

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

Date of decision: 14th JUNE, 2021

+ **CRL.M.C. 1209/2021 & CRL.M.A. 6143/2021 (Stay)**

SHAKUNTALA DEVI GOLYAN Petitioners

Through Mr. Rakesh Kumar Singh, Advocate
versus

STATE NCT OF DELHI AND ORS. Respondents

Through Ms. Meenakshi Chauhan, APP for the
State

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present petition under Section 482 Cr.P.C is directed against the order dated 18.03.2021, in Case No.5444/2020, whereby the learned Metropolitan Magistrate, Saket Courts, Delhi, granted bail to the accused Vijender (respondent No.2 herein) and Brij Kishor (respondent No.3 herein) and exempted the other accused namely Anil Bhalla, Gautam and Gaurav from appearance. It is pertinent to mention here that the instant petition is restricted only to the portion granting bail to Vijender (respondent No.2 herein) and Brij Kishor (respondent No.3 herein).

2. The facts, in brief, leading to the instant revision petition are as under:
a) The petitioner was approached by the respondents herein to purchase an apartment unit in their project namely, 'Project Sovereign Next', Tower-A, The Sovereign Next, Sector-82A, Gurgaon-122002. It is stated that lured by the offer, the petitioner

herein decided to purchase a unit of approximately 3250 sq. ft area in the said project at net basic sale price of Rs.6000/- sq ft. It is stated by the petitioner that at the time of purchase she was told that the project would be complete within a period of 4 years and 6 months and the possession would be given to her by 30th November 2017.

b) It is stated that the petitioner paid a total sum of Rs.1,10,09,459/- (One Crore Ten lakh Nine Thousand Four Hundred and Fifty Nine Rupees Only) to the accused, out of the total sale consideration of Rs.2,07,50,500/-(Rupees Two Crore Seven Lakhs Fifty Thousand Five Hundred only), which is more than 50% of the sale consideration. It is stated that since the project was not complete even after three years of the promised date a legal notice was sent by the petitioner herein on 22.04.2017, demanding refund of the total amount paid by the petitioner with interest at the rate of 18% per annum. It is stated that the petitioner issued several notices thereafter but it did not elicit any response. It is stated that the petitioner has filed a complaint being CC No.868/2018, before the National Consumer Disputes Redressal Commission (for short NCDRC) on 13.01.2021 for refund of Rs.1,10,09,974/-. It is stated that the petitioner herein also filed an application under Section 156(3) Cr.P.C before the learned Metropolitan Magistrate, South East District, Saket Courts but the same was not pressed, instead a complaint under Section 200 Cr.P.C was filed. It is stated that the learned Metropolitan Magistrate, considering the facts and circumstances of the case took cognizance of offence under Sections 403/405/409/420 IPC. It is stated that the learned Metropolitan

Magistrate issued notice against the accused vide order dated 23.02.2021 for appearance on 11.02.2021. It is stated that despite service of summons, the accused preferred not to appear before the Court on 11.02.2021 and accordingly bailable warrants in the sum of Rs.20,000/- were issued against the accused for securing their presence on 18.03.2021. It is stated that on 18.03.2021, out of five accused only two accused, i.e. the respondent No.2 and 3 herein appeared but the main accused preferred not to appear and filed an application seeking exemption from personal appearance. The learned Metropolitan Magistrate *vide* the order impugned herein granted bail to the respondent No.2 and 3 herein and also granted exemption to the other accused for not appearing.

c) It is this order which is under challenge in the instant petition.

3. Heard Mr. Rakesh Kumar Singh, learned counsel for the petitioner, Ms. Meenakshi Chauhan, learned APP for the State and perused the material on record.

4. Mr. Rakesh Kumar Singh, learned counsel for the petitioner argues very vehemently that after cognizance has been taken there was no reason for the accused not to appear before the learned Metropolitan Magistrate. It is submitted by the learned counsel for the petitioner that there are serious allegations against the respondent No.2 and 3 and other accused persons. He submits that the offences are very serious in nature and the Court cannot grant bail to the accused for their asking.

5. A perusal of the facts shows that this is primarily a builder buyer dispute. The petitioner has already filed a complaint against the accused with the NCDRC for refund of the amount. The learned Metropolitan

Magistrate while passing the impugned order has observed that no custodial interrogation of the accused is required. In matters of grant of bail under Section 437 Cr.P.C, the Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court to substitute its own discretion to that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused (refer Nagawwa v. V.S. Konjalgi, (1976) 3 SCC 736).

6. In Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 the Supreme Court observed as under:

*“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. **Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.**” (emphasis supplied)*

7. The learned Metropolitan Magistrate while considering the petition was justified in holding that the question as to whether the accused persons had dishonest intention right at the time of entering into agreement with the complainant/petitioner herein or not is a matter of trial. It is to be noted at this juncture that the counsel for the accused persons had stated that the building is complete and the petitioner herein has not made more than 50% of the payment of the property. No material has been produced before this Court to show that the accused, who had been granted bail by the order impugned herein, have criminal antecedents or that they would flee from justice. It cannot be said that the order impugned herein suffers from non-application of mind. It is trite law that when bail is granted, an appellate Court must be very slow to interfere and when it is found that there is proper application of mind by the Court below in granting bail then the superior Court should not interfere with such orders. In view of the above, no interference is called for.

8. Accordingly, the petition is dismissed along with the pending application.

JUNE 14, 2021

Rahul

SUBRAMONIUM PRASAD, J