

(2013) 07 DEL CK 0165

In the Delhi High Court

Case No : Bail Application 314 of 2009 and Criminal M.C. 2697 of 2012

Yashpal Raikar and Another

APPELLANT

Vs

The State of Delhi

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420

Citation : (2013) 07 DEL CK 0165

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : V.K. Mehra, Mr. S.M. Walawaiker, in Bail appln. 314 and 315/2009 and Mr. Sanjiv Sen in Criminal M.C. 2697/2012, for the Appellant; S.M. Walawaiker, Advocate for R-3, 4 and 5 in Bail Appln. 315/2009, Mr. M.N. Dudeja, APP for the State Mr. Suhail Dutt, Azhar Alam, Advocate for M/s. Anirva Developers Pvt. Ltd., Mr. Pawan Narang, Anish Dhingra, Advocates for Mr. Baleshwar Sharma for Intervener, Mr. Sanjiv Sen, Anoop K. Sinha, Advocates for the Complainant- Nageshwar Pandey, Vijay Aggarwal, Advocate for Mr. Ravi Arora -Director, Vijender Singh, SI Crime Branch in all appeals, for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Garg, J.

BAIL APPLN. 314/2009 & CRL. M.B. No. 184/2013, CRL. M.A. Nos. 1052/2013, 5279/2010, 2187/2012, 15689/2012, 19939/2012

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BAIL APPLN. 315/2009 & CRL. M.B. No. 189/2013 & CRL. M.A. Nos. 1058/2013, 5280/2010, 14327/2012

1. Petitioners Ravindra C.P. Navelkar, Yashpal A. Raikar, Smt. Fermeena P. Khunte and Pradeep Khunte seek bail in FIR No. 131/2008 u/s 406 /420 /409 /120B IPC registered with Police Station Economic Offences Wing, on 07.08.2008 on

Nageshwar Pandey's complaint alleging cheating of Rs. 18 crores on the pretext to sell 35 acres land in Goa by the petitioners. An Agreement to Sell dated 08.01.2007 was executed at Delhi. On 19.09.2007 Yaspal Raiker, Ravindra Navelkar's attorney, executed sale deed in favour of M/s. Anirva Developers Pvt. Ltd. represented by him (Sh. Nageshwar Pandey) at Concanna, Goa. Subsequently, he came to know that the land in question was already under mortgage with Goa Co-operative bank and was sold to Smt. Nirupa Pawar in an auction on 29.03.2006. The petitioners suppressed these material facts and had no clear title to convey. After dismissal of anticipatory bail application, the petitioners surrendered on 09.01.2009 and were remanded to police custody till 17.01.2009. On 17.02.2009 while seeking regular bail, they expressed desire to resolve the matter through Delhi High Court Mediation and Conciliation Centre. With parties's consent interim bail was granted as an interim measure to settle the dispute. On 24.03.2009 settlement with M/s. Anirva Developers Pvt. Ltd. before the Mediation Centre was reported. Crl. M.A. No. 7216/2009 was moved in bail application No. 314/2009 for cancellation of interim bail. On 03.02.2010 there was a joint request for adjournment as M/s. Anirva Developers Pvt. Ltd. was exploring possibility of settlement with Mr. Nageshwar Pandey. On 24.05.2010 M/s. Anirva Developers urged to cancel the interim bail as cheques issued by the petitioners for a sum of Rs. 35 crores had bounced. Finally, by an order dated 09.09.2010, interim bail granted to the petitioners on 17.02.2009 was withdrawn. Petitioners challenged the order and Supreme Court granted interim bail pending further orders. While disposing of Special Leave Petitions, Supreme Court granted limited liberty to the petitioners to move High Court for grant of bail in view of "fresh" settlement between the parties which was being finalized in the form of a consent decree before the competent court as informed by the parties. The petitioners, thereafter, moved the bail applications.

2. I have heard Additional Public Prosecutor, informer/complainant Nageshwar Pandey; M/s. Anirva Developers Pvt. Ltd. and Intervenors. Learned Additional Public Prosecutor urged that the matter requires investigation as the petitioners cheated the complainant of Rs. 18 crores by sale of land which was under mortgage and was subsequently purchased in auction by Mrs. Nirupa Pawar. The parties attempted to settle the dispute, however, the cheques issued by the petitioners bounced and they could not arrive at any settlement. Petitioners' counsel urged to grant bail as the matter was settled and the possession of the land in question was handed over. Counsel for M/s. Anirva Developers Ltd. vehemently opposed the bail and urged that company (M/s. Anirva Developers Ltd.) was cheated of huge amount of Rs. 18 crores and till date, it has not got the possession of the land. The property was purchased by Nageshwar Pandey on behalf of the company and not in his individual capacity. He (Nageshwar Pandey) has been removed as Director of the company. The amount contributed by the Directors (Nageshwar Pandey, Baleshwar Sharma, Satish Julka, Amardeep Julka, Ravi Arora, Baldev Arora and Sunil Julka) has not been accounted for or returned and the petitioners hatched criminal conspiracy to cheat the company and opted

to withdraw writ petition filed before High Court without any notice to it. Similar pleas have been taken by Baleshwar and Ravi Arora.

3. Directions were issued to the parties on 03.04.2013 to disclose following facts on affidavits:

(i) Who is in possession of the property in dispute at present; since when; how and in what manner, the possession was delivered to him.

(ii) Whether the consideration was paid by the individual or on behalf of company; to whom the consideration was paid and in what manner it was paid.

(iii) Who are the Directors of M/s. Anirva Developers Pvt. Ltd. and since when or who is authorised to represent M/s. Anirva Developers Pvt. Ltd.

(iv) What is the status of the suit filed by Smt. Nirupa Udhav Pawar at Goa.

(v) Who claims ownership of the land in question i.e. an individual or the company.

(vi) Any other relevant fact in the knowledge of the parties concerning the issue.

4. I have minutely scrutinized the affidavits filed in compliance of the above order and it emerges that at present the land in question is in possession of Nageshwar Pandey. He (Nageshwar Pandey) disclosed on affidavit that he is the owner and in possession of the property in question since the execution of sale deed. The possession was delivered to him by vendors Smt. Nirupa Pawar and R.C.P. Navelkar. The entire consideration paid by him was from his personal account and no payment was made by the company. He further disclosed that the land in question was under mortgage with Goa State Cooperative Bank Limited. However, in WP (C) No. 498/2006 the Bank gave no objection for withdrawal of the writ petition and the execution of the sale deed in his favour by an order dated 23.12.2009. Finally, the property was sold to him by Smt. Nirupa Pawar vide sale deed dated 02.02.2010. On M/s. Anirva Developers Pvt. Ltd.'s application consent decree dated 29.08.2012 was passed by Civil Judge, Mapusa, in which M/s. Anirva Developers Pvt. Ltd. had promised to pay him Rs. 15 crores or before 01.07.2012 but it never paid the balance amount of Rs. 13.25 crores.

5. Ravindra C.P. Navelkar in his affidavit admitted that the possession of the land is with Nageshwar Pandey. M/s. Anirva Developers Pvt. Ltd. did not pay the decretal amount of Rs. 15 crores to Nageshwar Pandey in terms of consent decree dated 29.08.2012 in which he was given complete discharge with regard to all the claims. Nageshwar Pandey had paid the consideration in his individual capacity and the possession of land was handed over to him. The dispute with Smt. Nirupa Pawar was settled in WP No. 498/2006.

6. Shri Satish Julka in his affidavit on behalf of M/s. Anirva Developers Pvt. Ltd. stated that he was its Director since 20.10.2007. Nageshwar Pandey and Baleshwar Sharma erstwhile directors of the company were removed w.e.f. 12.03.2009. The land in question was purchased by the Company vide sale deed

dated 19.09.2007 and the sale deed was executed by its director Nageshwar Pandey on behalf of the company for a total payment of Rs. 17,08,12,500/-. The payments were made by him, Amardeep Julka, Sunil Julka, Baldev Arora and Ravi Arora through the company to Ravindra C.P. Navelkar. The petitioners cheated the company and suppressed the fact that they had given collateral security of the said property towards loan extended by the bank to Pradeep Khunte. In an auction sale in 2006 the property was purchased by Smt. Nirupa Pawar for Rs. 1.37 crores. Interim bail was granted by this court as the petitioners undertook under the settlement dated 16.03.2009 to clear the title of the property and settle Smt. Nirupa Pawar's and bank's claim within one year. In the alternative, the petitioners gave post-dated cheques of Rs. 35 crores; out of which Rs. 25 crores were against this property. Instead of clearing the title, the petitioners in collusion with Nageshwar Pandey entered into a clandestine private agreement and moved petition u/s 482 Cr. P.C. being CrI. Misc. Main 919/2009 for quashing of FIR No. 131/2008 which was dismissed vide order dated 09.09.2010. Cheques given by the petitioners were dishonoured. It was further disclosed that settlement with Nageshwar Pandey was recorded in Civil Suit filed by the company on 29.08.2012 but the same rendered otiose in view of the fact that the subsequent purchase by Nageshwar Pandey in his individual capacity was challenged by Smt. Nirupa Pawar. Baleshwar Sharma and Ravi in their affidavits have also opposed grant of bail to the petitioners.

7. Bhisham Singh, Additional Deputy Commissioner of Police admitted in the affidavit that during investigation, it emerged that the land in question was in possession of Nageshwar Pandey pursuant to Sale Deed executed by Nirupa Pawar in his favour. Agreement to sell dated 08.01.2007 was executed between Ravindra C.P. Navelkar and Nageshwar Pandey. Subsequently the property was sold by R.C.P. Navelkar through his attorney Shri Yashpal Raikar in favour of M/s. Anirva Developers Pvt. Ltd. vide registered Sale Deed dated 06.09.2007 for sale consideration of Rs. 18 crores approximately which was paid by Nageshwar Pandey, Shri Baleshwar Sharma, Shri Satish Julka, Shri Amardeep Julka, Shri Ravi Arora, Shri Baldev Arora and Shri Sunil Julka as Directors of M/s. Anirva Developers Pvt. Ltd. and in their individual capacity.

8. Apparently, there is inter-se dispute among the Directors of M/s. Anirva Developers Pvt. Ltd. Affidavit filed by the State reveals Baleshwar Sharma lodged FIR No. 84/2010, police station Crime Branch. Company Petition vide No. CP 74 (ND) 2010 before Company Law Board, New Delhi has been filed challenging his removal by filing forged documents in the ROC. Nageshwar Pandey claims ownership after it purchase from Smt. Nirupa Pawar for Rs. 3 crores. Satish Julka, Shri Amardeep Julka and Baldev claim ownership on the basis of sale deed dated 19.09.2007 in favour of their company M/s. Anirva Developers Pvt. Ltd.

9. At the time of disposal of SLPs, there was no dispute among the parties about "fresh" settlement which was being finalized in the form of a "consent" decree before the competent court.

10. Special Civil Suit No. 39/2010/C was filed by M/s. Anirva Developers Pvt. Ltd. through Mr. Satish Julka, its Director against petitioners, Goa State Cooperative Bank Limited, Mrs. Nirupa Pawar and Nageshwar Pandey for Declaration, Injunction and other consequential relief. The matter was settled and Compromised Deed (Ex. D-53) was filed in the said court under order XXIII Rule 3 CPC. M/s. Anirva Developers Pvt. Ltd. abandoned all its claims against the petitioners. It was noted in the order dated 29.08.2012 that the plaintiff M/s. Anirva Developers Pvt. Ltd. by signing Ex.-52 admitted that they had no claim of whatsoever nature as against defendant No. 1 (Ravindra Navelkar) in respect to the suit property and discharged him from the claim made against him in that suit and in all other legal proceedings arising in relation to the suit property. The suit was decreed in terms of consent terms filed as Ex. D-53. Names of defendant Nos. 1 to 6 were deleted from the array of parties. The plaintiffs (M/S. Anirva Developers Pvt. Ltd.) agreed to pay Rs. 15 crores to Nageshwar Pandey in full and final settlement of all claims to the said property and towards giving up, delivering, transferring of all his rights in the said property in favour of all the plaintiffs.

11. Taking into consideration all the detailed facts, circumstances and developments and also considering the fact that the petitioners have remained in custody in this case for some days and have joined the investigation as and when required and have parted with the possession of the property in question, which is admittedly with Nageshwar Pandey, they deserve bail. Accordingly the petitioners are admitted to bail on their furnishing personal bond in the sum of Rs. 1,00,000/- each with one surety each in the like amount to the satisfaction of the Trial Court. They shall, however, join the investigation as and when required.

12. Bail applications are accordingly allowed. Pending applications disposed of.

Crl. M.C. No. 2697/2012 & Crl. M.A. Nos. 17791/2012, 13644/2012, 16810-16812/2012

13. Petitioners Ravinder C.P. Navelkar and Nageshwar Pandey have filed Crl. Misc. No. 2697/2012 for quashing of the FIR No. 131/2008 stating that the matter has been settled and consent decree dated 29.08.2012 has been passed. As discussed above, all the parties are not ad-idem about the settlement arrived at by document (Ex. D-53) on the basis of which the consent decree was passed. The terms and conditions of the consent decree have not been adhered to. There are specific allegations against the petitioners for cheating M/s. Anirva Developers Pvt. Ltd. now represented by various other Directors. It is to be investigated whether Nageshwar Pandey made the payment to the petitioner in his individual capacity or it was on behalf of the company. Role of directors in all the transactions is required to be ascertained and investigated. The FIR and the proceedings emanating from it cannot be quashed in view of the detailed discussion made above. Crl. M.C. No. 2697/2012 is accordingly dismissed. Pending applications also disposed of.