

08.10.2020
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SB
Ct. No. 19
(Bail Allowed)

CRM 7566 of 2020
CRAN 1 of 2020

In Re : An application for bail under Section 439 of the Code of Criminal Procedure in connection with Baguihati P.S. Case No. 251/2020 dated 06.08.2020 under Sections 420/406/34 of the Indian Penal Code.

In the matter of : **Manoj Jaiswal @ Manoj Kumar Jaiswal**

Mr. Sourav Chatterjee
Mr. Soumya Nag ... for the petitioner

Mr. Imtiaz Ahmed
Md. Zeeshanuddin
Mrs. Smita Saha
Sk. Saidullah
Ms. Arunima Mukherjee ...for the de facto complainant

Mr. S. G. Mukherjee, Ld. P.P.
Mr. Sudip Ghosh
Mr. Bitasok Banerjee ... for the State

This is an application under section 439 of the Code of Criminal Procedure whereby the petitioner is seeking release on bail in connection with the present case.

The facts as pointed out by the learned advocate for the petitioner is that the petitioner is in custody for last 27 days for no reason whatsoever on the basis of the complaint and the F.I.R. lodged on behalf of the opposite party / de facto complainant alleging cheating of the amount of a sum of Rs.10 lakhs which were paid to the sister-in-law and the wife of the petitioner by two cheques of sum of Rs.5 lakhs each. It is submitted that the cheques were accepted toward earnest money for the sale of piece of a land to the de facto complainant and negotiations were going on and lastly letter was communicated on 20.02.2020 to the de facto complainant requesting him to pay of balance consideration money of Rs.1,57,00,000/- (Rupees one crore and fifty seven lakhs only)

within one month from the receipt of the notice by the de facto complainant otherwise the whole earnest money being Rs.10 lakhs will be forfeited. Such communication of letter may be treated as an agreement for sale but instead of filing a regular suit for specific performance of the contract based on such communication between the parties, the de facto complainant / O.P. instituted criminal case under sections 420/406/34 of the Indian Penal Code registered against the petitioner.

On perusal of the F.I.R. and the communication between the parties, it is reflected that dispute between the parties is civil in nature. The de facto complainant / O.P. ought to have further negotiated to translate the agreement into a contract by execution and the registration of deed of conveyance upon payment of balance consideration money, in default de facto complainant ought to have preferred a suit for specific performance of contract instead of lodging an F.I.R.

Now, on behalf of the de facto complainant, learned advocate submits for purchase of the land in question upon payment of balance consideration money of Rs.1,57,00,000/- but the learned advocate for the petitioner submits that petitioner is in jail for 27 days and he has developed a bad taste and further submits that he is ready with two bank drafts of Rs. 5,00,000/- each towards refund of the money payable to the de facto complainant and would pay the interest thereon after he is released on bail. The said two drafts (bearing no. 005672 and 008673 dated 23.09.2020) of Rs. 5 lakhs each in total Rs. 10,00,000/- in favour of the de facto complainant is handed over to Mr. Imtiaz Ahmed, learned advocate for the de facto complainant.

Having heard the learned advocate for the parties and in consideration of civil nature of dispute, the petitioner is allowed to find

bail of Rs.20,000/- (Rupees twenty thousand only) with two sureties of Rs.10,000/- (Rupees ten thousands only) each subject to the satisfaction of the learned Chief Judicial Magistrate, Barasat.

The application for bail being C.R.M. No. 7566 along with C.R.A.N. 1 of 2020 is accordingly disposed of.

(Shivakant Prasad, J.)