* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgement delivered on: 25.02.2019*

\+ **BAIL APPLN. 2151/2016, CRL. M.A. 20402/2017 & CRL. M.A. 20403/2017**

PUNIT BERIWALA ..... Petitioner
Through: Mr. Salman Khurshid, Senior Advocate with Mr. Puneet Singal, Ms. Ayesha Jamal, Mr.Lokendra Malik and Mr. Vijay Shankar, Advocates.

Versus

STATE (NCT OF DELHI) & ANR. ..... Respondents
Through: Mr. Ravi Nayak, Addl. P.P. for the State. Mr. Ambar Qamaruddin with Mr. Tejasvi Kumar, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

1. The petitioner had sought anticipatory bail. Interim protection was granted to him earlier. The petitioner is being investigated in C.C. No. 72/1/2014 under section 420 IPC pending with P.S. Economic Offences Wing.

2. The allegations are that one Smt. Damayanti Devi had agreed to purchase Flat No. D-7, Tower-B, at Property No. 6, Auribindo Marg, New Delhi, with M/s. Vipul Infrastructure Developers Ltd., for a sale consideration of Rs.1,73,02,000/- (one crore seventy three lacs two thousand only) and had paid Rs.5 lacs vide cheque no. 107822 dated 31.03.2005

drawn on Centurion Bank Ltd., vide receipt dated 04.04.2005, and Rs.15 lacs vide cheque no. 374516 dated 27.10.2005, drawn on the same bank, vide receipt dated 28.10.2005. She had filed a civil suit in the year 2007. She passed away on 05.04.2010. The present complaint was filed in February, 2011.

3. While seeking anticipatory bail from the Trial Court, the petitioner no. 1, without prejudice to his rights and contentions and in order to show his bona fide, had moved an application for depositing Rs.20 lacs in the Court. The said amount is stated to have been deposited. However, it is his case that the dispute is primarily civil in nature for which Smt. Damayanati Devi has already filed a civil suit for specific performance; that there is an unexplained delay in filing the complaint case; that it relates to an apprehension which arose in 2005 while the complaint was filed in 2011; there is no criminality involved in the case and the petitioner is not required for any further investigations; that he is a permanent resident of Delhi with deep roots in the society and would not abscond or flee from the process of justice or tamper with evidence, he has no criminal antecedents. He submits that the complaint has been filed primarily with ulterior motives to extract money from the petitioner.

4. The complainant/R-2 opposes the bail on the ground that her mother-in-law Ms. Damayanti Devi, whose interest she inherits, has been defrauded by the petitioner and should be prosecuted. She contends that for the aforenoted flat, on an oral agreement Smt. Damayanti Devi had paid Rs.20 lacs, as aforementioned and receipts were issued for both the payments. Thereafter, Smt. Damayanti Devi was asked by the seller to deposit Rs.46 lacs in cash. She preferred instead to pay the said amount by way of two

cheques for Rs.24 lacs and Rs.21 lacs each. The cheques were never encashed. A complaint was lodged with the Economic Offences Wing on 03.11.2009.

5. The records would show that the company M/s Vipul Infrastructure Developers Ltd. had filed documents which clearly show that the property had already been sold on or before 04.01.2005 to one Rishi Aggarwal, for which payments had been received by the Company.

6. A Letter of Administration, apropos the Will of Smt. Damayanti Devi dated 15.01.2009, has been granted. The Company has admitted, vide letter dated 26.06.2011, to the receipt of Rs.20 lacs from the complainant's mother-in-law. It is claimed that the current value of the flat has increased more than five times, therefore, a clear case is established against the petitioner- Puneet Beriwala, who is the Managing Director of the said Company.

7. The petitioner's application for anticipatory bail was filed after the filing of an application for regular bail under section 437 Cr. P.C. The anticipatory bail application was dismissed by the learned Trial Court, *inter alia*, on the ground that it could not be entertained after the filing of an application for regular bail. The Trial Court had not found the dicta of ***P.V. Narsimba Rao v. State*** 1997(1) CC Cases 154 applicable to this case because the same was distinguishable on facts. In the present case, the petitioner's application for regular bail has been dismissed by the learned Additional Sessions Judge. However, he has now sought the anticipatory bail.

8. The learned counsel for the complainant, relying upon the dicta of the Supreme Court in ***State of Maharashtra and Anr. vs. Mohd. Sajid Husain***

Mohd. S. Husain etc. (2008) 1 SCC 21, submits that the present application would not be maintainable. The judgment inter alia held as under:

> *"28. We may also notice that the High Court itself has refused to grant regular bail to the accused against whom charge-sheet has been submitted. The learned Sessions Judge also did not grant bail to some of the accused persons. If on the same materials, prayer for regular bail has been rejected, we fail to see any reason as to why and on what basis the respondents could be enlarged on anticipatory bail.*
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> *29. In the peculiar facts and circumstances of the case, we are of the opinion that the High Court ought not to have granted anticipatory bail to the respondents. The impugned judgment, therefore, cannot be sustained which is set aside accordingly. The appeal is allowed."*

9. During the course of the proceedings, time was taken by the parties to explore the possibility of an amicably settlement. Nothing worthwhile came about it. However, the petitioner has offered that, in addition to Rs.20 lacs which was deposited by Smt. Damayanati Devi, he was willing to deposit another sum of Rs. 1 crore, without prejudice to his rights and contentions and primarily to show his *bona fides*, especially in view of the fact that Smt. Damayanti Devi had paid only Rs.20 lacs for the purchase of the property, while the total sale consideration was Rs.1.73 crore in the year 2004. The petitioner undertakes to not flee from the course of justice.

10. Looking at the facts of the case, in particular, the issue that the said flat had already been sold or promised to be sold to one Rishi Aggarwal in January, 2005, against payments receipt by M/s. Vipul Infrastructure Developers Ltd., while the monies for the sale of the same property were received from M/s. Damayanti Devi three months later in March-April,

2005, without notice to either of the parties of such transaction, the allegations leveled against the applicant/petitioner are grave in nature. Deposit of Rs.20 lacs would not mitigate the circumstances. Furthermore, in terms of ***Mohd. Sajid Husain Mohd. S. Hussain etc.*** (supra), the application for anticipatory bail after dismissal of the regular bail application would not be maintainable.

11. In view of the above, the interim order is vacated. The petition is dismissed.

NAJMI WAZIRI, J.

FEBRUARY 25, 2019/acm