

(2023) 01 DEL CK 0034

In the Delhi High Court

Case No : Bail Application No. 2940 Of 2022

GP CPT (Retd) Dipender Kumar Singh

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 10-01-2023

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 409, 420

Citation : (2023) 01 DEL CK 0034

Hon'ble Judges : Yogesh Khanna, J

Bench : Single Bench

Advocate : S.K.Sharma, Tejas Singh, Harpreet Singh Popli, Rekha Aggarwal, Kunal Madan

Final Decision : Disposed Of

Judgement

Yogesh Khanna, J

1. This petition is filed for grant of bail to the petitioner in case FIR No.58/2017 under Section 406/409/420/120B IPC registered at police station Economic Offences Wing.

2. The facts of the case are:

a) in the year 2012 the petitioner decided to venture in the arena of real estate business and after little research, earmarked a land in sector-102, Dwarka-Gurgaon Expressway for the same. He in fact was an Ex-Air force officer who took voluntary retirement and ventured into this field. On the basis of his limited knowledge and information received, he was made to understand the land he intended to offer for investment will come within the municipal limits within a year of completion of the expressway;

b) The applicant was novice in the real estate market, he in order to understand the further feasibility of his idea decided to float the entire scheme to the people and as such the applicant made the offer of share in a 2 acre parcel of land @

Rs.24.00 lacs for 220 sq. yds. or @ Rs.12.00 lacs for 110 sq.yds. of land. The offer was made only for share in land and not for constructing flats. The petitioner also incorporated a company on 29.08.2012;

c) various complainants joined the scheme and though they only made part payments and since the time was running out the petitioner did not have sufficient funds and on the assurance of the members for making complete payment could not get 2 acres of land. The non-payment by the members and some portion being under some family dispute amongst the owners was the reason for the initial shortfall in the purchase of 2 acres and only 1.4 acres could be purchased;

d) the main complainant Mr.Tanmay Sharma also did not make the entire payment in time and paid the balance amount only in February, 2013 after the registry of the said 1.4 acres of land. It is alleged Rs.40.00 lacs approx of pensionary benefits received post retirement by the applicant was also lost in sustaining the company and clearing its dues. Though the FIR was registered in the year 2017 but the petitioner was making all efforts to return the money and in October, 2017 the petitioner's brother in law through his company M/s. Jain Link Pvt. Ltd. offered to purchase all assets of M/s.DEF Housing Pvt. Ltd. for a sum of Rs.9.65 crores. The said amount was required to be paid the shareholders and to close the matter. This proposal was communicated to all the members of M/s.DEF Housing Pvt. Ltd. In EGM of the company 86% of the voters voted in favour of M/s.Jain Link Pvt. Ltd. proposal. But Mr.Tanmay Sharma, held the land in a hope Dwarka Expressway was likely to be completed in near future.

e) In the year 2019 the petitioner was arrested in the present matter but since his intention was to pay the entire amount, hence his wife on his behalf, entered into MoU dated 25.06.2019 with the complainant, executed and signed during the bail proceedings before the learned Session's Judge and only then the petitioner was granted bail. As per said MoU the petitioner was to pay Rs.9.50 crores to the members as principle amount as also 12% interest on delayed payments. He was granted conditional bail by the learned Session's Court on 25.06.2019. It is stated the petitioner after March, 2020 also sold his property on throw away prices only to deposit an amount of Rs.9.50 crores and suffered further losses. However, on account of non-payment of interest the learned Sessions Court on 08.12.2021 had dismissed the bail of the petitioner;

f) The said order was challenged by the applicant before this Court in CRL.M.C.3268/2021 and this Court directed the learned Session's Court to restore the original bail application and the petitioner was given an opportunity to file additional grounds for seeking bail and the bail application was directed to be decided on merits. Vide the impugned order the learned Session's Court yet again dismissed the bail application and granted some time to him to surrender. The petitioner surrendered on 24.09.2022 and is in custody till date, hence this petition.

3. It is the submission of the learned counsel for the petitioner even if one looks at the merits of the case, an amount of Rs.9.50 crores was actually given to this petitioner by the complainants for providing them land but he could not give such land due to reasons mentioned above and hence this FIR and he was arrested. He later entered into MoU and deposited the entire principal amount and per order dated 06.07.2022 it was distributed to the complainants on pro-rata basis after due verification by the Investigating Officer. Now only the interest part is left to be refunded to the complainants and the petitioner is in judicial custody since more than three months.

4. It is submitted by the learned counsel for the petitioner, had the petitioner deposited the principal amount in the beginning he would have pressed for anticipatory bail but now since he has spent about three months in judicial custody and he being also a victim of circumstances viz. having suffered huge loss as even his pension, gratuity, including the retirement benefits of his father were all spent on this project but the project somehow failed and he had to go in custody and that it was a misfortune/misadventure as he also was a serving pilot and took retirement to do construction business but because of lack of experience in this field he went into losses.

5. Admittedly there is no other case registered against the petitioner and he is a retired Air force employee ventured into this new business.

6. The learned counsel for complainants though relied upon Sanjay Chandra's case but the petitioner submits it has been wrongly relied upon since in the said case accused told the Court an amount of Rs.7.50 Crores is deposited by him per direction but actually he did not deposit a single penny, much less Rs.7.50 Crores. In fact such amount of Rs.7.50 Crore was deposited after monetization of assets of Unitech by the Committee headed by Retired Justice S N Dhingra, hence the judgment of Unitech is of no avail to the complainant herein.

7. Lastly it was urged by complainants counsel the petitioner still own 50-60 flats at an undisclosed location but admittedly in investigation till date no one has been able to point out such alleged location. The State was rather asked to verify such allegations.

8. An additional status report has now been filed by the State which read as under:

"In continuation of previous Status Report, it is submitted that as per direction of this Hon'ble court, Notices were sent to Office of Sub Registrars, Delhi, Uttar Pradesh, Haryana and Punjab. Since, no response has been received from the abovementioned offices so far, hence no conclusive report can be given before this Hon'ble Court. The details of Petitioner and his family members have been shared with the concerned Sub-Registrars for providing the details.

Further, notice was sent to Financial Intelligence Unit (FIU) to get the details of bank accounts of the accused Dipender Kumar Singh and his family. However,

efforts are continued to get all the replies in this regard. In addition to the above, a formal notice has been given to Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI) for providing details of any immovable property against which loan has been taken by the accused and his family. The reply from the concerned authority (CERSAI) is still awaited."

9. Though it was submitted by the learned counsel for the complainant(s) a sum of Rs.20.00 crores have been embezzled but admittedly the chargesheet speaks only of Rs.2.50 crores approx. allegedly siphoned of by the petitioner. Admittedly the investigation stand complete in the present matter and chargesheet is filed. The applicant is in judicial custody for more than three months. He is a retired Air Force official who started a project but allegedly failed. It was submitted his case is not covered under Section 409 IPC but under Section 406 IPC where the maximum punishment is only for three years. It is stated 65 witnesses are to be examined in the present matter and it would take a long time and the petitioner cannot be kept in custody till trial is over. It is argued bail is the rule and given the circumstances where Rs.9.50 crores deposited by petitioner have since been released to the complainants and where neither the complainants nor the police have traced such 50-60 alleged flats and where the petitioner is inclined to give an undertaking if such alleged flats are found he shall have no objection if the Investigating Officer seize such 50-60 flats allegedly in his name or in his wife's name and may dispose those of; realize the sale proceeds and make payment per MoU entered into, though he still reiterates there being no such alleged flats and it was a failed project and his intention to return hard earned money of complainants is seen from the effort he made to return the principle amount to complainants and he endeavors to return interest in due course and if is unable to return then shall face trial; thus looking into gamut of circumstances stated above; the period of his custody; his intention to settle; deposit of principle amount and its disbursement to the complainants, I see no reason why the petitioner be kept in custody; hence is admitted to bail on his executing a personal of Rs.1.00 lac with one surety of like amount to the satisfaction of the learned Trial Court. He shall however file an undertaking before the learned Trial Court that if any flat(s) as alleged are found by the Investigating Officer, the Investigating Officer shall be free to seize and dispose those of to pay interest factor per MoU and the petitioner shall have no objection. The petitioner shall keep his mobile location app open at all time and shall not leave the country without prior permission of the learned Trial Court.

10. With these observations the petition stands disposed of along with pending application(s), if any.

11. A copy of this order be communicated to the learned Trial Court/Jail Superintendent for information and compliance.

12. Order dasti.