



2024:DHC:3026



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 16.04.2024

+ **BAIL APPLN. 3540/2023**

SANJAY ADHANA

..... Applicant

versus

THE STATE OF GOVT. NCT OF DELHI Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Ajay Burman, Senior Advocate with
Mr. Varun Mudgal, Mr. Rishab Tyagi and
Mr. Varun Seth, Advs.

For the Respondent : Mr. Utkarsh, APP for the State with Insp.
Benkatesh, PS Sarita Vihar.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in FIR No. 213/2017, dated 30.06.2017, for offences under Sections 420/406/34 of the Indian Penal Code 1860, registered at Police station Sarita Vihar.

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2. The FIR was registered on a complaint made by the complainant alleging that she has been cheated by the applicant and the other accused persons

3. It is stated that the complainant in the month of September 2012 saw an advertisement while she was searching for some residential plot of land. After seeing the advertisement, she visited the office of M/s RVA Realcon Private Limited / accused company. The complainant met two persons namely Mr. Divesh and Ms. Nisha who introduced themselves as representatives of the company and explained the details of the project and presented attractive options.

4. It is stated that the complainant thereafter met the applicant, as he was director of the company, who explained her about the details with respect to the pricing and the cost of project and other things and thereafter introduced the complainant to one Mr. Nand Kishore, saying that he will deal with the complainant along with Mr. Divesh and Ms. Nisha with respect to purchase of the property.

5. Various plots were shown to the complainant and Plot bearing no. A-48, admeasuring 100 sq yards, situated in Khata No. 13 & 14 (hereafter '**the land**'), was ultimately chosen by the complainant, and after negotiations price for the land was fixed at Rs.2300/- per square yard along with an additional Rs. 20,000/- towards development costs.

6. It is alleged that the agreement was signed by Mr. Nand Kishore and Rs.60,000/- was paid at the time of signing the agreement. It is alleged that a total sum of Rs.2,50,000/- (Rs. 2,30,000/- + Rs. 20,000/-) was paid to the accused company.



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7. It is alleged that after clearing the said dues the land was registered by Shri Nand Kishore on behalf of the company in favour of the complainant *vide* sale deed dated 11.09.2013, bearing no, 22505, Bahi No.1 Zid No. 14089 pages 237-256. It alleged that the applicant and Mr. Nand Kishore promised that the land would be handed over in 15 days after completing the construction of the boundary.

8. It is alleged that the boundary work of the land was never completed and the possession was not handed over to the complainant. The complainant also alleged that the same land was also sold to others on the basis of false and fabricated documents.

9. The learned counsel for the applicant submitted that the applicant had falsely been implicated as applicant never met the Complainant. Also, that the applicant resigned from the accused Company on 26.02.2013 which was accepted by the Board of Directors in the Minutes of Meeting conducted on the same day, whereas the alleged sale deed was registered on 11.09.2013. He submitted that the offence as alleged is civil in nature and the present FIR is nothing but an attempt to harass the applicant.

10. He submitted that the learned Trial Court has granted bail to the accused namely Nand Kishore by order dated 21.08.2013, whose role can be alleged to be similar if not graver, since he was the one who signed the alleged sale deed on behalf of the accused company.

11. He submitted that the applicant is in custody since 28.10.2021 and the investigation in the present case is complete and chargesheet



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has already been filed, hence there is no reason to keep the applicant in further incarceration.

12. He also submitted that this Court by order dated 17.02.2023, had dismissed the applicant's regular bail application on the ground that the applicant is involved in similar types of offences from the year 2015 i.e., duping innocent investors in buying properties which do not belong to the company.

13. He submitted that all the material witnesses have already been examined and only official witnesses remain.

14. The learned Additional Public Prosecutor for the State had opposed the grant of present bail application, He submitted that there are approximately more than fifteen other cases pending against the applicant in which he used the same *modes operandi*.

15. He submitted that even though the applicant stated that he was not a director in the company at the relevant time, it was found during the course of investigation that the applicant is holding 90% of the shareholding of the M/s RVA Realcon Private Limited.

ANALYSIS

16. The chargesheet in the present case was filed way back on 03.01.2022.

17. From the very nature of the offence and the allegations made, the entire incriminating material seems to be documentary in nature and is already available with the investigating agency. Therefore, it cannot be alleged that the applicant will influence the witnesses and tamper with the evidence if released on bail.



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18. The co-accused Mr. Nand Kishore who was alleged to be director of the accused company and executed document in favour of the complainant has already been granted bail by the learned Trial Court by order dated 21.08.2023. The State has not challenged the said order granting bail to co accused person. The allegations of forgery and any involvement of the applicant will be proved in trial.

19. It cannot be alleged that further incarceration of the applicant is required to carry out further investigation since the chargesheet has already been filed.

20. A chart is placed on record by the applicant in which it shows that the applicant is on bail in all the matters.

21. The undertrial prisoners cannot be detained in custody for an indefinite period. It is a settled principle of law that bail is the rule and jail is an exception. The right to speedy trial and justice has been recognised as a Fundamental Right by the Hon'ble Supreme Court. In **Sanjay Chandra v. CBI: 2012 1 SCC 40**, it was held as under:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to



the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

22. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

23. Considering the above and the fact that the applicant is in custody since 28.10.2021, and that the investigating in the present case is complete and the trial is likely to take a considerable amount of time, this Court feels that no useful purpose would be served by keeping the applicant in further incarceration.

24. Without commenting further on the merits of the present case and keeping in mind the facts and circumstances of the case, I am satisfied that the applicant has made out a case for grant of regular bail. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000 with two sureties of the like amount, subject to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, on the following conditions:

- a. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts



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of the case or tamper with the evidence of the case, in any manner whatsoever;

- b. He shall under no circumstance leave the Country without the permission of the learned Trial Court;
- c. He shall appear before the learned Trial Court as and when directed;
- d. He shall, upon his release, provide the address where he would be residing after his release and shall not change the address without informing the Investigating Officer/ SHO concerned; and
- e. He shall, upon his release, provide his mobile number to the Investigating Officer/ SHO concerned, and shall keep it switched on at all times.

25. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

26. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and not be taken as an expression of opinion on the merits of the case.

27. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

APRIL 16, 2024

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