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

\+ CRL.M.C. 1079/2020,CRL.M.As. 4272-4273/2020

RAJENDER KUMAR TRIPATHI ..... Petitioner

Through: Mr. Shahid Azad and Ms.Meenu Sharma, Advs.

versus

STATE & ANR. ..... Respondents

Through: Mr. Kamal Kr. Ghei, Addl. PP for Govt. of NCT Delhi.

CORAM:
HON'BLE MS. JUSTICE SANJEEV NARULA

O R D E R

% **26.02.2020**

CRL.M.C. 1079/2020

1. The present petition filed under Section 482 of Cr. P.C., 1973 impugns order dated 18.01.2020 whereby, on an application under Section 437 (5) of the Cr. P.C., 1973, the Court has passed the following order:

> ***"CIS no. 3394/19***
> ***FIR no. 198/17***
> ***P.S. Daryaganj***
> *18.01.2020*
> *Present: Ld. APP for the State.*
> *Accused is present with counsel Sh. K. Singh.*
> *Complainant is present with counsel Sh. Nitin Mittal.*
> *Heard on the application U/s 437 (5) Cr. P.C. for the cancellation of the bail of the accused.*
> *Ld. APP for the State submits since the accused has not complied with the undertaking/settlement agreements his bail*

be cancelled.

Ld. Counsel for accused vehemently opposed the present application by submitting that the account of the accused was freezed in case FIR No. 99/17 PS Crime Branch and the account was de-freezed by the orders of Ld. CMM South District. It is submitted that the bank of the accused is not complying the directions of Ld. CMM and thus the accused is not at fault. Settlement agreement perused. Till date the accused has not moved any application before Ld. CMM South-East against the bank. As per the settlement the responsibility of making payment was upon the accused. Accused is hereby directed to bring the Demand Draft of the entire amount due on next date of hearing to which the counsel for complainant has no objection.

Ld. APP for the State also submits that accused be given time for submitting the Demand Draft on next date of hearing and if no demand draft be brought by the accused his bail be canceled.

It is hereby made clear to the accused that no exemption application will be entertained on any of the ground whatsoever on next date of hearing.

Put up on 12.02.2020."

2. The background of this case is that a settlement agreement dated 21.06.2019 was executed between the parties whereunder, the applicant settled the disputes arising out of FIR No.198/2017 by agreeing to make payment of Rs.36 lacs by way of installment in the manner stipulated in the said agreement, the relevant portion whereof extracted hereinabove;

"3. INVOICING AND PAYMENT.

3.1 In order to process payment of the Settlement Amount in a routine manner, the Party 2 will make the payments against the settlement amount in the Court of Ld. CMM, Tis Hazari Courts in FIR No.198/2017, Dated 24.08.17 filed at Daryaganj Police Station as per the schedule below and upon signing of this agreement issue to Party 1 as collateral a Post Dated Cheque "PDC" of Rs.25,00,000/- (In words: Rupees Twenty-Five lacs only) from his bank a/c No. 1529002100471730 of Punjab

National Bank, Nehru Place Branch, New Delhi, held in the name of National Housing Development Organization to the Party 1 in the manner referred to herein below:

S. No.	*Amount (In Rs.) In figures*	*Payment Schedule*	*Time*
1	*11,00,000/- + 25,00,000/- PDC as collateral*	*With the acceptance of this Settlement Agreement and Grant of Bail to the 'Party 2'*	*With Bail Application*
2	*5,00,000/-*	*1st Installment*	*3 Months from Date of Release on Bail*
3	*5,00,000/-*	*2nd Installment*	*3 Months from 1st Installment*
4	*5,00,000/-*	*3rd Installment*	*3 Months from 2nd Installment*
5	*5,00,000/-*	*4th Installment*	*3 Months from 3rd Installment*
6	*5,00,000/-*	*5th Installment & Final Installment*	*3 Months from 4th Installment*
Total	*36,00,000/-*		

3. In the said settlement agreement, the parties have also taken note of the fact that the similar FIR No. 99/2017 under Section 420/406 of the IPC, 1860 read with Sections 3 & 5 of the Emblem & Names (Prevention of Improper Use) Act, 1950 at PS Crime Branch, New Delhi was pending and under the said FIR, assets lying in Bank Account No. 1529002100471730, were in the custody of the Court.

4. Be that as it may, the present petitioner specifically undertook in terms of Clause 3.4 of the settlement agreement, to get the amount released under the cheques issued in favour of the M/s Graphisads Pvt. Ltd., by filing an appropriate application before the Court of Ld. CMM, South East, Saket District Court.

5. Learned counsel for the Petitioner submits that instead of the applicant approaching the Court, the first party under the settlement agreement (M/s Graphisads Pvt. Ltd.) filed an application seeking release of the amount. On the said application, the following orders came to be passed.

> *"FIR No. 99/2017*
> *PS Crime Branch*
> *State Vs. R. K. Tripathi*
> ***(Application seeking release of FDR and bank account)***
> *06.08.2019*
> *Present : Dr. Dinesh K. Singh, Ld. APP for the State.*
> *Applicant in person with counsel Sh. Keshav Sharma.*
>
> *This is an application seeking release of FD and bank account No. 1529002100471730 of Punjab National Bank, Nehru Place Branch, New Delhi held in the name of National Housing Development Organization.*
>
> *Heard. Record Perused.*
>
> *In view of facts and circumstances of the case and the submissions made by Ld. Counsel for applicant, the application in hand is hereby allowed.*
>
> *Incharge of Punjab National Bank, Nehru Place Branch, New Delhi is directed to release FD and bank account no. 1529002100471730 held in the name of National Housing Development Organization in the account of M/s Graphisads Pvt. Ltd..*
>
> *Application stands disposed of.*
> *Copy dasti.*

-sd/-
(Deepak Sherawat)
Chief Metropolitan Magsitrate
SED/New Delhi/06.08.2019"

6. Learned counsel for the Petitioner submits that despite aforesaid directions, Respondent 2 (payee of the cheques) has not presented the cheques in question for encashment and the court ought not have issued the directions in the impugned order.

7. It is not in dispute that the settlement agreement was indeed executed by the present petitioner. As a result, the Petitioner undertook to make the payments in terms provided therein. In fact, the order granting bail to the Petitioner dated 21.06.2019, is premised on the fact that the parties have settled the matter and an amount of Rs.36 lacs has to be paid as per the schedule mentioned in the settlement agreement. The said order which reads as under;

"ID no. 3394/19
FIR No. 198/17
PS: Daryaganj

21.06.2019

Present: Ld. APP for the State.
Accused produced from JC.
Sh. Keshav Sharma and Sh. Harshvardhan, Ld. Counsels for accused.
Sh. Mukesh Gupta, Managing Director of Graphisads Pvt. Ltd. (Complainant) with Sh. Nitin Mittal, ld. Counsel for complainant.

A bail application U/s 437 Cr. PC moved on behalf of accused is pending disposal.

Submission heard.

It has been submitted by Ld. Defence Counsel that matter has been settled between the parties in a sum of Rs.36 lacs to be paid as per the *schedule mentioned in the settlement agreement being filed today (the settlement agreement has been signed by the parties in the Court and same has been placed on record). It has been further submitted that in view of settlement and the fact that the major offences U/s 420/406/419 IPC are compoundable in nature, accused may be released on bail.*

Ld. Counsel for complainant has also submitted to the same effect. He has also submitted that the complainant has received two cheques bearing no. 209998 and 209972 amounting to Rs.25 lacs and Rs.11 lacs.

Ld. APP for the State has opposed the bail.

Considering the above alongwith nature of offence and period of detention (accused is in JC since 08.01.2019), the bail application stands allowed. Accused is directed to be released on furnishing of P/B in the sum of Rs.25,000/- with one sound surety of like amount. While on bail, the accused shall abide by following conditions:-

i) he shall not commit any other offence similar to offence in question,

ii) he shall abide by the terms of the settlement agreement filed before the Court today.

iii) he shall regularly appear before the Court on dates fixed.

Bond furnished. Accepted hereby.

Put up for further proceedings on 06.09.2019.

Let copy of this order be given dasti to both the parties."

8. In terms of Clause 3.4 of the settlement agreement, it is the Petitioner's obligation to take appropriate steps to have the amount released in favour of Respondent 2. Admittedly, the same has not been done. In these circumstances, vide the impugned order the learned Magistrate has directed the Petitioner to bring a Demand Draft for the amount of the cheques.

9. Learned APP states that since the accused has failed to comply with the directions of the court, non-bailable warrants (NBWs) have been issued against the accused vide order dated 12.02.2020.

10. The Petitioner had taken upon himself the obligations to have the amount released in favour of Respondent 2. Today, he has conveniently

sought to take shelter of the fact that since the application for release of payment was filed by the complainant, he cannot be held liable to ensure compliance of the orders passed in the application preferred by Respondent 2. The Petitioner cannot wash off his obligations envisaged in the agreement. The undisputed fact is that the cheques have been drawn on the account which is in the name of the Petitioner. The Petitioner as the mandate holder, has to take appropriate steps to get the amount released or to ensure that if there is any embargo in the operation of the bank account, the same is lifted so that the cheques issued under the settlement agreement are honoured on their due date. The order dated 18.01.2020 merely directs the accused to bring the amount by way of Demand Draft. For the foregoing reasons, I do not see any reason as to why the directions given by the Trial Court be interfered with.

11. In these circumstances, I do not find any merit in the present petition. Accordingly, the same is dismissed along with pending applications.

SANJEEV NARULA, J

FEBRUARY 26, 2020
Pallavi