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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision:- 20.11.2018

+ CRL.M.C. 5795/2018 & CRL.M.A. 47535/2018
DHEERAJ SHARMA Petitioner
Through Mr.R.M.Tufail with Mr.Farooq and
Ms.Astha, Advs.

versus

STATE & ORS Respondent
Through Mr.Mukesh Kumar, APP with Insp.
Pankaj Arora, PS Crime Branch.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. At the outset, learned counsel for the petitioner hands over a bunch of additional documents, copies whereof have been provided to Mr.Mukesh Kumar, learned APP. The said documents are taken on record.

2. Vide the present petition, the petitioner seeks modification of the conditions imposed by the learned Chief Metropolitan Magistrate while granting him bail vide order dated 24.05.2018.

3. Before dealing with the rival contentions of the parties, it would be appropriate to refer to the conditions imposed by the learned Chief Metropolitan Magistrate while granting bail to the petitioner. The relevant portions of the order dated 24.05.2018 passed by the learned Chief Metropolitan Magistrate are reproduced hereinbelow:-

14. In view of the settlement the accused is granted interim bail for a period of six months subject to the following conditions:-

- 1. On furnishing bail bond in the sum of Rs. 1 lacs with one surety in the like amount.*
- 2. The accused shall not create any third party interest in the property bearing No. 26-A, Pocket B Mayur Vihar, Phase-II till further orders.*
- 3. He shall not leave the territory of India without permission of the court.*
- 4. He shall deposit his passport in original with the IO within two days of his release from the custody.*
- 5. He shall make payment to all the victims alongwith interest in one installment as per the settlement arrived today after six months from today.*
- 6. He shall not interfere with the investigation and shall join the investigation as and when called.*

4. A perusal of the aforesaid order clearly shows that the conditions for the grant of bail to the petitioner, were imposed on the basis of a settlement arrived at between the parties and, in fact, a prayer had been made on behalf of the petitioner to the effect that interim bail may be granted to him for a period of six months so that he can arrange the funds for making payments to the victims/investors in compliance of the condition no.5 imposed on him for grant of bail.

5. It is an admitted position that based on the aforesaid order dated 24.05.2018, the petitioner was released on interim bail on 24.05.2018 itself, which he has been enjoying for the last almost 6 months and it is only at the fag end of the said period of 6 months that the present petition seeking modification of the conditions of bail, has come to be filed on 14.11.2018.

6. Learned counsel for the petitioner has essentially raised two contentions before this Court, the first being that since the petitioner

was bound to make payments to all the victims alongwith interest in one instalment after 6 months from the date of the passing of the aforesaid order, the same had to be done as per list of victims to be provided by the Investigating Officer. He submits that while the said list was provided to him by the Investigating Officer, the same was faulty as it also included the names of 7 persons who had already been paid the due compensation in the proceedings arising out of FIR No.153/2015. He, therefore, submits that the said condition no.5 as noted hereinabove, is liable to be set aside and prays that the order dated 24.05.2018 be modified to that extent.

7. The second contention of the learned counsel for the petitioner is that the condition directing the petitioner to make the requisite payments to the victims alongwith interest in one instalment, is onerous and in the teeth of the law laid down by the Apex Court on the subject of the imposition of conditions on the grant of bail. In this regard he places reliance on a decision of the Supreme Court in the case of *Sumit Mehta v. State of NCT of Delhi* [Crl.Apl.No.1436/2013] and while drawing my attention to paragraphs 13 to 15 of the same, states that that the aforesaid condition imposed by the learned Chief Metropolitan Magistrate on the grant of bail to the petitioner, is evidently onerous and unreasonable. He, therefore, prays that the same be set aside.

8. On the other hand, Mr.Mukesh Kumar, learned APP vehemently opposes the petition by stating that the petitioner has enjoyed the aforesaid interim bail order for a period of six months and cannot at this belated stage be permitted to urge that the conditions

therein are in any manner onerous or unreasonable. He further submits that the plea of the learned counsel for the petitioner that the Investigating Officer has included the names of the 7 persons who he claims to have already compensated in the proceedings arising out of FIR No.153/2015, is factually incorrect. However, to cut short the controversy, Mr.Mukesh Kumar reiterates on instructions from the Investigating Officer that the names of the 7 persons that the petitioner claims to have compensated are not included in the list being furnished to the petitioner for compliance of condition no.5 of the order dated 24.05.2018.

9. For the sake of clarity the names of the 7 persons, who according to the petitioner already stand compensated and whose names are admittedly not included in the list furnished by the Investigating Officer, are reproduced hereinbelow:-

NUMBER MENTIONED AS PER LIST OF FIR NO.732/15

Bold names are also reflects in FIR No.153/15

S.No.	Name	Project	Plot No.	Area	Registry Expenses	Registry Amount/consideration Amount
1.	Dharamvir Malik S/o Sh.Satyapal Malik	Anand Niketan	232	100	Rs.18,500/-	Rs.3,70,000/-
5.	Laxmi Rawat D/o Rajesh Singh Rawat				Pending	Rs.10,80,000/-
6.	Mayur Singh S/o Sh.Vinod Kumar				Pending	Rs.13,60,000/-
7.	Sh.Sharvan Kumar S/o Sh.Siya Ram Raut	BE-E	145	50	Rs.25,000/-	Rs.5,00,000/-
11.	Parbha Singh @ Prabha W/o Sh.Brij Mohan	BEE	41	70.25	Registry Done	Rs.2,96,000/-
12.	Sh.Ranjeet Kumar S/o Sh.Sattya Narayan	BE-E	31	71	Registry Done	Rs.3,20,000/-
13.	Priya Kumar @ Priya Kumari W/o Nirbhay Kumar	BEE	49	70.25	Registry Done	Rs.8,19,000/-

10. In the light of the aforesaid broad facts, I have considered the rival submissions of the learned counsel for the parties and perused the record. The foremost fact that needs to be noted is that the petitioner is seeking modification of the conditions for the grant of bail as imposed by the learned Trial Court just before the conclusion of the period of six months after which he was required to make the necessary payments to the victims/investors. It is interesting to note that the petitioner, who was in custody and had been produced before the learned Trial Court when the aforesaid order dated 24.05.2018 was passed, was released on interim bail on the very same day only in view of the statement made by him in Court to the effect that he is agreeable to the proposed settlement, which included compensating the victims in one instalment after a period of 6 months from the date of the passing of the order.

11. In the light of the admitted position that the settlement was not only arrived in the petitioner's presence but was also the basis of his release from judicial custody for the last six months, I am unable to fathom how he can now contend that the conditions imposed by the learned Chief Metropolitan Magistrate on him for grant of bail are unreasonable or onerous, especially in view of his specific consent to the proposed settlement as recorded in the order dated 24.05.2018. Even otherwise, in my considered view the condition imposed on the petitioner to generate the necessary funds and pay back the victims alongwith interest in one instalment, for which purpose the petitioner was granted interim bail for six months, cannot in any manner be said to be unreasonable.

12. I have also considered the decision of the Apex Court relied upon by the learned counsel for the petitioner. In my view the said decision, which related to a case wherein as a condition to the grant of anticipatory bail, the learned Trial Court had directed a FDR of Rs. 1 crore to be kept with the Investigating Officer, is clearly distinguishable from the facts in the present case. In the present case, the conditions imposed by learned Trial Court were based on a settlement arrived at between the parties and the petitioner having taken the benefit of the order granting him interim bail, cannot now turn around and contend that the conditions imposed therein are unreasonable. In my opinion, in case the petitioner was aggrieved by any condition imposed on him for the grant of bail, it was incumbent upon him to approach the Court within a reasonable time after the passing of the said order, instead of availing the benefit of the said order and then approaching the Court at the fag end.

13. Now, in as much as the second submission made by the learned counsel for the petitioner is concerned that the Investigating Officer has included in the list of investors who need to be paid by the petitioner in accordance with the order dated 24.05.2018, even the names of those 7 victims who already stand compensated in the proceedings arising out of FIR No. 153/5015, the same need not detain me in view of the categorical statement made by the Investigating Officer before this Court, that the names of those 7 persons are not included in the list of investors furnished by him. The Investigating Officer will remain bound by his aforesaid statement.

14. For the aforesaid reasons, the petition is dismissed alongwith the pending application as being meritless.

(REKHA PALLI)
JUDGE

NOVEMBER 20, 2018

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