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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19.08.2020

Pronounced on: 26.08.2020

+ BAIL APPLN. 3088/2018 & CrI.M.A. 10430/2020

VIKAS GUPTA

..... Petitioner

Through Mr.Simon Benjamin, Adv.

versus

STATE & ORS.

..... Respondents

Through Mr.Amit Chadha, APP for State.
Mr.Dushyant K. Mahant, Adv. for
complainant.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner prays as under:

- (i) *Allow the present application and grant regular bail to the applicant in the matter of subject FIR (namely FIR No.424/2018 dated 18.10.2018 registered with PS Subhash Place, NW, Delhi);*
- (ii) *Grant interim bail in the above referred subject FIR and he be kindly forthwith released on interim bail in the matter of subject FIR (namely FIR No.424/2018 dated 18.10.2018*

registered with PS Subhash Place, NW, Delhi) pending final disposal of the present application;

(iii) Grant ex parte order in terms of prayer (ii) above.

2. After considering the averments made in the present petition and status report and submissions of the learned counsel for the parties, on 31.12.2018, this Court passed order as under:

“1. Petitioner is seeking regular bail under Section 439 (a) CrPC in FIR No. 424 dated 18th October, 2018 under Section 420/34 IPC, PS Subhash Place, North West Delhi.

2. Pursuant to the last order, learned APP for the State has filed a status report, copy whereof has been handed over to the learned counsel for the Applicant. The Applicant seeks and is granted two weeks’ time to file the response to the status report.

3. The accused has been in custody for about 60 days. The Applicant’s wife is presently on interim bail till 3rd January, 2019. The dispute between the parties arises out of an Agreement to Sell dated 2nd September, 2017 and it is stated that the parties are presently in litigation in respect of the aforesaid Agreement to Sell.

4. Investigation is complete and the charge sheet has been filed.

5. Looking into the facts and circumstances of the case, till the next date of hearing, the Petitioner is granted interim bail on furnishing his personal bond in the sum of Rs. 25000/- with one surety bond of like amount to the satisfaction of the learned Trial Court/CMM/Duty Magistrate. The Petitioner shall not go out of the territorial limits of National Capital Region of Delhi.”

3. Thereafter, on 11.01.2019, the Court passed the order which is reproduced as under:

“1. Learned counsel for the petitioner submitted that the petitioner shall deposit the amount before the Trial Court within 2 weeks which is stated to be due to Rachit Katyal and Manpreet Singh Sahni, without prejudice to the rights and contentions of the parties and the defence of the petitioner.

2. Learned counsel for the petitioner further submitted that he shall file the receipt of the payment made to Mr. Sooraj Kumar.

3. The petitioner is directed to file the reply to the status report by way of affidavit.

4. Interim protection granted shall continue till the next date of hearing on the same terms and conditions as directed in the order dated 31.12.2018.

5. Renotify on 31.1.2019.”

4. On 05.02.2019, the Court passed further order which is also reproduced as under:

“1. Learned counsel for the petitioner has handed over the certified copies of the proceedings dated 25.1.2019 and 31.1.2019 before the Trial Court, stating therein that the petitioner has filed the demand drafts before the Trial Court. Copies of the said proceedings have also been handed over to learned counsel for respondent No.2.

2. Renotify for final disposal at the end of the Board on 11.4.2019.

3. Interim order to continue.”

5. Thereafter, interim protection continued and on 03.03.2020 recorded as under:

“Counsel for petitioner has assured this Court that he shall call Ms.Geeta in whose name the property in question was transferred for the same deed dated 12.04.2019.

For the aforesaid purpose, renotify on 27.03.2020.

Interim order to continue till further orders.”

6. However, Mr.Chander Dang who is Constituted Attorney of the complainant filed an application dated 23.07.2020 which numbered as CrI.M.A.10430/2020 for cancellation of interim order dated 31.12.2018 by stating as under:

“6. The applicant/complainant, constrained, approached Police to register the investigate the matter after various other facts came to light. Accordingly, an FIR no. 424/18 was registered at PS, NSP Delhi. During the investigation, the Police discovered that the Accused Persons were habitual of taking money from various persons on the pretext of selling the same said property to them.

7. The Police finally arrested accused persons on 31.10.2018. Thereafter, Ld. Magistrate granted interim bail to the wife of the petitioner on the ground of being a woman. The petitioner never challenged the said order of the Ld. CMM on this ground. The Ld. CMM denied bail to petitioner who finally got interim bail on 31.12.2018

from this Court.

8. However, the complainant came to know that accused persons, maintaining same fraudulent modus operandi as earlier, created another instrument of third party interest. This time, accused persons let out the said property vide rent Agreement dated 27.02.2019 to one Mr. Naresh.

*9. The petitioner immediately moved an application before the Ld. CMM for “**cancellation of the interim bail**” to wife of the petitioner since she had, by letting out the said property and creating third party interest, hampered the trial and prosecution irreparably. The Ld. CMM posted the matter for arguments.*

10. Before the Ld. CMM could hear the application on the basis of the said Rent Agreement, it turned out that accused persons, after exceeding all boundaries of prudence and rule of Law, sold the said property to one Ms. Geeta. The said consideration was Rs.1.67 crores. With the money obtained, wife of the petitioner is learnt to have cleared the dues of PNB. Such an act by the accused persons significantly altered the nature and possible result of the criminal and civil proceedings. The petitioner, who stood witness to the recent sale deed and also to various other instruments, made a mockery of the law and Courts repeatedly. The petitioner impressed vehemently upon the Ld. CMM the veracity, ramifications and implications of conduct of accused Ms. Hema Gupta.

11. Vide the instant application, the complainant is praying before this Hon'ble Court to revoke the interim protection granted on 31.12.2018 to the petitioner. During the course of arguments of March 03, 2020 before this Court the applicant brought all these facts to the knowledge of this Hon'ble Court. Thereafter this Court was pleased to order the new buyer. Ms. Geeta, to appear before this Court.

12. The petitioner has deliberately flouted the interim protection by indulging in same actions for which he is already facing proceedings. He should be remanded back to custody immediately.”

10. Learned counsel for the petitioner submitted that firstly, there is no status quo order passed on the property in question; secondly, he cannot force her (Geeta) to appear before this Court. Moreover, he tried his level best but failed since said Geeta is not party in the present proceedings and no order of this Court against Geeta to appear.

11. In addition to above, petitioner has paid an amount of Rs.36 lakh which is admitted in Status Report dated 02.07.2020 filed by Insp. Satish Kumar. Thus, cancellation application may be dismissed and order dated 31.12.2018 be made final one.

12. It is not in dispute that on 31.12.2018, petitioner did not give undertaking to deposit any amount, however, keeping in view the fact that petitioner had already spent 60 days in Judicial Custody and chargesheet has been filed, this Court granted interim bail. In addition, parties are in litigation regarding Agreement to Sell dated 02.09.2017.

13. It is also not in dispute that the petitioner paid, during interim, Rs.36 lakh to five parties as is evident from Status Report dated 02.07.2019

mentioned above.

14. In view of the various aforementioned orders passed by this Court, petitioner already spent 60 days in Judicial Custody, chargesheet has been filed and trial will take substantial time, I hereby confirms order dated 31.12.2018.

15. Consequently, Crl.M.A. 10430/2020 is dismissed.

16. Petition is allowed and disposed of accordingly.

17. The Trial Court shall not get influenced by the observation made by this Court while passing the order.

18. Copy of this order be transmitted to the Trial Court for information and necessary compliance.

19. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 26, 2020
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