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

+ **BAIL APPLN. 244/2020**

**DEVINDER MEENA**

..... Petitioner

Through: Mr. Arvind Kumar Shukla, Ms. Reetu  
Sharma, Mr. Kunal Yadav, Mr. Ram  
Singh and Mr. Vivekanand, Advs.

versus

**THE STATE**

..... Respondent

Through: Mr. Amit Chadha, APP for State with  
SI Jagbir, PS – Mohan Garden

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**ORDER**

**30.01.2020**

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**CRL. M.A. 1936/2020**

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

**BAIL APPLN. 244/2020**

3. The present application is filed under Section 439 Cr.P.C. read with Section 482 Cr.P.C. for grant of bail in case bearing FIR No. 160/2019 registered at Police Station – Mohan Garden, Delhi for the offence punishable under Section 420 IPC.
4. Case of the petitioner is that he had never indulged in any act of cheating with the complainant and the petitioner is a victim at the hands of owner of property in question, namely, Sh. Devi Dayal.

5. The petitioner is a small time builder resides in a rented accommodation. He got married in June, 2018. Petitioner had entered into a Construction-cum- Collaboration Agreement dated 28.06.2016 with one Sh. Devi Dayal for construction of a five storey building at property bearing no.L-32, Mohan Garden, New Delhi. As per terms and conditions of the abovesaid agreement, it was agreed that petitioner would construct total five floors at his own cost and out of those floors, petitioner would get two floors i.e. first floor and second floor without roof rights with common parking and the owner, namely, Devi Dayal shall execute the sale/ transfer documents of the said floors in favour of petitioner or his nominee at the time of second instalment. One of the conditions of abovesaid Agreement was that the Agreement shall not be cancelled by either party under any circumstances.

6. Thereafter, the complainant namely Sh. Krishna Singh had booked the first floor flat in the abovesaid project vide Sale Agreement dated 29.06.2016 and made payment of a sum of Rs.15 Lakhs in instalments to the petitioner. However, due to financial crunches with the petitioner, abovesaid project got delayed and petitioner sought extension of time, but owner of the said plot, namely, Devi Dayal did not consider the sincere requests of the petitioner: rather, he illegally and unilaterally terminated the collaboration agreement, which is also in violation of the agreed terms and conditions of the collaboration agreement. Not only this, the abovesaid Devi Dayal had also illegally and unlawfully sold/transferred the flats of the share of petitioner to third parties without any information to the petitioner and also without refund of the money already invested by petitioner in the said project.

7. Learned counsel appearing on behalf of the petitioner submits that all funds/ money of the petitioner got invested in the abovesaid project and the petitioner was not able to recover the same and became penniless. However, petitioner had shown his commitment to refund the amount so received from the complainant and petitioner also started arranging the funds from his friends and relatives and sought some more time from the complainant; however, complainant did not cooperate with petitioner in his hard time and got the abovesaid case/FIR registered against him.

8. Learned counsel further submits that it becomes clear that, petitioner himself is a victim of the fraudulent acts of the owner of property in question, namely, Devi Dayal and petitioner was/is always ready and willing to amicably settled the matter with the complainant, for which petitioner requires a reasonable time in order to arrange the money. However, Ld. Sessions Court failed to consider the submissions of the petitioner in the right perspective and wrongly dismissed the bail application of the petitioner on misconceived findings, which are contrary to the record and are not sustainable in the eyes of law.

9. Learned APP appearing on behalf of the State has opposed the present application and submits that the complainant, namely, Sh. Krishna Singh had entered into an Agreement to Sell dated 29.06.2016 with petitioner and his brother Sh. Chetah Meena with regard to the first floor of property bearing no.32, L-Block Extn., Mohan Garden, Uttam Nagar, New Delhi for a sum of Rs.18 Lakhs and petitioner had assured to handover possession of said flat after completion of the construction within a period of eleven months. It is further alleged that, the complainant had paid Rs.15 Lakhs to

petitioner and his brother and remaining Rs.3 Lakhs were payable on completion of construction. The petitioner did not give the flat within time even after extension of the agreement till 24.04.2018 and then promised to return the money. Moreover, an agreement for refund of money was prepared on 26.11.2018, according to which the petitioner was to repay a sum of Rs.17,50,000/- to the complainant in instalments through post dated cheques, out of which two cheques of Rs.5 Lakhs and Rs.2 Lakhs got dishonoured and petitioner refused to repay the above amount to the complainant. It is further alleged that complainant thereafter revealed, that the said flat has been sold to some other person. On the aforesaid allegations, a case bearing FIR No. 160/2019 registered Police Station – Mohan Garden, Delhi for the offence punishable under Section 420 IPC.

10. It is not in dispute that all the evidence in the present case are documentary in nature and the fact that the petitioner is ready to amicably settle the present matter with the complainant, as such there is no chance of any tampering and hampering with the prosecution evidence/ witnesses in any manner whatsoever.

11. In *Anil Mahajan Vs. Commission of Custom & Anr.*, 84 (2000) DLT 854, this Court while considering the judgment in *Gurcharan Singh & Ors. Vs. State (Delhi Admn.)*, AIR 1978 SC 179 and *Goodikanti Narasimhulu & Ors. Vs. Public Prosecutor*, AIR 1978 SC 429, summaries the legal position governing the bail in Para 14 of the said judgment. These principles have been discussed by this Court in *H.B. Chaturvedi Vs. CBI*, 171 (2010) DLT 223, wherein after having considered various aspects, this Court has held that there is no justification for detaining petitioner therein in person

any longer and it was further held that bail not to be withheld as a punishment and it cannot be said that bail should invariably refused in cases involving serious economic offences. In this judgment; while discussing the principles, it has been held that for the purpose of granting or refusing bail, there is no classification of offences except the ban under Section 437(1) of Cr.P.C. against grant of bail in the case of offences punishable with death or life imprisonment.

12. In the present case, chargesheet has been filed qua the petitioner and petitioner is yet to face the trial for the offences charged with. Hence, the denial of bail to the petitioner and his further detention in judicial custody is not required.

13. As stated by the learned counsel for petitioner, on instructions, that the Court below asked the petitioner to pay the amount only then the bail will be granted. The trial Court was ready to give some time. However, he has not availed the opportunity for the reasons that he was not able to make the arrangement, thus did not want to flout the terms of the bail.

14. Keeping in view the reasons that initial agreement was between the petitioner and Devi Dayal to construct the building however, due to unavoidable circumstances, the agreement dated 28.06.2016 could not be completed. Thereafter, said Devi Dayal entered into agreement with Pankaj, who completed the construction of building. Fact remains that whatever the amount invested by the petitioner in making the building, he could not get the amount refunded from any corner.

15. Without commenting on the merit of the prosecution case, I am of the view that the applicant/ petitioner is entitled for bail. Accordingly, he shall

be released on bail on furnishing personal bond in the sum of ₹20,000/- with one surety of the like amount to the satisfaction of the Trial Court.

16. The application is allowed and disposed of.

17. Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for necessary compliance.

Order *dasti* under the signatures of Court Master.

**SURESH KUMAR KAIT, J**

**JANUARY 30, 2020**

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