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

+ **BAIL APPLN. 15/2018**

KULWANT RAI & ANR

..... Petitioners

Represented by: Mr. Simranjeet Singh,
Advocate.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
with Insp. Ashwani Kumar, PS
EOW.
Mr. Soayib Qureshi, Advocate
for complainant.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

01.08.2018

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Crl.M.A. No. 28241/2018 (additional documents)

By this application the petitioner seeks to place on record additional documents.

Application is disposed of taking the additional documents on record.

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1. By this petition, the petitioners seek anticipatory bail in case FIR No. 103/2016 under Sections 420/468/471/120B IPC registered at PS EOW on the complaint of one, Randhir Singh Nehra, Director and authorized signatory of M/s Aspen Infratech Pvt. Ltd.

2. The allegations of the complainant in the above noted FIR are that the petitioner No. 2, Darshan Singh Rai and his family members, namely his

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wife Smt. Kulwant Rai, petitioner No. 1 herein, Navdeep Singh Rai, daughter and Navjeet Rai, son cheated the company by executing an Agreement to Sell dated 30th October, 2013 for 150 acres land and agreed to be purchased for ₹49 crores out of which ₹2.85 crores was paid as earnest money despite the fact that the petitioners and the other accused were fully aware that the total land of 150 acres has already been notified under Section 4 and 5 of Forest Act and thus could not be of any use to the complainant as the same could not be developed. It was also claimed that the land was free from all encumbrances, except three bank loans amounting to approx. ₹64 lakhs which would be cleared by the land owners before execution of the sale deed. Further, out of the said 150 acres land, 30 acres of the land fell in the river. It is thus alleged that by misrepresentations, the petitioners and the other accused persuaded the complainant to enter into an Agreement to Sell and pay ₹2.85 crores as part payment out of the total consideration of ₹49 crores.

3. Though learned counsel for the petitioners submits that the entire land is not a forest land, however, during the course of investigation it has been found out that the land in question is a forest land.

4. Learned counsel for the petitioners heavily relies on Clause A of the Agreement to Sell to contend that all documents of the land in question were given to the complainant and he had conducted due diligence of the land.

5. Clause A of the Agreement to Sell notes as under:-

A. That party of the Second part has represented that he/they is/are absolute owner and in possession of Appx. 150.00 Acres or as per revenue record Agricultural Land at Village Mouli, Tehsil Barwala, Distt. Panchkula (Haryana)

(hereinafter referred as 'Said Land'). The Sizra of the said land with demarcation plan have been already received by the First party. The revenue details of the said land i.e. its Khasra/Khatoni numbers and physical inspection of the land have been already inspected by the first party to their satisfaction.

6. A perusal of the Clause (A) as noted above clearly shows that the copy of the Sizra with demarcation plan was given to the complainant besides the details of the land that is Khasra/Khatoni and the complainant was permitted physical inspection of the land in question. In none of the clauses it is mentioned that the land in question is under forest area or that the khasra girdawaris were handed over to the complainant.

7. A perusal of the Clause 15 of the Agreement to Sell also notes that the seller shall provide physical possession of the land as required and mutually agreed in front side closest to the highway for the purpose of constructing site office, for the purpose of sales, marketing and construction activities. It is thus evident that the proposed plan of the complainant was construction on the said property which to the knowledge of the petitioners could not be done, the land having been already notified under the Forest Act.

8. Learned counsel for the petitioners submits that the notification qua the forest land was only for 15 years which had expired prior to the entering into Agreement to Sell. However, as per the decision of the Hon'ble Supreme Court if land is in a forest area, even if the notification has expired, no construction thereon can be carried without the approval under the Forest Conservation Act.

9. A perusal of the jamabandi allegedly handed over by the petitioners to the complainant clearly shows that the portion where it was noted that the land is closed under Sections 4 and 5 of the Forest Act for 15 years by the notification has been omitted out and is not available on the copy handed over to the complainant.

10. Further though the case of the petitioners was that after the earnest money was received from the complainant the mortgages with the property would be clear according to the complainant in the FIR the same were also not cleared.

11. Learned counsel for the petitioners submits that though the loans had not been cleared at the time of registration of FIR, however, in the end of 2017, the mortgages with the various banks had been cleared.

12. Learned counsel for the petitioners further submits that the stand of the complainant in the civil suit was that no permission of the forest department was required, however, even with this stand being taken by the complainant, the same does not absolve the petitioners of the criminal liability of misrepresentation and wrongful inducement to part with the money.

13. Case of the complainant is that as per Clause 14 of the agreement the club house of the petitioners was to be renovated by the complainant which the complainant did. Learned counsel for the complainant fairly submits that after the FIR was registered a sum of ₹25 lakhs was paid back by the petitioners to the complainant.

14. Considering the nature of allegations as noted above this Court finds

no ground to grant anticipatory bail to the petitioners.

15. Petition is dismissed.

MUKTA GUPTA, J.

AUGUST 01, 2018
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