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

+ **W.P.(CRL) 3541/2017**

P S PAL

..... Petitioner

Represented by: **Mr. Neeraj Pandey, Adv.**

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Represented by: **Mr. Ashish Aggarwal, ASC**
with SI Arun Kumar PS
Ghazipur.
Mr. D.S. Paweriya, Adv. for
complainant.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
23.03.2018

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1. Petitioner applied for an anticipatory bail before this Court in case FIR No.1/2011 under Sections 420 IPC registered at PS Ghazipur on the complaint of Saroj Kumari. The order passed by this Court in BAIL APPLN. 1932/2013 on 12th December, 2013 is as under:

“1. The mediation between the parties has failed.

2. The complainant is present in Court and he submits that he paid Rs.2,00,000/- to the petitioner on 24th December, 2009, Rs.80,000/- on 10th May, 2010, Rs.3,31,477/- to Delhi Development Authority for conversion of the leasehold rights into freehold and Rs.30,000/- on 1st January, 2010. The complainant further submits that he took loan of Rs.7,20,000/- from HDFC Bank to pay the said amount to the petitioner in terms of the sale deed dated 10th May, 2010. It is submitted that the HDFC Bank issued cheque No.999942 dated 9th March,

2010 drawn in the name of the petitioner to him and the said cheque is lying with HDFC Bank and the complainant is paying the instalments for the repayment of the loan along with interest thereon. It is submitted that the complainant has suffered loss of interest. The complainant further submits that the possession of the subject property is with the petitioner.

3. The learned counsel for the petitioner submits that the petitioner as well as the complainant have filed civil suits against each other and the rights of the parties with respect to the subject property shall be determined by the civil Court. The learned counsel for the petitioner further submits that the petitioner has no objection to the complainant surrendering the loan of Rs.7,20,000/- to HDFC Bank subject to final outcome of the civil suits. The learned counsel for the petitioner further submits that, without prejudice to the rights and contentions of the parties, the petitioner is ready and willing to deposit Rs.10,00,000/- with the Registrar General of this Court subject to final outcome of the civil suits pending between the parties.

4. The learned APP for the State submits that the undertaking of the petitioner to deposit Rs.10,00,000/- with this Court be recorded.

5. The petitioner, present in Court, undertakes to deposit Rs.5,00,000/- with the Registrar General of this Court within one month and balance amount of Rs.5,00,000/- within a period of three months without prejudice to the rights and contentions of the parties. The undertaking of the petitioner is hereby accepted. On the aforesaid amount being deposited, the Registrar General shall keep the said amount in fixed deposit till the appropriate directions with respect to the said amount are passed by the concerned civil Court. Both the parties shall place the copy of this order before the civil Court.

6. Subject to the petitioner depositing Rs.10,00,000/- with the Registrar General of this Court in terms of the above undertaking, in the event of arrest, the petitioner shall be released on furnishing a bail bond in the sum of Rs.25,000/- and one surety of the like amount by the Investigating Officer.

7. In the event of the failure of the petitioner to deposit

Rs.10,00,000/- in terms of the undertaking to this Court, this order shall stand vacated.

8. *It is clarified that this Court has not examined this case on merits and the rights of the parties shall be adjudicated by the civil Court and the undertaking of the petitioner to deposit Rs.10,00,000/- is accepted to balance the equities as the possession of the subject property is with the petitioner and the complainant is out of pocket to the extent of more than Rs.6,50,000/-. The civil Court shall determine the rights and liabilities of the parties without being influenced by any observation made in this order.*

9. *The bail application is disposed of.”*

2. It is thus evident that on the petitioner undertaking to deposit a sum of ₹10 lakhs in two instalments without prejudice to his rights and contentions the petitioner was granted anticipatory bail.

3. Since the petitioner did not comply with the undertaking and did not submit himself for investigation, thus process under Section 82/83 Cr.P.C. was started. The petitioner was finally arrested on 19th April, 2017 whereafter he applied for regular bail before the learned Additional Sessions Judge wherein the learned ASJ passed the order dated 24th August, 2017 which is impugned in the present petition and the relevant portion thereof is:

“Keeping in view the prima facie material against the applicant, the victim cannot be left remedy-less, awaiting final decision of the Court. Hence, applicant is admitted to bail on his furnishing P/B and S/B in the sum of ₹30,000/- with one surety in the like amount up to satisfaction of ld. MM/ Duty MM, subject to the following conditions:

(a) *Applicant shall deposit amount of ₹10 lakh in the form of FDR in the name of trial Court. This FDR shall be released to any of the parties, as per findings given by the trial Court in this case. Meaning thereby, if applicant*

stands acquitted, it shall be released back to the applicant or if he is convicted, then same may be utilized as compensation for the victim. Trial Court shall have discretion to release it even otherwise, on the basis of any settlement between the parties.

- (b) Applicant/accused shall not leave the area of NCR without express permission of trial court, except in emergent situation. In emergent situation, he shall intimate and seek further permission from the court through his authorized representative/ counsel to leave the area of NCR.*
- (c) Applicant and surety shall intimate trial court immediately after any change in their addresses.*
- (d) Applicant shall not try to influence any witness of this case.*
- (e) Applicant and surety shall mention their mobile numbers to be used by them during the period of bail.”*

4. Considering the fact that the undertaking of the petitioner was for the purpose of seeking anticipatory bail, the learned Sessions Judge while granting regular bail to the petitioner after the petitioner has been in custody since 19th April, 2017 could not have imposed the condition of deposit of amount of ₹10 lakhs in the form of FDR in the name of the Trial Court. The order passed by the learned Special Judge, PC Act CBI dated 24th August, 2017 as noted above is modified deleting Para (a) of the condition granting bail. Rest of the conditions as imposed by the learned Special Judge, CBI in the order dated 24th August, 2017 would continue. Petitioner is now released on bail on his complying conditions mentioned in the order dated 24th August, 2017 of the learned Special Judge except condition No.(a).

5. Petition is disposed of. Order dasti.

MUKTA GUPTA, J.

MARCH 23, 2018
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