Kumar, P.S. EOW.
Mr. Abhik Kumar with Mr. Rinku
Mathur, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the complaint of Resham Singh Lally (the petitioner in Crl.M.C. No. 4155/2016), the Chief Metropolitan Magistrate of South District, by his order dated 09.05.2013, exercising his power and jurisdiction under Section 156(3) of Code of Criminal Procedure, 1973

(Cr.P.C.) directed an investigation to be carried out by the police, the complaint revealing cognizable offences having been committed. Pursuant to the said order, the Economic Offences Wing (EOW) of Delhi Police registered first information report (FIR) no.114/2013 and took up the case for investigation into offences punishable under Sections 406/420/120B of Indian Penal Code, 1860 (IPC).

2. The petitioner Kulwinder Singh is named as the accused in the aforesaid FIR. By his petition (Crl.M.C. 1987/2016), he invokes the inherent jurisdiction of this Court under Section 482 Cr.P.C. to seek proceedings in the FIR to be quashed, particularly, the order dated 09.05.2013 in terms of which, the FIR was registered.

3. During the course of investigation, the police issued notices in the wake of which the accused (petitioner in Crl.M.C. 1987/2016) was constrained to move initially the court of sessions for release on bail. Though it appears some protection was granted at some stage, his application was dismissed eventually and he was arrested on 22.11.2013. He produced before the Metropolitan Magistrate on 23.11.2013. He remained in police custody for three days. His application for release on bail was rejected by Chief Metropolitan Magistrate on 03.12.2013. This was followed by certain further applications and, then on 10.01.2014, he was enlarged on interim bail for ten days. The said interim bail was extended from time to time, eventually, the application being rejected on 11.04.2014. He failed to surrender immediately, this leading to non-bailable warrants being issued. Finally, he surrendered in jail on 21.04.2014.

4. It was against the above said backdrop that he moved an

application for release on bail in this Court, his Bail Application No.938/2014 being granted by order dated 05.12.2014, a perusal thereof would show the release on bail was passed on memorandum of understanding (MoU) dated 04.12.2014.

5. The order dated 05.12.2014 passed on Bail Application no.938/2014 may be quoted as under:-

“This is an application under Section 439 read with Section 482(hereinafter referred to as “Cr.P.C.” seeking bail in case FIR No.114/2013 under Sections 406/420/120B IPC registered at PS EOW, Delhi.

Learned counsel for the applicant submits that the applicant was arrested on 22.11.2013 and he was released on interim bail by learned Additional Sessions Judge, Saket Courts, New Delhi vide order dated 10.01.2014. He also submits that the parties could not settle the matter and the interim bail granted to the applicant was cancelled by learned Additional Sessions Judge, South, Saket Courts, Delhi vide order dated 11.04.2014. He further submits that the applicant surrendered on 21.04.2014. Thereafter, the applicant filed the present application seeking bail and the applicant was admitted to interim bail on 06.05.2014 by this Court for a period of three weeks.

Learned counsel for both the parties submit that the parties have settled the matter and a Memorandum of Understanding dated 04.12.2014 has been placed on record. In terms of the settlement, the petitioner has agreed to pay a sum of Rs.2 crores (Rupees two crores), without prejudice to the rights of both the parties. As per the settlement, the first instalment of Rs.50 lakhs (Rupees fifty lakhs) will be paid by the applicant to the complainant on or before 20.12.2014 by way of demand draft and another sum of Rs.50 lakhs (Rupees fifty lakhs) shall be paid on or before 20.02.2015. The remaining amount of Rs.1 crore (Rupees one crore) shall be paid to the complainant by way of fixed

deposit receipts which will be deposited before the trial Court on or before 05.04.2015.

It is also agreed that the petitioner shall not leave the country without prior permission of the trial Court. Learned counsel for the respondent/complainant, on instructions from the complainant, submits that he has no objection if the applicant is admitted to bail, in terms of settlement. The other issues would be decided by the trial court during the course of trial.

Learned APP for the State submits that investigation is complete and charge-sheet has already been filed.

Considering the facts and circumstances of the case and the submissions made by learned counsel for both the parties, the applicant is admitted to bail on furnishing a personal bond in the sum of Rs.1 lakh (Rupees one lakh) with one surety of the like amount to the satisfaction of the trial Court. However, the petitioner shall not leave the country without prior permission of the trial Court, as agreed by both the parties and parties shall abide by the terms of the compromise.

*The application stands disposed of.
Dasti.”*

6. It is the admitted case of the complainant (petitioner in CrI.M.C. No.4155/2016) that the amount of Rupees one crore in two installments of Rs.50 lakhs was paid to him by the accused in terms of the bail order. It is, however, also admitted that one of the conditions of the bail, i.e. the remaining amount of Rupees one crore which was to be deposited in the form of fixed deposit receipt with the trial court on or before 05.04.2015, has not been complied with till date. In this context, it may be added that on subsequent applications – CrI.M.A. 1773/2015 and 4722/2016 – the time for deposit of the said amount of Rupees one crore in the form of FDR or bank guarantee was extended

by three more months and five more weeks respectively by orders dated 08.10.2015 and 23.05.2016 by learned Single Judges of this Court. The accused, by another subsequent application – CrI.M.A. 11160/2016 – had sought further enlargement of time, but his said request was declined, it being devoid of merits, by order dated 04.08.2016. In spite of dismissal of the said application for extension of time by order dated 04.08.2016, the accused did not make compliance with the aforesaid (second) condition of bail order.

7. Referring to the above default, the complainant by his petition (CrI.M.C. 4155/2016) has approached this Court under Section 439(2) read with Section 482 Cr.P.C. to seek cancellation of the bail granted to the accused.

8. During the course of hearing, it was pointed out that investigation of the case has since been concluded and report under Section 173 Cr.P.C. was submitted on 01.04.2014. The Chief Metropolitan Magistrate has taken cognizance thereupon summoning the accused, he having appeared, the case being ever since at the stage of consideration of charge. The counsel for the accused on being asked would not give any explanation as to why the question of charge remains unaddressed till date.

9. The petition by the accused under Section 482 Cr.P.C. (CrI.M.C. 1987/2016) questions the registration of the FIR on merits, the contentions being that false accusations have been made. The challenge to the order dated 09.05.2013 by such a petition presented in May, 2016 after the investigation into the said FIR has been completed and even a charge-sheet presented in the court of cognizance which

has issued process thereupon is improper as it asks for a departure to be made from the normal course of criminal procedure without any special reasons being set out.

10. The Chief Metropolitan Magistrate upon perusal of the complaint found cognizable offences made out. He, thus, exercised his jurisdiction under Section 156(3) to direct investigation by the police. The police complied with the said direction and, upon investigation, has found substantive material on the basis of which prosecution of the accused for offences under Section 406/420/120B IPC has been proposed. The Chief Metropolitan Magistrate, upon perusal, found grounds to proceed against the said accused and, thus, issued process taking cognizance of the offences in terms of the Section 190 read with Section 204 Cr.P.C.

11. Against this backdrop, the proper course for the petitioner is to raise his contentions before the criminal court where the matter is pending and assist it in taking a proper decision on the question of charge. Rushing to this court by a petition under Section 482 Cr.P.C. in a manner that would call for inquiry into the facts under Section 482 Cr.P.C. is improper [*Rajiv Thapar vs. Madan Lal Kapoor* (2013) 3 SCC 330]. The petition for quashing of the order dated 09.05.2013 directing registration of the FIR is, therefore, dismissed.

12. The accused while resisting the other petition – CrI.M.C. 4155/2016 – refers to *Biman Chatterjee v. Sanchita Chatterjee and Another*, [(2004) 3 SCC 388] to argue that the non-fulfilment of the terms of compromise cannot be the basis for cancelling the bail. The situation here, however, is different. It is not a case where there is

mere breach of terms of MoU. It is a case where the court while granting release on bail had put certain conditions that included deposit of the amount of Rupees one crore in the form of FDR with the trial court within specified period. It was, thus, a condition attached to the bail order. The petitioner did not comply with the directions within the period specified i.e. on or before 05.04.2015. The court showed indulgence by enlarging the time on his applications by orders dated 08.10.2015 and 23.05.2016. When he came up with third application, it was found to be devoid of merits and, thus, request for further enlargement of time was declined on 04.08.2016. With the rejection of his prayer for further enlargement of time, there was no occasion for the accused not to comply with the condition. Since he has concededly not complied with the condition till date, there is a willful breach of one of the material conditions of the bail order. Consequently, the benefit of the bail order has been forfeited by him. The order, thus, stands exhausted. The accused being in breach cannot avail of its benefit and must surrender to custody forthwith. Ordered accordingly.

13. The trial court is directed to take appropriate steps to ensure due compliance with the letter and spirit of these directions.

14. The petitions are disposed of in above terms.

9. *Dasti.*

R.K.GAUBA, J

AUGUST 10, 2018

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