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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 07.12.2022

+ BAIL APPLN. 1543/2022 & CRL.M.A. 9795/2022

UMESH KUMAR

..... Petitioner

Through: Mr Rohit Kumar Modi, Ms Praveena
Gautam, Mr Aman Sharma, Mr
Pawan Shukla and Ms Akansha
Tyagi, Advs. for Applicants

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondents

Through: Mr Aashneet Singh, APP for State
SI Rajiv Ranjan, PS-Mayapuri
Mr Manjeet Singh Bhamra, Adv. for
complainant.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (ORAL)

1. This is an application seeking bail in FIR No. 198/2022 dated 15.02.2022, registered at Police Station-Mayapuri, Delhi under section 420 IPC.

2. The applicant herein is the Director of M/s. Tayal Plastopack Pvt Ltd. who was the owner of industrial plot bearing No. H-933, RIICO Industrial Area Chopanki, Bhiwadi, Tehsil Tizara, District Alwar, Rajasthan. The complainant approached the applicant-Umesh Kumar and showed his interest in purchasing the said property as it was adjacent to his already

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existing industrial unit (H-932). Pursuant to the negotiations, an Agreement to Sell dated 07.03.2019 was executed. The price of the property was fixed at Rs. 81,50,000/- and the complainant over a period of time has admittedly paid Rs. 33,50,000/- Although, it is stated by learned counsel appearing for the complainant that they have paid a sum of Rs 39 lakhs.

3. It is stated in the FIR that it is only subsequently after paying substantial amount of money, the complainant got to know that the property was already mortgaged with Bank of India and the said fact was hidden from the complainant.

4. Mr Modi, learned counsel appearing for the applicant states that in the present case,

- a. the dispute is of a civil nature,
- b. the complainant knew about the mortgage as he has made RTGS payments to the Bank,
- c. the property was sold on '*as is where is basis*' and hence the applicant is entitled to bail.

5. I am unable to agree with the contention of learned counsel for the applicant. The Agreement to Sell categorically stated "*The plot is not restricted from loan, sale, lease and rent etc. Nor I have taken the loan from any Bank of Financial Institution by mortgaging the plot, that is, it is free from all type of encumbrances.*" The said agreement to sell is signed by the applicant- Umesh Kumar. The said statement is clearly contrary to the factual matrix especially when the property was mortgaged with Bank of

India. The complainant has invested substantial amounts of money and without knowing that the property was mortgaged. There was nothing which prevented the applicants from disclosing this fact to the complainant.

6. The ingredients of the offence u/s 420 IPC are also made out by the FIR. There are allegations of cheating by alluring the complainant of a beneficial deal knowing very well that the said property did not have clean title. The FIR states as under:

“That, having been enticed & allured and ensured about the lawful, valid, subsisting & clean title by the aforesaid persons, discussed the deal with other Director(s) and upon their consent & approval we agreed to enter into Agreement to sell for the purchase of the property in question. After rounds of meetings & negotiations which took place in our registered office at Mayapuri, New Delhi the deal for the Sale/Purchase of the property in question was fixed at total price consideration amount of Rs. 81,50,000/- (Rupees Eighty One Lakhs Fifty Thousand Only). It is worth mentioning here that prior to the deal & Agreement with respect to the aforesaid property in question, it was represented to me by the aforesaid persons that the company M/s Tayal Plastopack Pvt. Ltd. was the sole & absolute owner of the property in question, the said property is free from all sorts of encumbrances & liens and that they have valid & subsisting right, title & Interest in the same. Umesh

Kumar & his son/Mohit Tayal also showed some photocopies of the Lease Deed, Transfer letter issued by RIICO and other registered title documents etc. in name of their company - M/s Tayal Plastopack P. Ltd. while stating that the original documents are with them and same shall be handed over at the time of finalization of the deal.”

7. In ‘Archana Rana vs. State of Uttar [(2021) 3 SCC 751] the Supreme Court has opined that-

“7...As observed and held by this Court in R.K. Vijayasathathy [R.K. Vijayasathathy v. Sudha Seetharam, (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454] , the ingredients to constitute an offence under Section 420 are as follows:

(i) a person must commit the offence of cheating under Section 415; and

(ii) the person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.

8. “Cheating” is defined under Section 415 IPC. The ingredients to constitute an offence of cheating are as follows:

(i) there should be fraudulent or dishonest inducement of a person by deceiving him:

The person who was induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or the person who was induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived.

Thus, a fraudulent or dishonest inducement is an essential ingredient of the offence under Section 415 IPC. A person who dishonestly induced any person to deliver any property is liable for the offence of cheating.”

8. The FIR has clearly laid out that the applicant cheated the complainant by making a false inducement that the plot which was being sold by them, was free from all encumbrances. Based upon the false inducement the complainant parted with valuable security in the form of payment. Making of payment to the bank by RTGS does not mitigate the accused's false inducement. Similarly, 'as is where is' has to be read in harmony with the other recitals which said that the property was free from all prior encumbrances and mortgages.

9. In view of the aforesaid reasons, I am not inclined to entertain the present bail application as all the above three grounds pale into insignificance in view of the conduct and material concealment which clearly amounts to cheating on behalf of the applicants.

10. In this view of the matter, the application is dismissed.

JASMEET SINGH, J

DECEMBER 7, 2022

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[Click here to check corrigendum, if any](#)



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