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

% Reserved on: 7th February, 2019
Decided on: 15th February, 2019

\+ **BAIL APPLN. 2842/2018**

SACHIN DUTTA ..... Petitioner
Represented by: Mr. Gurvinder Pal Singh, Mr. Rajmanagal Kumar and Mr. Sidharth Borah, Advocates.

versus

STATE ..... Respondent
Represented by: Ms. Rajni Gupta, APP with SI Umesh Sharma.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, the petitioner seeks bail in case FIR No. 151/2015 under Sections 406/420/174A/120B IPC registered at PS EOW.

2. Case of the prosecution against the petitioner based on the complaint of Narendra Barmecha is that in the year 2011 on the inducement of the petitioner and his parents who were all partners of M/s Balaji Construction Narendra Barmecha joined the firm as a partner and started making investment therein as also in their newly incorporated company M/s Balaji Build Serve Pvt. Ltd. The accused persons had purchased several immovable properties at different points of time in the name of starting various real estate projects. On the inducement, the complainant also invested crores of rupees in the last four years but later realized that all the assurances were false and no projects as assured was launched. It is stated that the complainant made the investment to the tune of ₹1.33 crores into

M/s Balaji Constructions through his Axis Bank Account. Since the complainant felt cheated on 15th October, 2014, he expressed his desire to clear his accounts and retire from the partnership firm. Vide the retirement deed dated 3rd November, 2014 the complainant quit the firm and his accounts were settled for ₹11.50 crores. It is alleged that to secure the interest of the complainant, it was agreed that till payment of the aforesaid amount was made four properties belonging to the firm would remain mortgaged with the complainant vide the letter dated 5th November, 2014 and an equitable mortgage was created by handing over the original title deeds of the four properties.

3. The grievance of the complainant is that despite the four original title deeds being in possession of the complainant the petitioner sold all four properties to Nathu Singh Tyagi and his son Pawan Tyagi on 11th March, 2015, 24th March, 2015 and 30th March, 2015 and also lodged one NCR on 15th March, 2015 claiming that the original documents of the properties have been lost though the NCR does not clarify which original documents were lost and only stated that papers of property situated in Indrapuram, Makanpur which he bought from Rishipal Tyagi, Yashpal Tyagi, Hareshwar Tyagi, Lalita and Smt. Prabha were lost.

4. Case of the petitioner is that after the complainant joined the firm of the petitioners i.e. M/s Balaji Constructions, the partnership firm, he expressed his desire to retire whereafter a retirement deed dated 3rd November, 2014 was entered into between the parties. The rights of complainant were consolidated in the retirement deed to a sum of ₹11.50 crores to the complainant. The retirement deed also noted four situations giving options to the petitioners and the respondent qua manner of return of

the money.

5. In the first situation it was contemplated that best endeavour be made to get the requisite maps approved from the concerned authorities and in case the construction is permitted then Narender Barmecha will be given residential area in the project equivalent to a sum of ₹11.50 crores. The manner of calculation of the area was also noted.

6. The second situation contemplated that in case approval of construction at the Indrapuram land was not granted till 31st December, 2015 the continuing partners had the right to offer area in the alternative land duly approved for construction of the group housing project on or before 31st December, 2015.

7. The third situation contemplated that unable to get approvals for the Indirapuram or the alternative lands, continuing partners undertake to pay a sum of ₹11.50 crores along with the interest @ 24% per annum starting from 1st January, 2016 on monthly basis on or before 31st December, 2016 inclusive of tax whereafter the retiring partner will be left with no claim. The continuing partners also undertook to furnish an appropriate security to the retiring partner to secure the agreed compensation of ₹11.50 crores.

8. The fourth situation contemplated that it was at the sole discretion of the continuing partners to dispose off/sold the land at Indrapuram and pay a sum of ₹11.50 crores to the retiring partner with an interest @24% per annum from 3rd November, 2014 and in case the property at Indrapuram is sold the first lien would be of the complainant for receiving an amount of ₹11.50 crores irrespective of the price at which the Indrapuram land is sold.

9. Learned counsel for the petitioner thus contends that even if by the letter dated 5th November, 2014 the continuing partner had secured the

retiring partner by giving the original title deeds in terms of situation three the continuing partners still had the option of situation four of selling the property at Indrapuram and handing over the amount and it is this option which was exercised by the continuing partner by selling the three lands vide sale deed dated 11th March, 2015, 24th March, 2015 and 30th March, 2015.

10. Learned counsel for the petitioner also contended that to satisfy the dues of the complainant, the entire shares of the company M/s Balaji Build Serve Pvt. Ltd wherein the complainant had also invested were transferred to him which fact had been concealed in the complaint and no investigation has been carried out thereon.

11. Learned counsel for the complainant on the other hand contends that the complainant had invested in M/s. Balaji Build Serve Pvt. Ltd. when he was a partner in Balaji Construction and in order to secure his interest in Balaji Build Serve Pvt. Ltd. the complainant made further payments and got transferred the entire shares. Despite the petitioner having cheated the complainant, the complainant made further efforts to redeem losses as much as he could do and thus shares of M/s. Balaji Build Serve Pvt. Ltd. were bought so that the complainant could be mitigated by the properties of the said company. He further points out that after the FIR was registered the petitioner was not available for investigation and was declared a proclaimed offender and besides the present FIR, FIRs have been registered against the petitioner in Noida, etc., wherein the allegations are of similarly cheating the other victims.

12. Learned APP for the State on the other hand contends that the petitioner was declared a proclaimed offender on 10th May, 2016 in the

above-noted FIR by the learned CMM and was arrested on 28th February, 2017. He cheated the complainant for a sum of ₹11.5 crores in a clandestine manner. The petitioner is involved in one FIR registered at Noida, one by the CBI and one by the Economic Offences Wing wherein the modus-operandi of the petitioner is similar. Statement of the complainant is being recorded before the learned Trial Court and there is every likelihood that if released on bail the petitioner will flee away from justice. She has placed on record status report to show that how first the land situated at Makanpur, Indapuram was purchased by the firm Balaji Constructions and then it was sold to Nathu Singh Tyagi and Pawan Tyagi through three separate sale deeds and thus all the four properties which had the interest of complainant were sold off despite equitable mortgage having been created by deposit of title deeds to the complainant. Further the purported sale consideration of the four properties of M/s. Balaji Construction which were sold to Nathu Singh Tyagi and Pawan Tyagi was ₹18.43 crores out of which ₹2.97 crores were received through cheque and ₹15.46 crores through cash. The amounts so deposited in the bank were also withdrawn and both the cash and cheque amounts have been siphoned off. No amount received from the sale of the properties of the firm M/s. Balaji Construction have been transferred to M/s. Balaji Build Serve Pvt. Ltd. Further the contention of the petitioner that after the retirement of the complainant from M/s. Balaji Construction his claim for a sum of ₹15.46 crores was satisfied by transferring the properties of M/s. Balaji Build Serve Pvt. Ltd. to the complainant is also incorrect for the reason Sidharth Barmecha has transferred ₹1,65,25,000/- and Narendra Barmecha ₹85 lakhs into the account of M/s. Balaji Build Serve Pvt. Ltd. before the shares of said company were transferred to the name of the complainant. Further money was also transferred from the account of Saloni Buildcon Pvt. Ltd.

13. Heard learned counsel for the parties at length. The allegations of the complainant in the FIR in question are that the petitioner, his mother Tripta Dutta, father R.K. Dutta all partners of M/s. Balaji Construction persuaded the complainant Narendra Barmecha to join the firm as a partner assuring him of good returns. Thus the complainant started investing in the firm and simultaneously a new company namely M/s. Balaji Build Serve Pvt. Ltd. was incorporated. It is alleged that the accused persons purchased several immovable properties jointly and through Mr. Nathu Singh at different points of time. Further the complainant at the inducement of the accused also invested crores of rupees in the real estate projects. After investment the complainant realized that all the assurances made by the accused were false and no projects as assured were ever launched. Thus the complainant was cheated. After the complainant realized that he was being cheated, a retirement deed dated 15th October, 2014 was entered into which as noted above had four options including the options to the accused to sell the properties and clear the dues of the complainant.

14. No doubt, original title deeds of all the properties in question were with the complainant thereby creating an equitable mortgage however still the petitioner sold the same to Pawan Kumar Tyagi and Nathu Singh Tyagi. In the above-noted FIR charge for offences punishable under Section 420/406 IPC has also been framed against the petitioner. The petitioner has been in custody since 28th February, 2017 and as noted testimony of the above material witness i.e. the complainant is in progress. Though the petitioner has been declared a proclaimed offender, however he is willing to

furnish surety bonds of his family members who have also undertaken to stand surety in his favour. Considering the fact that the trial is likely to take some time, this Court deems it fit to grant bail to the petitioner. It is therefore directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹5 lakhs with two surety bonds of the like amount to the satisfaction of the learned Trial Court out of which one of the surety would be a family member of the petitioner. The petitioner will deposit his passport with the learned Trial Court and will not leave the country without the prior permission of the Court concerned. In case of change of residential address the same will be intimated to the Court concerned by way of affidavit. The petitioner will report to the investigating officer on first Monday of every month at 9.00 AM.

15. Petition is disposed of. Order dasti.

(MUKTA GUPTA)
JUDGE

FEBRUARY 15, 2019
'ga'