*　　IN THE HIGH COURT OF DELHI AT NEW DELHI

%　　Decided on: May 20, 2019

\+　　**BAIL APPLN. 2100/2018**

AMRESH MISHRA ..... Petitioner

Represented by: Mr.Dhruv Mehta, Sr. Adv. with Mr. Mr.Rajat Arora, Ms.Vishalakshi Singh, Advs. for the petitioner with petitioner Amresh Mishra in person

versus

STATE NCT OF DELHI ..... Respondent

Represented by: Ms.Meenakshi Chauhan, APP for the State with SI Vishal Tiwari, P.S. Hauz Khas

Mr.Anjaneya Mishra, Adv. with Mr.Sahil, Adv. for the complainant

\+　　**CRL.M.C. 2100/2019**

RAJ KUMAR JHA ..... Petitioner

Represented by: Mr.Anjaneya Mishra, Adv. with Mr.Sahil, Adv. for the complainant

versus

STATE OF NCT OF DELHI & ANR. ..... Respondent

Represented by: Ms.Meenakshi Chauhan, APP for the State with SI Vishal Tiwari, P.S. Hauz Khas
Mr.Dhruv Mehta, Sr. Adv. with Mr. Mr.Rajat Arora, Ms.Vishalakshi Singh, Advs. for the respondent No.2 with respondent No. 2 in person

MUKTA GUPTA, J. (ORAL)

BAIL APPLN. 2100/2018

1. By this petition, petitioner has sought regular bail in case FIR No. 112/2018 under Sections 420/406/34 IPC registered at P.S. Hauz Khas on the complaint of one R.K.Jha.

2. The allegations against the petitioner in the aforesaid complaint were that the petitioner and his wife represented that they wanted to sell their property ad-measuring 26 karnals 7 marlas situated in village Mubarikpur, Farukhnagar, Gurgaon, Haryana of which property, M/s.Nishi Tradex Pvt. Ltd. was the owner. Accused Swadesh Mishra, brother of the petitioner handed over the due diligence report dated 24th November, 2014 through their advocate in respect of the property claiming that the property was free from all encumbrances and persuaded the complainant to purchase the said property for a total sale consideration of ₹ 1 Crore. An agreement to sell in this regard was executed on 24th December, 2014. Since for one complete year, nothing proceeded further, the petitioner returned a sum of ₹ 40 lakhs to the complainant by way of RTGS on 28th January, 2016. On 29th January, 2016, petitioner and his wife Nivedita Mishra represented that they were in dire need of money and desperately wanted to sell the said property. Thus, again an agreement to sell was entered into between the parties on 29th January, 2016 for a sale consideration of ₹ 1 Crore and original title deeds of the property in question were deposited with the complainant. An initial payment of ₹ 40 lakhs was made by the complainant through RTGS on 29th January, 2016 itself and later, further sum of ₹ 40 lakhs was given on 15th April, 2016 by way of a cheque. Despite having received ₹ 80 lakhs, sale

deed was not executed and the sale was avoided. On a physical visit to the site, it was revealed that the property in question was in possession of a third party and on verification from the Sub-Registrar's office at Farukh Nagar, Gurgaon, it was revealed that the same was already sold in favour of one Sanjeev Kumar for a consideration of ₹ 1.40 Crores in April, 2013. The complainant thus made this complaint on which FIR No. 112/2018 as noted above, was registered.

3. The complainant also gave one more complaint to P.S. Hauz Khas on which, no separate FIR was registered but the same was also clubbed during the investigation of the present FIR by recording supplementary statement of the complainant. In the said complaint dated 2nd December, 2018, the complainant R.K.Jha complained to DCP (South) that the petitioner approached him through common friend for letting out his property bearing No H-139, Block H, Sector 84, Faridabad. The accused also induced him to hand over the original documents of the subject property so that he can place the same as collateral security with the UCO Bank, Punjabi Bagh Branch, New Delhi. The petitioner represented himself to be the owner of the account bearing No.0234510000670 maintained by M/s. Nishi Tradex Private Ltd. As against the property of the complainant, the petitioner took over draft facility to the tune of ₹ 80 lakhs. On the said facts being revealed, a cheque was issued for a sum of ₹ 80 lakhs was issued by the petitioner in favour of the complainant which was dishonoured. It was later revealed to the complainant on enquiry from the UCO Bank, Punjabi Bagh Branch that the original documents of the complainant's property were not placed with M/s. Nishi Tradex Pvt. Ltd. but with a different company being M/s.

Shivangi Exim Pvt. Ltd. and Amresh Mishra was neither the signatory nor the Director in M/s. Nishi Tradex Pvt. Ltd. The Memorandum of Understanding between the complainant R.K.Jha and M/s. Nishi Tradex Pvt. Ltd. dated 19th January, 2015 through its authorized signatory Dharmender Kumar Pandey is also signed by Amresh Mishra as Director of M/s. Nishi Tradex Pvt. Ltd.

4. When the present petition being Bail Application No. 2100/2018 seeking regular bail came up before this Court on the first date i.e. 10th September, 2018, learned counsel for the petitioner stated that an offer of settlement was made to the complainant and an affidavit accepting the offer was settled on behalf of the complainant and the petitioner has agreed to pay a sum of ₹ 1.30 Crores as per the time schedule indicated in the settlement, which fact was refuted by the learned counsel for the complainant. However, learned counsel for the petitioner, to show his bona fides in the meantime, undertook to deposit ₹ 80 lakhs, the amount allegedly cheated, with the Registrar General of this Court. The bail application was directed to be listed on 26th September, 2018 and the petitioner was permitted to deposit the amount as stated by the learned counsel with the Registrar General of this Court, who was directed to keep the same in the FDR.

5. On 18th September, 2018, Crl.M.A. 32418/2018, an application on behalf of the petitioner came up for hearing before this Court seeking pre-ponement of the date of hearing and modification of the order dated 10th September, 2018 as also seeking interim bail. On 18th September, 2018, learned counsel for the petitioner stated that he would not press interim bail but would press the same on 26th September, 2018, the next date fixed.

However, the statement of learned counsel for the complainant was also recorded that the father of the petitioner has undertaken that petitioner would pay a sum of ₹ 1,30,00,000 as full and final settlement of the complainant's claim which was accepted by the complainant and that PDCs in this regard have been prepared and a sum of ₹ 10 lakhs has been paid to the complainant on 18th September, 2018. Thus, the order dated 18th September, 2018 was modified and it was noted that the petitioner may not deposited a sum of ₹ 80 lakhs with the Registrar General of this Court till the next date of hearing. However, the next date was not preponed and the application was disposed of. On 26th September, 2018, noting the facts as mentioned in the FIR only and that the parties had entered into a settlement, wherein the father of the petitioner has agreed to pay a sum of ₹ 1.30 Crores in lieu of all the claims of the complainant, which were affirmed by the complainant and also the fact that ₹ 10 lakhs and 8 post-dated cheques for a sum of ₹ 1.20 Crores encashable every month and finally on 10th May, 2019 had been received by the complainant, this Court granted interim bail to the petitioner and listed the matter for today.

6. This order granting interim bail was passed on 26th September, 2018 which the petitioner availed, however, when the date 20th May, 2019 was nearing, application being Crl.M.A.8202/2019 was filed by the petitioner seeking the modification of the order dated 26th September, 2018. This Court noted that the petitioner's/applicant's claim was that the respondent claims sum of ₹ 80 lakhs in the FIR in question, out of which, ₹ 55 lakhs has been paid to the complainant and the petitioner was willing to pay a further sum of ₹ 25 lakhs. It was stated that though father of the petitioner had

entered into a settlement and agreed a sum of ₹ 1.30 Crores in lieu of all the claims of the complainant, however, the petitioner was not in a position to pay the said amount and the bail application be heard on merits, permitting the petitioner to deposit ₹ 25 lakhs in the meantime with the Registrar General of this Court. This Court directed the petitioner to be present in Court on 20th May, 2019, the date fixed while issuing notice to the parties and noted that the petitioner may deposit ₹ 25 lakhs with the Registrar General of this Court, which amount would be kept in fixed deposit. Till date, the sum of ₹ 25 lakhs has not been deposited and the learned senior counsel for the petitioner today offers a demand draft of ₹ 25 lakhs to the complainant. Learned counsel for the complainant claims that though it is the claim of the petitioner that a sum of ₹ 55 lakhs has been paid as part settlement, however, the complainant has received only ₹ 50 lakhs. Thus, even as per the initial amount of ₹ 80 lakhs, which was not the finally settled amount, which was actually ₹1.30 Crores and which was in relation to the first complaint for which the FIR was registered only, the complainant has only received a sum of ₹ 50 lakhs and not ₹ 55 lakhs.

7. In view of this conduct of the petitioner, the complainant R.K.Jha has filed Crl.M.C. 2100/2019, which seeks cancellation of interim bail granted to the petitioner herein/modification of the order dated 26th September, 2018.

8. Since the petitioner has not honoured the settlement which was the very basis for grant of interim bail by this Court, bail application of the petitioner is now required to be decided on merits of the case.

9. As noted above, the allegations against the petitioner are of entering into an agreement to sell of a property which had already been sold and taking a sum of ₹ 80 lakhs from the complainant. Further, besides this, during the course of investigation, the second complaint against the petitioner by the complainant had been clubbed and is being investigated as part of this FIR itself, wherein, the allegations are that keeping the property of the complainant i.e. H1-39, Block H, Sector 84, Faridabad with the UCO Bank, Punjabi Bagh Branch, New Delhi on which, overdraft credit facility to the tune of ₹ 80 lakhs has been taken. Though the petitioner initially paid interest on the said amount, after 2017, he stopped paying the interest.

10. Claim of the petitioner is that the petitioner has no connection with M/s. Shivangi Exim Pvt. Ltd. for which the documents were used or M/s. Nishi Tradex Pvt. Ltd., however, the petitioner has signed the MoU dated 19th January, 2015 as a Director of M/s. Nishi Tradex Pvt. Ltd. and the complainant was represented that the credit facility will be taken by M/s. Nishi Tradex Pvt. Ltd. but the same was taken on behalf of M/s. Shivangi Exim Pvt. Ltd.

11. Learned counsel for the petitioner vehemently contends that the petitioner having joined the investigation and since only one day, police remand was granted, the petitioner is no more required for the purposes of investigation and entire evidence being documentary in nature, he be released on bail.

12. It may be noted that the petitioner was arrested in FIR No. 112/2018 under Sections 420/406/34 PC at P.S. Hauz Khas on 14th August, 2018. On the representation that the matter was settled and the petitioner was willing

to pay a sum of ₹ 1.30 Crores/- in full and final settlement of the claim and for which PDCs were issued, the petitioner was granted interim bail on 26th September, 2018 when investigation was still going on. The charge sheet in the case has yet not been filed, hence, it cannot be said that the presence of the petitioner for investigation would not be required.

13. Considering the facts as noted above, this Court finds no ground to grant bail to the petitioner.

14. Petition is dismissed. Petitioner would surrender to custody.

15. Order dasti.

Crl.M.C. 2100/2019 with Crl.M.A.8341/2019 and Crl.M.B. 1419/2018 (for interim bail), Crl.M.A. 8202/2019 (for modification of order dated 26.9.2018) in Bail Appln. No. 2100/2018

Dismissed as infructuous.

MUKTA GUPTA, J.

MAY 20, 2019/akb