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

\+ **BAIL APPLN. 1237/2019**

K.S. SURESH ..... Petitioner

Through Mr S. Nandakumar, Mr S. Muthukrishnan and Ms Deepika Nandakumar, Advocates.

versus

STATE & ANR. ..... Respondents

Through: Ms Meenakshi Chauhan, APP for State.
Mr P.D. Gupta, Senior Advocate with Mr Atul Gupta, Advocate for R2/complainant.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **23.09.2019**

1. The petitioner has filed the present petition, *inter alia*, praying for anticipatory bail in connection with FIR No. 89/2014 under Sections 420/468/471/120-B/34 of the IPC registered at P.S. Mianwali Nagar.

2. The said FIR was registered at the instance of Sainik Welfare Organization of India (hereafter 'SWO'). SWO is a non-governmental organization, *inter alia*, formed with the object to further the welfare of retired defence personnel/their dependants. SWO states that it had collected money from certain retired defence personnel and their dependants for development of a residential accommodation for them. SWO had entered into a Memorandum of Understanding dated 30.04.2010 with one Sanjay Narain, Director of M/s Vakaratund Infrastructure Private Ltd. for the said

purpose. In terms of the said MOU, M/s Vakaratund Infrastucture Pvt. Ltd. had the responsibility to complete the housing project. Consideration for the same was to be paid in instalments.

3. It is stated that Vakaratund Infrastructure Pvt. Ltd. entered into a Memorandum of Understanding dated 27.12.2009 with HKD International Company (Mahesh Bulsaria and Hetal Bulsaria) for development of the project. HKD International Company, in turn, entered into an agreement dated 27.12.2009 with the petitioner herein for procurement of land. It is stated that the project has not commenced and, in this background, SWO had filed the FIR in question.

4. It is stated that applications for anticipatory bail were filed by the co-accused, namely, Mr Mahesh Bulsaria and Ms Hetal Bulsaria. The petitioner also filed an application for anticipatory bail. While the proceedings were pending, SWO and the accused (K.S. Suresh, the petitioner herein, Hetal Bulsaria and Mahesh Bulsaria) were referred to the Mediation Centre, Tis Hazari Courts for an amicable resolution of their disputes.

5. It is stated that the said parties resolved their disputes before the Mediation Centre and on 09.02.2015, entered into a Settlement Agreement. In terms of the said agreement, the said accused agreed to repay a sum of ₹4,50,00,000/- to SWO/the investors. Although Hetal Bulsaria and Mahesh Bulsaria are stated to have partly paid the same amount, the petitioner herein has not paid any amount.

6. In view of the settlement arrived at between the parties in terms of the Settlement Agreement dated 09.02.2015, anticipatory bail was granted to the accused by an order dated 10.03.2015. Since the said accused did not perform their obligations in terms of the settlement arrived at on 09.02.2015 that is, defaulted in payment of the agreed amount in full, SWO filed an application seeking cancellation of the bail grated to the accused. The said application was allowed and the bail granted to them was cancelled by an order dated 05.11.2018 passed by the learned ASJ.

7. The other two accused, namely, Hetal Bulsaria and Mahesh Bulsaria filed their respective bail applications (Bail Application No. 2744/2018 & 2748/2018) seeking anticipatory bail from this Court. Their applications were rejected by a common order dated 11.01.2019. The said accused have preferred a Special Leave Petition against the said order (SLP (Crl.) 2414-2415/2019). And, by an order dated 15.03.2019, the Supreme Court has issued notice and directed the stay of the arrest of the petitioners in the said case.

8. It is seen from the FIR that SWO had not entered into any direct agreement with the petitioner in this present case. Its agreement was with M/s Vakaratund Infrasturcture Pvt. Ltd. which, in turn, had entered into an MOU with HKD International Company represented by Ms Hetal Bulsaria and Mr Mahesh Bulsaria. HKD International company had in turn entered an agreement with K.S. Suresh, the petitioner in this case.

9. Since anticipatory bail was granted to the accused solely on the basis

of the Settlement Agreement entered into by them with the complainant, the same has righty been cancelled. Nonetheless, their prayer is required to be considered on merits *de hors* the Settlement Agreement with SWO.

10. This Court is of the view that anticipatory bail cannot be denied to the petitioner solely on the ground that the petitioner has failed and neglected to perform his obligation under the Settlement Agreement.

11. The petitioner claims that he had only received a sum of ₹20 lakhs in terms of his MOU with HKD International Company. In view of the above, it does not appear that the role of the petitioner can be equated with that of the constituents of HKD International Company (Hetal Bulsaria and Mahesh Bulsaria).

12. There does not appear to be any tangible risk of the petitioner escaping the process of law.

13. Considering the above, this Court is of the view that the present application ought to be allowed.

14. In view of the above, this application is allowed and the petitioner is directed to be released on bail on his furnishing a personal bond in the sum of ₹1,00,000/- and a surety of the like amount. This is also subject to the following conditions: -

i) The petitioner shall join the investigation and report to

the Investigating Officer on 25.09.2019 at 10:30 a.m. and shall ensure that he is available to the IO as and when called upon;

ii) The petitioner shall cooperate with the police and provide the IO all relevant documents including bank account documents, as are available in his possession, as and when required;

iii) The petitioner shall not leave the National Capital Territory of Delhi without approval of the IO;

iv) The petitioner shall provide his contact details and ensure that he is reachable at all times.

15. Needless to state that if any of the aforesaid conditions are violated, the anticipatory bail granted to the petitioner shall be cancelled. In the event, a need arises, the IO is at liberty to apply.

16. The petition is allowed in the aforesaid terms.

17. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

SEPTEMBER 23, 2019
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