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

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Judgment delivered on: 07.03.2019

+ BAIL APPLN. 2552/2018

PRAKASH GUPTA

..... Petitioner

versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Rebecca John, Sr. Advocate with Mr. Harsh Bora and Mr. Sideshwar Rai, Advocates.

For the Respondent: Mr. Hirein Sharma, APP for the State.

SI Rohit Kumar, PS Vasant Kunj.

Mr. Vijay Aggarwal with Mr. Sachit Arora, Mr. Khurram Salim, Mr. Shubhamshree, Ms. Barkha Rastogi, Mr. Shekhar Pathak and Mr. Shailesh Pandey, Advocates for the complainant.

Mr. Anupam S. Sharma, Spl. P.P. for CBI.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Status report has been received from Director, CFSL, CBI. In view thereof, CBI is discharged.

2. Petitioner seeks regular bail in FIR No.62/2017 under Sections 409/34 IPC. Allegations in the FIR are that the complainant had handed over 6 kilograms of gold to the petitioner and the petitioner thereafter neither returned the gold nor paid the money for the same

and has accordingly committed breach of trust.

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated. She submits that there is no material produced to show that any gold was handed over to the petitioner except for oral statements. It is contended that the prosecution has relied solely on the recording of a telephonic conversation allegedly between the petitioner and the complainant. She submits that when the recording is seen as a whole then there is no criminality insofar as the petitioner is concerned and the recording also does not substantiate that any gold was handed over to the petitioner.

4. Learned senior counsel for the petitioner submits that without prejudice to the rights and contentions and without amounting to an admission, the petitioner is willing to deposit a sum of Rs.75 lakhs with the Trial Court as a precondition for grant of bail.

5. Learned counsel appearing for the complainant disputes that there is no material of handing over of gold and submits that recording has been duly verified by the FSL and substantiates the handing over of gold and is also an admission on the part of the petitioner that he shall refund the money to the complainant.

6. Learned counsel for the complainant further submits that independent public witnesses and also the conversation have been corroborated through call records.

7. Learned counsel appearing for the respondent complainant prays that the amount sought to be deposited be released to the respondent subject to an undertaking of the respondent that he shall restore the same in case the petitioner is acquitted by the Trial Court.

8. Without commenting on the merits of the case and on petitioner depositing a sum of Rs.75 lakhs with the Trial Court in two equal instalments; first instalment to be deposited with the Trial Court within 4 weeks and the second instalment to be deposited with the Trial Court within 2 months thereafter and on petitioner furnishing a bail bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the Trial Court, petitioner shall be released on bail, if not required in any other case. Petitioner shall not do anything which may prejudice either the trial or the prosecution witnesses. Petitioner shall not leave the country without the permission of the Trial Court.

9. Petitioner has been released on interim bail by order dated 11.02.2019 in Bail Appln.213/2019 subject to furnishing a bail bond as well as surety of Rs.25,000/- and other conditions. The surety bond furnished pursuant to order dated 11.02.2019 shall ensure for the present bail order as well.

10. On an application being moved by the complainant, the Trial Court shall release the amount to the complainant on his undertaking alongwith furnishing a solvent security, to the satisfaction of the Trial

Court, for restitution of the amount with simple interest @ 7% pa, in case the petitioner is acquitted by the Trial Court.

11. Petition is allowed in the above terms.

12. Order *Dasti* under signatures of the Court Master.

MARCH 07, 2019
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SANJEEV SACHDEVA, J

