

Pradeep Kumar Aggarwal vs The State (Govt. Of Nct Of Delhi) on 6 April, 2022

Author: Prateek Jalan

Bench: Prateek Jalan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1068/2022 & CRL.M.A. 6334/2022

PRADEEP KUMAR AGGARWAL

..... Petitioner

Through: Mr. Javed Ahmad & Ms. Aakriti
Aditya, Advocates [9810518138]

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Amit Chadha, APP for the
State with SI Shailendra Tiwari
Seelampur.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 06.04.2022 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

CRL.M.A. 6334/2022 (exemption) Exemption allowed, subject to all just exceptions. The application is disposed of.

1. This is an application for bail in the event of arrest in connection with FIR No. 416/2021, dated 12.11.2021, registered at Police Station Seelampur, under Sections 420/406/466/467/471/120B/34 of the Indian Penal Code, 1860.

2. The applicant had filed two earlier applications under Section 438 of the Code of Criminal Procedure, 1973 before this Court. The first application [BAIL APPLN. 418/2022] was withdrawn with liberty to approach the Trial Court, as recorded in the order dated 04.02.2022. The Trial Court, however, dismissed the application vide order dated 11.02.2022, following which the applicant approached this Court by way of BAIL APPLN. 588/2022. Notice was issued on 17.02.2022, in which the contention of the applicant was recorded as follows:

"2. It is the contention of the petitioner that he had given a loan to one Ravi @ Raju,

the husband of the Suma Lata, who has purchased his property on the basis of a Power of Attorney and the papers were with him as security. He states that he was not involved in the sale of the property to the complainant. He states that though he was a party to the suit filed by the sister of the male legal heirs of Gainda Mal, he was not aware that the property belonged to the DUSIB (Delhi Urban Shelter Improvement Board) because the case was being looked after by the male legal heirs of Gainda Mal, who was the owner of the property. The learned counsel for the petitioner states that since he had only given a loan, he was not interested in the case. He states that the dispute is primarily civil in nature and the evidence is documentary in nature which is in the custody of the Police. He states that there is no necessity to arrest the petitioner."

3. The Investigating Officer ["IO"] thereafter filed a status report in which it was recorded that the co-accused-Ravi Rathore alias Raju had revealed that he had actively participated in the transfer of property to the complainant and had received a sum of 10 lakhs.

4. Noting the aforesaid contention, the Court passed the following order on 24.03.2021:

"2. Mr. Javed Ahmad, learned counsel for the applicant, submits that in view of the status report, it is evident that the co-accused-Mr. Ravi Rathore @ Raju had received Rs. 10 lakhs out of the consideration amount of Rs. 26 lakhs, paid by the complainant-Mr. Ashok Kumar, and the applicant received a sum of Rs. 16 lakhs. He states that the applicant is willing to pay the aforesaid sum of Rs. 16 lakhs to the complainant, without prejudice to his rights and contentions to recover the same from co-accused-Mr. Ravi Rathore.

3. In view of the aforesaid position, Mr. Ahmad seeks permission to withdraw the present application with liberty to move the Trial Court for appropriate relief.

4. The present bail application is dismissed as withdrawn, with liberty as aforesaid."

5. The Trial Court has once again dismissed the applicant's application vide order dated 30.03.2022, recording as follows:

"xxxx xxxx xxxx Ld. Counsel for accused/applicant has argued that IO has filed a status report before the Hon'ble High Court of Delhi in which it was disclosed that this applicant received Rs.16 lacs only from the complainant and Rs.10 lacs were received by co-accused Raju. It is further submitted that accused is ready to pay this amount to the complainant or to deposit with this court, provided he may be released on bail. It is further argued that accused has already joined investigation in pursuance of the interim protection granted by the Hon'ble High Court and he is further ready to join investigation as and when directed. It is further argued that custodial interrogation of this accused is not required, as entire case is based upon the documents which are already with police and this application may be allowed.

On the other hand, Ld. Chief PP for the State has strongly opposed this application on the ground that multiple bail applications of this accused have been dismissed on merit and there is no change of circumstances. It is further argued that the custodial interrogation of this accused is required, but accused is fleeing from interrogation and this application is liable to be dismissed.

Complainant is also present in person and has submitted that he had paid Rs.47 lacs to the accused to purchase this property for his family members, but all the accused have cheated him by concealing the actual nature of this property. It is further argued that this applicant received the entire amount but now taking a false plea just to cause him wrongful loss and to misappropriate his remaining amount paid in cash. It is further submitted that he is not ready for settlement and this application may be dismissed.

I have heard the argument and gone through the record.

Perusal of the order of the Hon'ble High Court shows that applicant was willing to pay Rs.16 lacs to the complainant, without prejudice of his right and contentions to recover the same from co-accused Ravi Rathore and, in view of this submission, permission to withdraw this application was granted by the Hon'ble High Court with liberty to file this application. Though this court has already considered all the facts of this case in detail vide order dated 11.02.2022, in which, all the contentions of the applicant were considered and discarded. However, this application has been filed on the ground of settlement between the parties. Accused is ready to pay Rs.16 lacs or to deposit with this court as bail condition, but complainant has flatly refused for this settlement. No doubt, section 420IPC is compoundable, but with the consent of the complainant, for which complainant is not ready. This court cannot direct the accused to deposit settlement amount with court without any possibility of withdrawal by the complainant. As such, bail is not maintainable on this ground.

So far as merit of the case is concerned, involvement of this accused was active during the entire incident. He was well aware that property was not transferable and rather belonged to DUSIB and was also declared as non transferable by the court of Ld. ADJ in a civil litigation, to which, he was also a defendant, but still he along with other co-accused entered into this sale transaction of this property with complainant and accepted this amount. As such, he was instrumental to this sale transaction and cannot claim innocence.

In view of severity of allegations, I am of the opinion that the custodial interrogation of this accused is required, hence application dismissed."

[Emphasis supplied]

6. Mr. Javed Ahmad, learned counsel for the applicant, submits that the contention taken by the complainant before the Trial Court, as recorded in the aforesaid order dated 30.03.2022, is entirely contrary to the contents of the FIR. He refers me to the allegation in the FIR that the total price of the property was 26 lakhs, out of which the complainant had given 5 lakhs by cheque and 21 lakhs by way of cash on 15.05.2019. Contrary to the aforesaid stand, the complainant has now stated

before the Trial Court that he had paid 47 lakhs for the property in question.

7. Issues notice. Mr. Amit Chadha, learned Additional Public Prosecutor, accepts notice on behalf of the State. Mr. Manoj Sharma, learned counsel, is present on behalf of the complainant and seeks time to take instructions. He is unable to respond, at this stage, to the contentions of Mr. Ahmad.

8. The status report be filed within two weeks.

9. In view of the apparent change in the stand of the complainant as recorded above, the applicant will not be arrested until the next date of hearing, subject to cooperating in the investigation. The applicant will attend the police station as and when required by the IO.

10. List on 17.05.2022.

PRATEEK JALAN, J APRIL 6, 2022 'hkaur'/ [Click here to check corrigendum](#), if any