

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

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**Reserved on : 28.09.2021**

**Pronounced on : 22.11.2021**

+ **BAIL APPLN. 3350/2021**

**ASHWANI AHLUWALIA (IN CUSTODY)**

..... Petitioner

Through: Mr. Bharat Chugh, Advocate with  
Mr. Abhinav Sekhri, Advocate.

versus

**STATE (GNCT) OF DELHI**

.... Respondent

Through: Dr. MP Singh, APP for the State with  
WSI Amolak, P.S. South Campus.

Mr. R.K. Wadhwa, Advocate with  
Mr. Armaan Verma and Ms. Aarushi  
Sahrawat, Advocates for the  
Complainant.

**CORAM:**

**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**ORDER**

**RAJNISH BHATNAGAR, J.**

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 140/2019 under Section 420/467/468/471/34 IPC registered at P.S. South Campus.

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2. Briefly stated, the facts of the case are that the present case was registered on the complaint of Sh. Solanki, Director, Birmala Projects Pvt. Ltd. The complainant alleged that, Ashwani (present petitioner) and his son Nakul induced him to construct their property D-25, Anand Niketan, New Delhi for a sum of Rs. 4.75 Crore to be paid to them and in return promised to give Basement, Ground Floor, First Floor, 50% Stilt area along with two utilities, use of common area and 55% undivided, indivisible and impartible ownership rights in the plot of land measuring 271.50 Sq. yards for which they offered to enter into a Collaboration Agreement. The complainant sought some time to think but they kept on inducing him by repeated phone calls.

3. Two days later, both Ashwani (present petitioner) and his son Nakul induced complainant to come to one broker's office and requested him to accept their offer. Complainant agreed and asked them to prepare proper agreement. Petitioner also invited complainant to his daughter's marriage on 07/12/2019 and requested the complainant to give him advance of Rs. 50,00,000 cash immediately, citing urgency for the said marriage.

4. Considering the urgent necessity of the petitioner, complainant arranged money from his friends and relative and gave Rs. 50,00,000/- cash to the petitioner and his son Nakul at their residence in the presence of Sandeep Sharma and one of his friend on 05/12/2019 and

requested both of them to execute Collaboration Agreement for which they sought time due to the above said marriage and assured to prepare agreement to be executed on 09/12/2019 in which the earlier payment made shall be mentioned. On 09/12/2019 the complainant along with his friend Varun Sharma, Sh. Sandeep Sharma visited the residence of the petitioner where his son Nakul and his son in-law Abhimanyu were already present and in their presence, a Collaboration Agreement was signed and executed. On further assurance of Abhimanyu, complainant paid a sum of Rs. 1,00,00,000/- cash and Rs. 90,00,000/- vide Cheque No. 000150 dated 09/12/2019 drawn on HDFC Bank in favour of petitioner from account of the complainant's company M/s Birmala Projects Pvt. Ltd. in the capacity of Director.

5. The complainant also requested them to show the original papers of said property but they gave a set of photocopy only and assured to show the original papers after getting them from locker of the bank. On 15/12/2019, the complainant came to know through a broker that petitioner has entered into another agreement with Shailendra Singh and has taken Rs. 51,00,000/- advance from him for the said property. On further enquiry, complainant came to know that Ashwani (present petitioner) had already entered into another agreement on 10/06/2019 with Sh. Hemender Sharma and has taken Rs. 10,00,000/- from him for the said property and hence petitioner made stop payment request to his bank for the above said cheque. Thereafter, complainant visited the

petitioner at his residence, where his wife and son were also present. Petitioner and his son Nakul refused to return his money and the said cheque and threatened to kill, if he visited them again or asked for the refund. They also threatened to implicate complainant in false case. On the basis of the above complaint given by the complainant, the above said FIR was registered and investigation was taken up.

6. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, assisted by the Ld. counsel for the complainant, perused the Status Report filed by the State and also perused the records of this case.

7. It is submitted by the Ld. counsel for the petitioner that the petitioner has spent more than 8 months in J.C. and the charge sheet has been filed. It is further submitted by the Ld. counsel for the petitioner that the petitioner requires to be enlarged on bail so that he can prepare his defence in consultation with his counsel. He further submitted that the petitioner is a Sr. citizen and has chronic medical condition. He further submitted that the petitioner is not a flight risk and there are no chances of his tampering with the evidence or threatening the witnesses. He further submitted that the petitioner has deep roots in the society.

8. It is further submitted by the Ld. counsel for the petitioner that the petitioner needs to consult private doctors for his medical condition.

He further submitted that the story as put- fourth by the prosecution and the witnesses is nothing but falsehood and the testimony of the material witnesses are contradictory to the events dated 09.12.2019. He further submitted that the petitioner never entered into parallel agreements in regard to the property in question with two other persons. It is further submitted by the Ld. counsel for the petitioner that the allegations of forgery are false and fabricated and the matter is still pending before FSL.

9. On the other hand, Ld. APP for the State has argued on the lines of the Status Report. It is submitted by the Ld. APP for the State assisted by the Ld. counsel for the complainant that the allegations against the petitioner are grave and serious in nature. He further submitted that during investigation notice U/s 91 Cr.P.C. was served upon DDA for providing the certified copy of the complete file bearing property No. D-25, Anand Niketan, New Delhi-110021 including conveyance deed, mutation, will, any court order. He further submitted that the reply from DDA was received, which revealed that vide order dated 17-08-2006 passed by this Court in CS (OS) No. 1455/2004, the petitioner was directed not to sell, transfer, alienate or encumber the property and the portion whereof which were in his possession but despite clear directions of this Court, the petitioner executed various agreements/ MOU regarding the said property.

10. It is further submitted by the Ld. APP for the state that the conveyance deed generated by the petitioner is forged and fabricated which was revealed from the reply received by DDA. It is further submitted by the Ld. APP for the State that during the period when the petitioner was granted interim bail due to ongoing Corona Pandemic, he has threatened Mr. Jai Prakash Saini who is a witness in the present case and an NCR in that regard was lodged on 16.09.2020. He further submitted that another witness of this case Mr. Shailendra Singh has also filed a complaint against the petitioner for threatening him at PS Vasant Kunj South on 22.08.2020. It is further submitted by the Ld. APP that in case, the petitioner is enlarged on regular bail, he can influence or threaten the witnesses.

11. It is further submitted by the Ld. APP that the petitioner has moved an application seeking interim bail on the ground of medical condition which was dismissed by the Sessions Court. He further submitted that as per the allegations in the FIR, the complainant has mentioned that he gave Rs.1,00,00,000/- to the petitioner on 09.12.2019 and the bank account statement of the petitioner has confirmed this fact. It is further submitted by the Ld. APP that further investigation is still in progress and supplementary charge sheet would be filed before the Trial Court as and when the investigation is complete. During the course of the arguments, it is submitted by the Ld. counsel for the complainant that the source of cash amount of Rs.

1.5 Crore has been intimated to the Income Tax Department and there is no discrepancy in the same.

12. In the present case, the petitioner has already spent more than 9 months in J.C. and the charge sheet has also been filed. It is submitted by the Ld. counsel for the petitioner that the petitioner is a Sr. citizen having chronic medical condition and he is a sick and infirm person. The fact regarding the illness of the petitioner has been confirmed by the medical certificate dated 24.09.2021 which is on record under the signatures of Medical Officer In-charge, Central Jail No. 4 Tihar and as per the report of the Medical Officer In-charge, the petitioner is suffering from CAD, diabetes mellitus-II, hypertension, otomycosis and bilateral knee pain.

13. It was mainly contended by the Ld. APP for the State assisted by the Ld. counsel for the complainant that the petitioner while he was on interim bail threatened the witnesses and an NCR/complaint had also been lodged by the witnesses to whom the petitioner had threatened. But neither any NCR/complaint has been placed on record nor anything has been placed on record by the prosecution to show as to what action has been taken by the IO of this case on the said NCR/complaint. As far as the contention of the Ld. APP that in case, the petitioner is enlarged on regular bail, he can influence or threaten the witnesses, this

aspect of the matter can be taken care of by putting a stringent condition on the petitioner.

14. There are no allegations of tampering with the evidence against the petitioner and as far as the allegations made by the complainant are concerned, those can be proved by the complainant by entering into the witness box. The charge sheet has already been filed. The trial will take a long time, so no purpose would be served by keeping the petitioner in J.C. for long.

15. Therefore, keeping in view the entire facts and circumstances of this case and also the fact that the petitioner is a senior citizen suffering from various old age ailments and has already spent more than 9 months in J.C., he is admitted to bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the concerned trial Court, subject to the following conditions:

- (i) That the petitioner shall not leave the country without the permission of the Trial Court.
- (ii) He shall not tamper with the evidence.
- (iii) He shall not threaten the complainant and any of the witnesses of this case.

16. It is made clear that in case these conditions are violated, the complainant or the prosecutor shall be free to move an appropriate application or revocation of the grant of bail to the present petitioner.

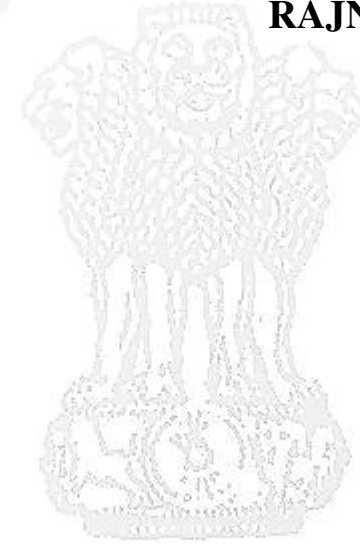
17. Subject to the aforesaid conditions, the petition is allowed.

18. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

**RAJNISH BHATNAGAR, J**

**NOVEMBER 22, 2021**

*Sumant*



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