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

Date of decision 16th November, 2021

IN THE MATTER OF:

\+ BAIL APPLN. 1702/2019

JAI KUMAR GOEL ..... Petitioner

Through Mr. Shantwanu Singh, Advocate

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents

Through Ms. Meenakshi Chauhan, APP with SI Ranveer Mavi, PS Vivek Vihar
Mr. Ashok Kumar Singh, Mr. Yash Datt and Mr. Deepak Kumar, Advocates for the respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

CRL.M.A. 17068/2020

1. This application under Section 482 Cr.P.C. has been filed by Respondent No.2/Complainant seeking recall of the Order dated 27.11.2019 passed by this Court in BAIL APPLN.1702/2019 granting anticipatory bail to the Petitioner in FIR No. 474/2017 dated 16.09.2017 registered at Police Station Vivek Vihar for offences under Sections 419/420/468/471 read with Section 34 of the Indian Penal Code, 1860.

2. Facts, in brief, leading to the present application are stated as under:

    a) The instant FIR was registered on the complaint of Respondent No.2, who is the real younger brother of the Petitioner herein. It is stated that the Complainant and his wife, along with the Petitioner and his wife, purchased a residential property bearing

No. D-64, Kaushambi, Ghaziabad, UP measuring 437.69 sq. mtrs. (*hereinafter*, 'the property in question'). It is stated that the original title documents, i.e. the registry documents, were kept by the Petitioner and his wife in their custody. It is stated that the Complainant came to know that the Petitioner herein had mortgaged the property in question by forging documents and had taken a loan worth Rs.1,86,01,534/- from Aditya Birla Finance Ltd. on 01.02.2013. It is further stated that there is a pending liability of Rs.1,77,67,349/- against the Petitioner that is to be repaid to Aditya Birla Finance Ltd. with regard to the abovementioned loan.

b) It is stated that when the Complainant confronted the Petitioner with regard to the loan, the Petitioner threatened the Complainant, and proceeded to abuse and humiliate him. It is alleged that a similar act was done by the Petitioner in the past wherein he borrowed a loan using forged signatures of the Complainant and his wife from Religare Finance Ltd. on 23.08.2010. It is stated that the Complainant had sent a notice to Religare Finance Ltd. on 11.07.2012 and then on 19.01.2013. It is further stated that documents of other properties of the Complainant and his wife are also in the custody of the Petitioner and his wife and the same can be misused by them.

c) On this complaint FIR No. 474/2017 was registered on 16.09.2017 at Police Station Vivek Vihar for offences under Sections 419/420/468/471 read with Section 34 IPC.

d) With regard to the instant FIR, the Petitioner approached the

Trial Court by filing an application for grant of anticipatory bail. The learned Additional Session Judge - 05, Karkardooma Court, *vide* Order dated 04.07.2019 dismissed the application of the Petitioner.

e) It is stated that thereafter the Petitioner approached this Court by filing an application for anticipatory bail, being BAIL APPLN. 1702/2019. It is stated that the wife of the Petitioner also approached this Court by filing an application under Section 482 Cr.P.C. being CRL.M.C. 4362/2019, seeking quashing of FIR No. 474/2017. It is stated that *vide* Order dated 02.09.2019, this Court referred CRL.M.C. 4362/2019 and BAIL APPLN.1702/2019 to the Delhi High Court Mediation and Conciliation Centre for the possible settlement of the dispute. It is stated that the parties amicably settled the dispute by entering into a settlement agreement dated 08.11.2019. Relying on the settlement agreement, this Court granted anticipatory bail to the Petitioner *vide* order dated 27.11.2019 and disposed of the bail application.

f) The relevant portion of the settlement agreement dated 08.11.2019 reads as follows:-

"1. It is agreed by the Second Party that property bearing no.D-64, Kaushambi, District-Ghaziabad, Uttar Pradesh which is presently in the joint name of First Party & Second Party would go to the share of the First Party herein.
2. That it is further agreed that the entire pending loan which has been taken in the name of M/s. JKG Construction Pvt. Ltd. from Aditya Birla Finance Ltd. against the mortgage of property bearing no. D-64, Kaushambi, District- Ghaziabad,

Uttar Pradesh will be paid by the Second Party either individually or through M/s. JKG Construction Pvt. Ltd or any of its sister/subsidiary concern. There shall not be any liability of First Party i.e. SH. VIJENDER KUMAR GOEL and SMT. ARCHAN GOEL.
3. It is further agreed that after clearing the above-mentioned loan of Aditya Birla Finance Ltd., the Second Party shall execute such documents as may be necessary for transfer of clear title free from all encumbrances including municipality tax, electricity bill, water bills, etc. in favour of First Party and shall also handover the vacant and peaceful possession of the above-said property to First Party on or before 31 January 2020." (emphasis supplied)

g) It is stated in the instant application that the Petitioner has not fulfilled his obligations under the settlement agreement dated 08.11.2019 in as much as he has not executed the documents under Clause 3. He thus states that the petitioner has violated the terms and conditions of bail. The Respondent No.2/Complainant has, therefore, filed the instant application seeking cancellation of anticipatory bail granted by this Court as well as the recall of the Order dated 27.11.2019.

3. Heard Mr. Shantwanu Singh, learned Counsel appearing for the Petitioner, Ms. Meenakshi Chauhan, learned APP for the State. and Mr. Ashok Kumar Singh, learned Counsel appearing for Complainant/Respondent No.2, and perused the material on record.

4. Mr. Ashok Kumar Singh, learned Counsel appearing for Respondent No. 2, submits that the Petitioner *vide* letter dated 15.01.2020 had informed Respondent No.2/Complainant that pursuant to the settlement agreement dated 08.11.2019, the Petitioner had vacated the property in question and

had also discharged all the necessary dues, including the loan which was taken against the property in question from Aditya Birla Finance Ltd. The Petitioner had further requested Respondent No.2/Complainant to take possession of the said property at the earliest after getting the ownership of the same transferred, by getting such necessary instrument executed in his favour.

5. The learned Counsel for Respondent No. 2 further submits that in response to the abovementioned letter, Respondent No.2 had reminded the Petitioner *vide* letter dated 16.01.2020 that as per the settlement agreement dated 08.11.2019, the property in question was to be transferred by the petitioner by way of a "gift deed" or any other means in favour of Respondent No.2.

6. Mr. Ashok Kumar Singh, learned Counsel for Respondent No.2, informs this Court that instead of complying with the terms of the settlement, the Petitioner sent a notice to Respondent No.2/Complainant stating that even after repeated reminders, Respondent No.2/Complainant had neither taken steps to get the title of the property in question transferred in his name nor taken the possession of the property in question till date. He further submits that the notice also called upon Respondent No.2/Complainant to handover possession of all such immovable properties that were registered in the name of the Petitioner along with their title documents within 30 days of the receipt of the notice.

7. The learned Counsel appearing for Respondent No.2 has brought to the notice of this Court the Prohibitory Order dated May 2015 in Execution Petition No. 278/2014 passed by the Ld. District and Sessions Judge, Gautam Buddh Nagar, as per which the property in question has been

attached. It is submitted that the terms of the Settlement Agreement could not have been acted upon and the petitioner has misled the Court in granting the anticipatory bail.

8. *Per contra,* Mr. Shantwanu Singh, learned Counsel for the Petitioner, submits that the application filed by Respondent No.2/Complainant is not maintainable in light of the bar which is instituted by Section 362 Cr.P.C. He submits that Respondent No.2/Complainant is trying to pressurize the Petitioner by filing the instant application in order to settle old issues as there are allegedly several civil and criminal disputes which are pending between Respondent No.2/Complainant and the Petitioner.

9. Mr. Shantwanu Singh, learned Counsel appearing for the Petitioner, further submits that in accordance with the terms and conditions of the settlement deed dated 08.11.2019, the loan against the property in question was repaid by the Petitioner herein along with all other statutory dues like electricity and water bill etc. Additionally, the Petitioner had also shifted his office from the premises of the property in question and offered the vacant possession to the Respondent No. 2 herein *vide* letter dated 16.01.2020. He states that instead of getting the requisite documents executed in his favour, Respondent No. 2/Complainant is now trying to resile from the settlement agreement with an intention of putting pressure on the Petitioner herein to extort more money.

10. The learned Counsel for the Petitioner has countered the assertion of Respondent No.2/Complainant that the property in question has been attached by stating that the certified copy of Prohibitory Order dated May 2015 which has been filed by Respondent No.2/Complainant is forged and fabricated, and requires an inquiry into the same. The learned Counsel for

the Petitioner has filed another copy of the certified copy of the Prohibitory Order dated May 2015 in Execution Petition No. 278/2014 and has informed this Court that the Prohibitory Order solely pertains to another property, being property located at GH-1D, Sector 16C, Greater Noida, Gautam Buddha Nagar, which is categorically mentioned in the certified copy of the Order, this information is missing from the copy which has been filed by Respondent No.2/Complainant. He has stated that the counsel for the respondent No.2/complainant has conceded to the fact that the attachment order does not pertain to the property in question.

11. Mr. Shantwanu Singh states that Respondent No.2/Complainant is now demanding that the Petitioner should also pay for the purchase of stamp duty and should execute a gift deed in his favour, despite it being clearly stipulated in the settlement agreement that Respondent No.2/Complainant will get the requisite documents executed himself by paying the stipulated charges. He further states that the Petitioner had also sent a notice to Respondent No.2/Complainant on 23.06.020 informing him to get the requisite documents executed in his favour. He, therefore, submits that the Petitioner has fulfilled the terms of the settlement deed whereas the Respondent No. 2/Complainant has not taken any steps to hand over the properties of the Petitioner which are in his possession and is enjoying the rental income from those properties.

12. The learned Counsel for the Petitioner states that Respondent No.2/Complainant is filing frivolous applications against the Petitioner and his wife before different Courts just to harass and pressurise the Petitioner in order to extort more money from them. He, therefore, states that the application should be dismissed.

13. At the outset, it is pertinent to note that Section 362 Cr.P.C, which bars the Court from reviewing or altering a judgment or a final order which has been signed by the Court disposing of a case, does not apply to the instant case as this matter pertains to a bail application and a bail application is not a judgment or a final order and, therefore, can be subjected to alteration or review.

14. A perusal of the impugned Order dated 27.11.2019 of this Court showcases that the Petitioner was granted anticipatory bail, *inter alia,* subject to his furnishing a personal bond in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of the Arresting Officer/Investigating Officer/SHO of the concerned police station. More importantly, the anticipatory bail was granted to the Petitioner in view of the report of the Delhi High Court Mediation and Conciliation Centre which had reported *vide* settlement agreement dated 08.11.2019 that a settlement had been arrived at between the parties.

15. This Court has perused the said settlement agreement. The settlement agreement dated 08.11.2019, on the basis of which anticipatory bail was granted, stipulates that, *inter alia,* the Petitioner would execute such documents as may be necessary for transfer of clear title free from all encumbrances, including municipality tax, electricity bill, water bills, etc. in favour of Respondent No.2/Complainant, and would also handover vacant and peaceful possession of the property in question to Respondent No.2/Complainant on or before 31.01.2020. This is categorically mentioned in Clause 3 of the settlement agreement.

16. The bone of contention in the instant matter is regarding the interpretation of the aforementioned condition, i.e. Clause 3, in the

settlement agreement. While it has been argued by Respondent No.2/Complainant that the said condition fixes the responsibility of paying the requisite stamp duty on the Petitioner for a peaceful transfer of the property in question, the Petitioner, on the other hand, has submitted that the condition is ambiguous on the liability front and that the Petitioner has duly discharged his end of the settlement agreement by paying all the dues with respect to the property in question and has even vacated the property for Respondent No.2/Complainant to take peaceful possession of the same.

17. This Court, on taking into account the submissions of both the parties as well as perusing the settlement agreement, is of the opinion that the terms and conditions enumerated in the settlement agreement are silent on whether the liability for paying of the stamp duty is affixed on the Petitioner or Respondent No.2/Complainant. Therefore, it cannot be said that either of the parties have violated the terms and conditions of the settlement agreement dated 08.11.2019 that may warrant cancellation of the anticipatory bail which has been granted to the Petitioner by this Court.

18. The Supreme Court has consistently held that cancellation of bail already granted stands on a different footing than rejection of bail when bail is applied for. It is easier to reject an application for bail in a non-bailable case than to cancel a bail once granted. The underlying reasoning for the same is that cancellation of bail interferes with personal liberty which has been already secured by the accused either by the exercise of discretion by the Court or by the thrust of law. Therefore, any order of the court cancelling bail must be administered with utmost care and circumspection.

19. The Supreme Court in State (Delhi Administration) v. Sanjay Gandhi, **1978 (2) SCC 411** while dealing with an application under Section 439 (2)

CrPC has observed as under:-

> *" **13. Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.** The fact that prosecution witnesses have turned hostile cannot by itself justify the inference that the accused has won them over. A brother, a sister or a parent who has seen the commission of crime, may resile in the Court from a statement recorded during the course of investigation. That happens instinctively, out of natural love and affection, not out of persuasion by the accused. The witness has a stake in the innocence of the accused and tries therefore to save him from the guilt. Likewise, an employee may, out of a sense of gratitude, oblige the employer by uttering an untruth without pressure or persuasion. In other words, the objective fact that witnesses have turned hostile must be shown to bear a causal connection with the subjective involvement therein of the respondent. Without such proof, a bail once granted cannot be cancelled on the off chance or on the supposition that witnesses have been won over by the accused. Inconsistent testimony can no more be ascribed by itself to the influence of the accused than consistent testimony, by itself, can be ascribed to the pressure of the prosecution. Therefore, Mr Mulla is right that one has to countenance a reasonable possibility that the employees of Maruti like the approver Yadav might have, of their own volition, attempted to protect the respondent from involvement in criminal charges. Their willingness now to oblige the respondent would depend upon how much the respondent has obliged them in the past. It is therefore necessary for the prosecution to show some act or*

conduct on the part of the respondent from which a reasonable inference may arise that the witnesses have gone back on their statements as a result of an intervention by or on behalf of the respondent."

(emphasis supplied)

20. The Supreme Court in Aslam Babalal Desai v. State of Maharashtra reported as **(1992) 4 SCC 272**, has observed as under:-

> *"**11**.....As stated in Raghubir Singh case [(1986) 4 SCC 481 : 1986 SCC (Cri) 511 : (1986) 3 SCR 802] the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vii) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. **It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.**"* (emphasis supplied)

21. A perusal of the material on record indicates that there has been no infringement of the terms and conditions of the settlement agreement dated 08.011.2019. Further, the legitimacy of the Prohibitory Order dated May 2015 in Execution Petition No. 274/2019 passed by Ld. District & Sessions Judge, Gautam Buddh Nagar, that has been filed by Respondent

No.2/Complainant before this Court, stands settled at this juncture. As per the attachment order, only the property located at Sector 16-C, Greater Noida, Gautam Buddha Nagar, has been attached and Mr. Ashok Kumar Singh, learned counsel for the respondent No.2/complainant, accepts that the property in question is free of encumbrances. Therefore, the property in question can be transferred to Respondent No.2/Complainant as per the settlement agreement.

22. Consequently, this Court has arrived at the conclusion that no grounds for cancellation of the bail, which had been granted to the Petitioner *vide* Order dated 27.11.2019, have been made out, and there is no reason to interfere in the same. Further, no supervening circumstances exist which would justify the cancellation of anticipatory bail granted to the Petitioner. This Court is, therefore, of the opinion that there exists no cogent reason to recall the Order dated 27.11.2019.

23. Furthermore, with regard to the dispute regarding stamp duty that is to be paid in order to get the property documents executed in favour of Respondent No.2/Complainant, this Court directs that the stipulated charges for the same can be divided equally by both the Petitioner and Respondent No.2/Complainant.

24. Accordingly, with the aforementioned observations, this application is dismissed.

<u>CRL.M.A. 15554/2021</u>

1. This application under Section 340 Cr.P.C is for seeking an inquiry against Respondent No.2/Complainant for filing/producing a false and fabricated certified copy of Prohibitory Order dated May 2015 passed by the

Learned District & Sessions Judge, Gautam Buddh Nagar in Execution Petition No. 278/2014 before this Court.

2. It is stated in the application that when the matter came up for hearing on 09.09.2021, during the course of arguments, the learned Counsel appearing on behalf of Respondent No.2/Complainant relied upon certain documents which were contended to have been filed in the Registry on 07.09.2021 *vide* Diary No. 721999/2021. It is stated that the learned Counsel appearing for the Petitioner raised an objection during the course of hearing that the advance copy of the said documents had not been supplied to him, whereupon the learned Counsel appearing for Respondent No. 2/Complainant undertook to serve a copy of the documents upon the learned Counsel for the Petitioner.

3. It is stated that this Court, after perusing the said documents, put a specific query to the learned Counsel for the Petitioner regarding status of the property bearing No. D-64 Kaushambi, U.P., as it was contended by Respondent No.2/Complainant that the same had been attached by Ld. District & Sessions Judge, Gautam Buddh Nagar in Execution Petition No. 278/2014 *vide* order dated May 2015.

4. It is stated that in order to ascertain the veracity of documents filed by the Complainant/Respondent No. 2, the Petitioner herein procured certified copy of the said Prohibitory Order dated May 2015, passed by Ld. District Sessions Judge, Gautam Buddh Nagar in Execution Petition No. 278/2014.

5. It is stated that on perusal of the documents, it was found that Respondent No. 2/Complainant had fabricated the certified copy of the said document, filed the same in the registry of this Court on 07.09.2021, and had also placed it before this Court during the course of hearing on

09.09.2021.

6. It is stated that Respondent No. 2/Complainant has committed offences under Sections 463, 464, 465, 466, 471, 34 of the IPC, and that an inquiry should be conducted into the same under Section 340 Cr.P.C.

7. This Court has heard the submissions of the learned Counsel for the Petitioner and has analysed the material on record.

8. A careful perusal of the certified copies of the Prohibitory Order of May 2015 in Execution Petition No. 278/2014 passed by the Ld. District and Sessions Judge filed by Respondent No. 2/Complainant as well as the Petitioner indicates that there is certain discrepancy in the same. While the copy of the certified copy of the Order filed by the Petitioner explicitly states that the attachment Order solely pertains to property at GH-1D, Sector 16C G.B.N., Greater Noida, the copy of the Order filed by Respondent No.2/Complainant fails to exhibit the same.

9. This *prima facie* discrepancy in the copy of the Order filed by Respondent No.2/Complainant gives rise to the assumption that there has been forging and fabrication of certified copies of judicial proceedings, and this amounts to the commission of a serious offence, if true, and warrants grave repercussions. However, the learned counsel appearing for respondent No.2/complainant, has conceded to the error in the certified copy of the judicial order and has stated that the same was a result of an oversight.

10. In light of the above observations, this Court directs the Registrar-General to conduct an inquiry as to how the certified copy of the Prohibitory Order dated May 2015 in Execution Petition No. 278/2014 passed by Ld. District and Sessions Judge, Gautam Buddh Nagar, containing such a grave omission could be allowed to be filed before this Court, and to submit a

report on the same.

11. Accordingly, this application is disposed of.

SUBRAMONIUM PRASAD, J

NOVEMBER 16, 2021
Rahul