

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

Date of Reserve: July 12, 2010
Date of Order: 13th August, 2010

+ CrI.M.C.No. 3022/2009 & CrI.M.A.No. 5184-5185/2010

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13.08.2010

Dr. Raman Kumar Juneja

... Petitioner

Through: Mr. S.S.Gandhi, Sr. Advocate with
Mr. Prag Chawla, Advocate

Versus

State (NCT of Delhi)

... Respondent

Through: Mr. V.K.Aggarwal, Advocate &
Mr. Chand Zafar, Advocate for the Complainant

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

By present petition under Section 482 Cr.P.C. the petitioner has assailed order dated 26th August, 2009 passed by the learned Additional Sessions Judge whereby he allowed an application of the respondent for cancellation of bail of the petitioner and set aside the bail order dated 18th February, 2009 passed by the learned Metropolitan Magistrate.

2. It is submitted that the cancellation of bail of an accused can be done by a Court only if there were supervening circumstances which render grant of bail no longer conducive to a fair trial. The law cited by the petitioner regarding cancellation of bail was ignored by the learned Session Judge. It was not a case where petitioner had attempted to interfere with the course of administration of justice or had abused the concession of bail granted by the learned Metropolitan

Magistrate. There was no cogent and valid reason available for cancellation of bail and the learned ASJ did not pass the order for just and cogent reasons.

3. Brief facts relevant for the purpose of deciding this petition are that the petitioner claimed to be owner of property No. 20/2 Rajpur Road, Civil Lines along with ownership rights of passage. Petitioner entered into an Agreement dated 18th January, 2008 to sell this property for a sum of Rs.6.75 crore and received around Rs.80 lac at the time of signing agreement; Rs.20 lac was received in cash Rs.60 lac was received through cheque. However, a dispute arose soon after signing of agreement between petitioner and respondent about the extent of property sold, and the respondent stopped payment of the cheque. Thereafter a fresh agreement was signed between the parties on 7th July, 2008. The only difference between agreement between 18th January, 2008 and 7th July, 2008 was that while in 18th January, 2008 agreement the petitioner had given to the respondent only easementary rights over passage from Rajpur Road to the property and no right of ownership over the land underneath passage was given however, in the agreement dated 7th July, 2008, it was specifically mentioned that the respondent will have ownership rights over the passage starting from main Rajpur Road to Kailash Building. The copies of the two agreements are on record showing this difference. After signing of the second agreement dated 7th July, 2008, the petitioner received a sum of Rs.1.5 crore from the complainant and balance consideration was to be received at the time of execution of the documents. The complainant later on found that the petitioner had misrepresented about his title over the passage in order to induce the respondent to part with huge amount of Rs.1.5 crore with a mala fide intention. The contention of the complainant was that the petitioner first kept on postponing the execution of sale deed. He did not show title documents in respect of title over

the passage from main road to Kailash Building and represented that he shall hand over the title documents at the time of receiving balance payment and execution of the sale deed. According to complainant, though the complainant was ready with the balance payment, the petitioner showed inability to execute the sale deed and to hand over the possession by due date of 18th August, 2008 and thereafter date was extended to 15th September, 2008 then to 16th October, 2008. The petitioner also failed to provide sanctioned building plan, "C" and "D" forms, completion certificate and complete set of documents. It was alleged that petitioner did not provide documents nor came forward to execute the sale deed in terms of the agreement dated 7th July, 2008. It came to the knowledge of the complainant that petitioner was not the owner of the entire property as stated in agreement dated 7th July, 2008 and the passage was not under ownership of the petitioner. Further, it also transpired that there was unauthorized construction and dispute between petitioner and municipal authorities was going on and with the result that the property was sealed. It is stated that despite petitioner not having marketable title over the property, the petitioner induced respondent to part with huge amount of money. However, after the petitioner failed to execute sale deed, the complainant met Mr. Anish Gupta, property dealer along with one Mr. Bipin Jain and requested for refund of money paid by him to petitioner. It was assured that the money shall be got refunded from the petitioner within 15 days but petitioner refused to return the money paid to him and told that the entire amount of Rs.1.5 crore had been forfeited.

4. The petitioner had applied for anticipatory bail which was rejected by the Sessions Court and also by this Court. Thereafter, the petitioner surrendered before the Court of MM and the learned MM granted bail to the petitioner observing that both the agreements were for the same consideration

and no extra payment was stipulated for the additional stipulation made in the agreement dated 7th July, 2008 for selling extra common passage. No cheating was alleged in respect of agreement dated 18th January, 2008. The accused was not a prior convict and looking at his age the learned MM directed the accused to be released on bail of Rs.50,000/- subject to condition that accused shall not leave the territory of India without permission and will surrender his passport and shall not commit a similar offence nor shall threaten or induce the witnesses. This order of the learned MM was assailed by the respondent on the ground that the learned MM had not taken into consideration the substantial facts while granting bail and it was not a fit case for grant of bail. Looking into the fact that the accused/petitioner was involved in cheating of a huge amount and had refused to refund Rs.1.5 crore even on his failure to show title, learned Sessions Judge came to the conclusion that prima facie it was a serious case of deliberately inducing the complainant to part with this amount by making false representation about ownership of the passage from main Rajpur Road to Kailash Building. The learned ASJ observed that the petitioner had admittedly received Rs.1.5 crore from the complainant and in case the agreement did not materialize, the petitioner was entitled to forfeit only the earnest money of Rs.20 lac and he was required to return sum of Rs.1.30 crore, which he deliberately did not return. So the Court of learned ASJ observed that in this case from the facts it can be gathered that the intention of the petitioner was mala fide from the very beginning and he had no intention to honour the agreement. The learned ASJ also found that in this cheating the petitioner had main role. He (petitioner herein) was the beneficiary of Rs.1.5 crore. The co-accused who was granted bail was not the beneficiary of any amount therefore, grant of bail to co-accused could not have been a reason to allow bail to petitioner on the ground of parity. The Court of Sessions found that the learned MM had not considered the matter

in proper prospects, did not pay heed to the difference between the two agreements, executed by the petitioner and inducement given, by making specific averment of ownership over the passage and agreeing to sell the passage on which he had no right. It further observed that a person who had duped complainant of Rs.1.5 crore cannot be treated alike to the person who had not received any benefit. The learned ASJ by a speaking order of 33 pages cancelled the bail of the accused.

5. It is contended by the Counsel for the petitioner that the learned ASJ had not taken into account the fact that cancellation of bail already granted must be considered and dealt with on different footings and the bail could be cancelled only if there were supervening circumstances showing that it was not conducive to a fair trial to allow an accused to remain on bail or the freedom granted to the accused by way of bail was being misused. Reliance was placed on *Dolat Ram & Ors. v. State of Haryana* (1995) 1 SCC 349 & *Ramcharan v State of M.P.* (2004) 13 SCC 617. It was submitted that even if two views were possible, once the bail was granted it should not be cancelled. The respondent on the other hand relied on *Dinesh M.N. (SP) v. State of Gujarat* (2008) 5 SCC 66 wherein Supreme Court had observed that while cancelling the bail, the Court can consider whether the irrelevant material was taken into consideration by the Court granting bail. In *Brij Nandan Jaiswal v. Munna @ Munna Jaiswal & Anr.* (2009) 1 SCC 678 Supreme Court observed as under:

12. It is now a settled law that the complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also. In our opinion, therefore, the complainant could question the merits of the order granting bail. However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter. While

granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary.

6. In Satish Jaggi v. State of Chhattisgarh & Ors. (2007) 11 SCC 195, Supreme Court had observed that while granting or non-granting of bail in non-bailable offences, the primary consideration should be nature and gravity of offence and question of credibility and reliability of the witnesses cannot be gone into. In Subodh Kr. Yadav v. State of Bihar & Anr. Criminal Appeal No. 1234/09 (MANU/SC/1207/2009) decided by the Apex Court on 15th July, 2009, Supreme Court again reiterated that where a Magistrate goes wrong and grants bail and acts in an arbitrary manner/oblique motive the Sessions Court was justified in setting aside the bail. The Apex Court observed that the powers of the Superior Court were not restricted in cancellation of bail in appropriate cases where the bail has not been granted on merits.

7. I consider that in the present case, the argument of the petitioner that the learned ASJ did not consider the law as laid down by Supreme Court was baseless. Even on facts, I find that the petitioner's conduct from the very beginning had been to swallow the money. Initially, when the dispute arose between petitioner and respondent about extent of property, the petitioner could have told the complainant that he was not the owner of the passage and he could not sell the passage and respondent was free to back out from the agreement. By that time, the respondent had paid only a small amount of Rs.20 lac cash to the petitioner and the complainant would have decided whether to go by deal or not. However, the petitioner fully knowing that he was not the owner of the passage, (as is seen from the gift deed and Will; copies of which have been placed on record by the petitioner), deliberately induced the complainant to enter into second agreement wherein he mentioned that he would transfer the

ownership rights over the passage and after entering into this agreement the petitioner received substantial amount of Rs.1.3 crore more from the complainant. Since he was not owner of the passage, he could not have transferred the passage. He had only easementary right over the passage as was written in the first agreement dated 18th January, 2008. The sole purpose of the petitioner making false statement in second agreement was to lure complainant to part with Rs.1.5 crore and then show volte face. However, the learned MM granted bail to the petitioner on the basis of first agreement between the parties without taking into account the fact that it was the second agreement after execution of which, the petitioner had received huge amount from the complainant wherein a false representation that petitioner being owner of the passage, was made. The petitioner had not shown his title 7th July, 2008 to the complainant. Had the petitioner shown title deeds, the complainant would not have entered into the second agreement and would not have parted with the money. It is obvious that prima facie the intention of the petitioner was to play fraud and to cheat the respondent of huge amount. This fact is further fortified when petitioner refused to return the amount. The learned MM did not take these facts into consideration while granting bail. The learned Sessions Judge was therefore within its jurisdiction to cancel the bail as Learned MM had failed to consider merits while passing bail order and gave casual treatment to the matter and considered irrelevant material.

8. I consider that where a person who has admittedly received huge amounts from the complainant on misrepresentation and who refused to return this amount despite his misrepresentation having come to light, such a person is not entitled for bail. His bona fides and intentions are to be doubted and the Court must remain alive to the situation that these days 'cheating' has become a

profession. Builders often make false promises about the land and about the buildings and induce people to invest money in colonies, which exist only on papers when in fact they do not have land or permission to set up colonies. This menace of cheating is increasing day by day and Courts cannot take a casual approach towards those, who admittedly had received huge amount but are not prepared to refund.

I, therefore find no infirmity in the order passed by the learned ASJ cancelling the bail of the petitioner. The petition is hereby dismissed.

August 13, 2010
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SHIV NARAYAN DHINGRA, J.