

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

% Reserved on: 17<sup>th</sup> February, 2023  
Pronounced on: 01<sup>st</sup> March, 2023

+ **BAIL APPLN. 164/2020**

DARSHAN SINGH NAMDHARI ..... Petitioner

Through: Ms. Richa Kapoor, Mr. Kunal Anand, Mr. Sandesh Kumar, Mr. Jai Batra & Ms. T. Sharma, Advs.

versus

STATE ..... Respondent

Through: Ms. Richa Dhawan, APP for the State with SI Sandeep Singh, PS Ranjit Nagar.

**CORAM:**  
**HON'BLE MR. JUSTICE ANISH DAYAL**  
**JUDGMENT**

**ANISH DAYAL, J.**

1 This bail application has been filed seeking regular bail for the petitioner in FIR No. 292 of 2017 PS Ranjit Nagar under Sections 420/34 IPC. The said FIR was registered on 20<sup>th</sup> September, 2017 against three accused persons namely the petitioner, Anoop Singh Bagga and Uday Singh Bagga, all sons of late Shri Sahender Singh on the complaint of Shri Sanjeev Yadav.

2. As per the case of the prosecution, the complainant alleged that accused No.1 had approached him through his acquaintance Joginder Singh in June 2016 claiming to be the co-owner of a three storey building property bearing No. 34, South Patel Nagar, New Delhi - 08

seeking to sell below the market value prevailing at the time since the accused were in dire need of money. The complainant, by agreement to sell dated 12<sup>th</sup> July, 2016 for a total consideration of Rs. 15 crores, ended up paying Rs. 2 crores on different dates. Later in the month of April 2017, the complainant came to know of a case pending in this Court pertaining to the said property where a restraint was there on creating third party interests. Accordingly, the said FIR was lodged.

3. The learned counsel for the petitioner contends that the transaction between the parties is of a civil nature and there was no dishonest intention or inducement as evident from the alleged agreement to sell. Moreover, the FIR itself would show that the accused wanted to sell the property below market value and therefore, it is contended that the complainant knew that it was a disputed property. The defense of the petitioner has been that the complainant knew fully well about the litigation on the property and therefore the agreement to sell it at a depressed sale value. Pursuant to the investigation, the petitioner and co-accused Uday Singh Bagga were arrested on 29<sup>th</sup> June, 2018 and the other co-accused Anoop Singh Bagga died during judicial custody. Charge-sheet was filed on 3<sup>rd</sup> August, 2018. Uday Singh Bagga pleaded guilty and has been convicted and sentenced for the period already undergone which is noted in the order of the learned Trial Court dated 21<sup>st</sup> December 2020. The petitioner has however been incarcerated for about 31 months and is therefore seeking bail. Not only has the co-accused Uday Singh Bagga, who had a similar role, been released on the sentence undergone, but also the punishment prescribed in Section 420 IPC can extend only up to 7 years out of which the petitioner has already spent 2 years and 7 months in custody. Moreover, in the

Magisterial trial, which has been carried out in this case as per Section 29 Cr.P.C., a maximum sentence of 3 years can be awarded. Further, reliance was placed on Section 325 Cr.P.C. which lays down the procedure to be adopted by a Magistrate if there is a punishment different or more severe than what the Magistrate is empowered, which never was in this case. Reliance is also placed on Section 436A Cr.P.C for releasing an under trial once half of the maximum period of imprisonment specified for an offence has been undergone.

4. The petitioner is a senior citizen of 65 years of age and has been released on bail in FIR No. 624/2015, PS. Ranjit Nagar and FIR No. 380/2016, PS Ranjit Nagar *vide* orders dated 29<sup>th</sup> November, 2022 and 19<sup>th</sup> March, 2019 respectively, these cases having been cited as previous involvements of the petitioner, by the Ld. APP.

5. The counsel for the complainant however refuted these contentions and stated that order dated 28<sup>th</sup> February, 2020 had noted that the petitioner will settle all his disputes with the complainants within 6 months failing which he shall be liable to pay Rs.10 lacs per month as fine for the period he remains on interim bail and on this basis the complainants had agreed that they would facilitate him to get the FIR quashed. By order dated 21<sup>st</sup> October 2020, it was noted by this Court that the said period of 6 months had been completed and that the petitioner had violated the terms and conditions of the order dated 28<sup>th</sup> February, 2020. Thereafter the petitioner took two months further time to settle the disputes and he was liable to pay an amount of Rs. 60 lacs as per the undertaking. Further two months time had been granted to the petitioner till 31<sup>st</sup> December, 2020 to pay the complete amount of the complainants.

6. Thereupon in order dated 4<sup>th</sup> January, 2022 the contention of the claimant that the petitioner had obtained the bail order on a false promise to settle was noted. It was further noted that the petitioner had approached the Hon'ble Supreme Court against order dated 21<sup>st</sup> January, 2021 but had withdrawn the Special Leave Petition in view of the Hon'ble Supreme Court's decision in *Dilip Singh v. State of Madhya Pradesh*, (2021) 2 SCC 779 where the Court has clearly stated that criminal proceedings are not for realization of disputed dues. Accordingly, this Court had noted that the bail had been obtained by the petitioner by furnishing a voluntary undertaking, no modification of the orders had been passed and the petitioner continued to be in custody.

7. The learned counsel for the petitioner has averted to the decision of the Apex Court in *Manoj Kumar Sood v. State of Jharkhand* dated 19<sup>th</sup> March 2021 in SLP (Crl.) 1274/2021 where the Hon'ble Court has stated that criminal proceedings are not for realization of dues. Reliance has also been placed on order of the Hon'ble Supreme Court in *Sanjay Singh v. State of Bihar*, Diary. No. 36115/2022 dated 12th December, 2022 where the Apex Court observed that prayer for pre-arrest bail cannot be converted into money recovery proceedings. The learned counsel for the petitioner also relied upon the decisions of the Hon'ble Supreme Court in *Sanjay Chandra v. CBI*, (2012) 1 SCC 40, *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713 and *Sagar Tatyaram Gorkhe v. State of Maharashtra*, (2021) 3 SCC 725 and of this Court in *Awanish Kumar Mishra v. State*, 2021 SCC OnLine Del 4786 and in *Parvez v. State*, 2022 SCC OnLine Del 147 to rely on the principle 'bail is the rule and jail is the exception', that gravity of the offence cannot be the sole

ground to refuse bail, the purpose of bail is to secure the appearance of the accused at the trial and is not meant to be punitive or preventative.

8. Learned counsel for the petitioner also supplied a custody certificate dated 16<sup>th</sup> November, 2022 to note that the petitioner was lodged in Central Jail number 10, Rohini on the present date since 12<sup>th</sup> November, 2022.

9. In view of these facts and circumstances and contentions made by the parties, this Court is of the considered view that it would serve no purpose in keeping the petitioner in custody for an indefinite period of time, particularly when the charge-sheet has been already filed and trial will take some time. The petitioner has already served 31 months of sentence and his co-accused has already been released on sentence undergone. The principles as cited in the decisions as stated above buttress the plea for bail of the petitioner. Further, the fact that the petitioner at some point of time had agreed to settle the disputes with the complainant and had undertaken to pay monies but did not do so, will not dilute the application of the principles of bail. It is well settled that bail cannot be for recovery of disputed dues and the Court cannot be expected to act as a recovery agent for realization of dues in any case without the trial having been completed. Non-payment of settlement amounts which had been initially volunteered by the petitioner, has also visited upon the petitioner an additional period of incarceration to his prejudice.

10. Considering that the petitioner is a senior citizen of 65 years of age and has already been in custody in what also could potentially be regarded as a substantially civil matter, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is

directed to be released on bail on furnishing a personal bond in the sum of Rs. 100,000/- with one surety of the like amount subject to the satisfaction of the Ld. Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
  - ii. Petitioner shall provide permanent address to the Ld. Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
  - iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
  - iv. Petitioner shall join investigation as and when called by the IO concerned.
  - v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.
  - vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.
11. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

12. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
13. Accordingly, the Application is disposed of. Pending applications (if any) are disposed of as infructuous.
14. Order/Judgment be uploaded on the website of this Court.

**ANISH DAYAL, J**

**MARCH 01, 2023/RK**

