B.N. Gupta and ors. Vs. State

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Court : Delhi

Decided On : May-25-2010

Judge : P.K. Bhasin, J.

Acts : Indian Penal Code (IPC) - Sections 34, 406 and 420

Appeal No. : Bail Appln. 1641 of 2009

Appellant : B.N. Gupta and ors.

Respondent : State

Advocate for Def. : ACP T.R. Mongia and; Inspector Vinod Gandhi, Advs. from EOW;

Advocate for Pet/Ap. : K.T.S. Tulsi,; Abhishek Manu Singhvi,; Mukul Rohatagi,;

Judgement :
ORDER

P.K. Bhasin, J.

1. This is an anticipatory bail application filed by three Directors of M/s Triveni Infrastructure Development Company Ltd. apprehending their arrest by the police for their involvement in a criminal case registered against them on 24th December, 2008 by the Economic Offences Wing(EOW) of the Delhi Police vide FIR No. 234 of 2008 under Sections 406/420/34 IPC.

2. The petitioners' case may be noticed at the outset. The petitioners claim that they have been falsely implicated by some handful of people who were speculative investors in the real estate projects developed by the petitioners' Company M/s Triveni Infrastructure Development Company Ltd.(hereinafter to be referred to as 'Triveni') Those complainants remained invested in the projects announced in 2006-07 to be developed by Triveni to earn profits when there was boom and appreciation in the prices of real estate but they sought cancellation of their bookings in the year 2008 during sudden and steep fall in the real estate prices and to pressurize the petitioners to refund their money, even though they themselves were the defaulters, made false complaint against the petitioners to the police. Despite that, the petitioners claim, the claims of those complainants have been settled and they have refunded their money.

3. It is submitted that the FIR registered in December, 2008, however, was kept alive by the police at the instance of business rivals of Triveni with the object of conveying to the investors in general that Triveni was in deep waters and they should cancel their bookings and book with other real estate developers and get invested in their projects.

4. Since the police was approached by a handful of investors only with a complaint of cheating the petitioners being the Directors of Triveni apprehended their arrest and that apprehension necessitated filing of this anticipatory bail application.

5. During the course of various hearings, battery of senior counsel appeared in the matter on behalf of the petitioners and all of them had been taking the stand that the petitioners had never any intentions to cheat its valuable investors and at the same time they have also been offering to settle the claims of the investors who were desirous of having only the refund of their money and were no more interested in allotment of flats booked by them in Triveni's projects.

6. When this anticipatory bail application came up for consideration for the first time after notice to the respondent on 27th August, 2009 the following order was passed by Gita Mittal, J:

1. A status report has been filed by Mr. Ohri, learned APP in court today. The applicant No. 1 has also tendered response to this report by way of an affidavit which has been taken on record.

2. The instant matter relates to three housing projects which were promoted by a company floated by the petitioners. It has been contended that on account of the economic recession, certain difficulties in working of these projects were faced. However, the petitioners and the companies where there are directors are making a concerted effort to ensure time bound execution of all projects as well as the compliance of their contractual liabilities and assurances. Mr. Sethi, learned senior counsel appearing for the petitioners has further submitted that out of the list which has been furnished alongwith the status report, the petitioners have settled all disputes with 64 of the complainants and that 27 of the complainants have now sought cancellation of their allotments which is being examined by the companies. It is further submitted that the names of eight persons do not tally with the records of the company. Details of all these persons have been enclosed with the affidavit dated 27th August, 2009 sworn by the applicant No. 1 herein.

3. Time is sought by Mr. Manoj Ohri, learned APP on instructions of ACP Rajesh Dao on behalf of the investigating agency to verify the correctness of these submissions made in the affidavit dated 27th August, 2009 and also the status of the projects which have been floated by the petitioners.

4. To facilitate the verification by the respondents the applicants shall furnish proof of the settlements which have been effected with all the applicants who have approached the company for settlement as well as mode thereof. Let these documents be made available to the investigating officer within four days from today.

List on 16th September, 2009.

5. Having regard to the fact that verification process being underway, it is directed that till the next date of hearing, the applicants shall not be arrested.

The applicants shall also ensure that they join investigation as and when required to do so by the investigating officer.

7. Then on the next date fixed for 16th September, 2009 the following order was passed:

1. A further status report dated 16th September, 2009 has been filed wherein a tabulation has been set out at para 4 wherein the investigating officer has set out details of the documents which have been received from the applicant.

2. Mr. Mukul Rohatgi, learned senior counsel for the applicant has submitted that so far as the 31 complainants referred to at serial Nos. 6 and 7 of this tabulation is concerned, though post-dated cheques had been sent to these complainants however instead the builder company has substituted the same with demand drafts which stand delivered to seven complainants. Learned senior counsel has handed over photocopies of demand drafts in respect of the remaining 24 complainants. Let the position with regard to these complainants be also verified by the respondents.

3. It is further stated by Mr. Rohatgi, learned senior counsel on behalf of the petitioner that in order to facilitate the working of the projects which were floated by the company of which the petitioners are directors, the company has appointed a committee of three representatives each from the flat allottees in the different towers at the Faridabad complex and a representative of the company to monitor the finance; coordination between the company and the flat allottees and progress and quality of the construction at site. The applicant has proposed on behalf of Trivedi Infrastructure Development Co. Ltd. that such a committee be constituted for the purposes of appropriate coordination at the other projects also. It is further prayed that a retired registrar be nominated for the purposes of overseeing the working of these committees. A suggestion has been mooted by learned Counsels for the petitioners as well as the complainants/applicants/allottees who are present in court that Mr. D.K. Prasad, retired registrar of this Court be appointed as an observer so far as the functioning of these committees is concerned. It is submitted that an amount of Rs. 25,000/- per month for the time being with actual expenses which would include conveyance, telephone out of pocket expenses of

the observer shall be born by the petitioner. This statement is accepted and it is ordered accordingly. The nomination of the committees for all companies appointed by the company shall be informed to the investigating officer and the observer within ten days from today.

4. It is also submitted on behalf of the petitioners that they shall submit clarifications with regard to the various aspects pointed out in the status report which has been filed in court. It is stated on behalf of the respondents that details of any further complaints which are received shall be furnished to the petitioners so that they may respond to the position thereof.

List on 30th November, 2009.

Interim orders to continue till the next date.

Dasti.

8. On 30th November, 2009 the following proceedings were recorded in the present matter:

Status report has been filed by the Observer Mr. D.K. Prasad which has been taken on record.

Senior counsel appearing on behalf of the petitioner has placed on record a chart wherein it is stated that as per the list there are 164 complainants in this case of whom grievances of 115 have been redressed; out of the outstanding amount of Rs. 8,60,95,849/- a sum of Rs. 4,99,20,302/- has been paid to the complainants. Copy of the said document has been handed over to the counsel for the State. He seeks time to verify.

On behalf of the State a counter-chart has been placed on record, copy of which has been handed over to the counsel for the non-applicant. A list of 40 other complainants has also been handed over to the counsel for the non- applicants.

Number of complainants are present in court today and they have a lot of grievances against the petitioner; it is pointed out that the petitioners even do not have the ownership/licence to carry out construction at the Faridabad Complex.

Learned senior counsel appearing on behalf of his client, in order to work out the modality of a settlement undertakes to file on record an affidavit giving the following details:

(1) The licence/ownership of the construction going on in the plot Sectors 78 and 89 at Far idabad.

(2) A number of the JCC committee appointed for the different towers; details of those towers where the JCC committees have not been appointed.

(3) Construction will be carried out as per the schedule and in terms of the agreement between the parties. Thereafter the constructed flats in terms of the agreement will be handed over to the allotees who are desirous of taking those flats; those flats in the second category of persons who are not desirous of taking flats but in the alternate prefer to receive compensation shall be paid in terms of the agreement and the schedule contained in the agreement. All payment made to the parties will be routed through the Observer Mr. D.K. Prasad. Mr. D.K. Prasad will be available in his Chamber No. 461 of the Delhi High Court Complex on all working days between 10 A.M. to 5 P.M.

(4) The details of the redressals made to each of the 164 complainants; as to whether the complainant has been allotted a flat or whether he has received compensation in lieu of it; what amounts have been paid to each complainant and what balances yet to be paid.

This affidavit be filed before the next date with advance copy to the counsel for the State as also the counsel for the complainants.

Renotify for 11th December, 2009.

Interim order to continue.

Copy of the order be given dasti under signatures of the Court Master.

9. On 11th December, 2009 the following order came to be passed:

The affidavit has been filed by the petitioner. Copy of the affidavit has been furnished to learned Counsel for the State as also to the various complainants. There are two categories of persons; those who want the flats and a second category of persons who do not want the flats. As on date there are 204 complainants who are present before this Court. Learned Counsel for the State on instructions from the Investigating Officer states that there are other complainants also who wish to get their complaints redressed.

Status report has been filed by the Observer. The Observer is present in Court.

The Investigating Officer will collect the following information from all the complainants in a tabulated chart:

(i) investment made by each complainant;

(ii) the date on which he had invested this amount. This is for those category of persons who are not desirous of getting the flats but want their payments back. The Investigating Officer shall submit this information before the Observer within three weeks from today. Copy of this chart be also furnished to learned Counsel for the petitioner.

Further course of action will thereafter be considered. Renotify on 28.1.2010.

Interim order to continue.

10. It appears that during the period in between the dates of hearing of this bail application more and more people have been approaching the police for refund of their money invested in the projects of the petitioners' Company. As on 31st March, 2010, according to the investigating agency, there were 380 persons who had approached it to help them getting back their money from the petitioners.

11. Despite the fact that a Joint Co-ordination Committee was constituted under the chairmanship of a former Registrar of this Court, who unfortunately has died, to sort out the disputes between the petitioners and the investors but the investors appeared to have realized that nothing would turn out from the constitution of Co-ordination Committees and the petitioners also appear to have realized that the

investors wanting their money back were really not feeling confident whether they would at all get the flats/plots and sensing their sentiments they came out with an offer that they would pay to the investors their money back after deducting 20% of the base price of the properties booked by them and the remaining entitlement of the investors could be left to be decided in appropriate civil proceedings if at all the investors chose to do that and it was also volunteered that they would deposit with this Court thirtyfive lacs of rupees every month in order to show their bona fides and to infuse confidence in the investors that they would get back their money. Thereafter the petitioners started depositing in Court thirtyfive lacs per month. However, subsequently the investors raised a grievance that in that way it will take over a decade for their money to come back to them. In view of that grievance of the investors the amount to be deposited in Court by the petitioners came to be increased to of Rs. 25 lacs every week and the petitioners have been depositing in this Court that much amount every week. In that way two crores and thirty lacs of rupees already stand deposited with this Court upto 17th May, 2010 and if the petitioners have made another weekly payment that would make the total deposit to be over two and a half crores.

12. On 17th May, 2010 the following submissions made on behalf of the parties were recorded:

Today it has been submitted on behalf of the petitioners by their senior counsel that out of 380 persons claiming refund of the money paid by them to the petitioners' Company the petitioners have already arrived at out of the Court settlement with 85 persons and with 148 persons settlements have though been arrived at but payments to them are to be made in instalments. Regarding the remaining persons, it is submitted that petitioners, without prejudice to their stand that they have not cheated any of the investors, they are ready to pay to those people also their money paid by them but after deducting 20% of the base price of the property booked by them from the money paid by them. It has also been submitted that the petitioners would make payments to other persons also who have not so far approached the police and they want their money back. Some of the complainants/investors who are present in person in Court today, have submitted that they are interested only in refund of entire money which they have paid to the petitioners' Company and that too within a reasonable period of time taking into consideration the fact that already many years have gone by in the wait for the refund of their hard earned money and in case that is ensured by this Court they would not be interested in petitioners being sent to jail.

On behalf of the complainants/investors, who are being represented by their advocates, also same submissions have been made, as have been made by the complainants/ investors appearing in person. Additionally, the learned Counsel have submitted that this Court may work out a formula whereby interests of all the aggrieved persons is taken care of and the petitioners do not in any way misuse the protection granted to them.

Learned APP submitted that in view of the unanimity amongst the complainants/ investors to the effect that they are not interested in sending the petitioners to jail provided their money is returned back to them within reasonable time the State leaves it to the Court to pass any appropriate orders in the matter which would protect the interests of large number of persons who feel cheated by the petitioners.

In view of the aforesaid submissions having been made from both the sides, case is reserved for orders.

13. The submissions made on behalf of the parties on various dates and particularly on 17th May, 2010 have made the task of deciding this application by this Court quite easier.

14. It was contended by the learned senior counsel for the petitioners that as had been volunteered by them to show their bona fides, not only the payment of money to the investors after deduction of 20% from the base price of the properties booked by them, which was allegedly one of the terms of agreements executed by the investors, could be made as a condition of anticipatory bail to the petitioners but some more conditions also could be imposed which this Court may consider appropriate to secure the interests of the investors desirous of getting back their money. It was also contended that whatever money the petitioners have been depositing in Court and which shall be deposited in future as per the further

orders of this Court can be disbursed to the investors in the manner to be decided by this Court. Learned APP had submitted that in view of the fact that State's main concern also was to secure the payment of money to the aggrieved investors of Triveni and the investors had expressed their feelings that they were also not interested in sending the petitioners to jail in case their money is refunded the question of grant or refusal of bail to the petitioners was being left to the discretion of this Court without going into the merits of the application.

15. As per the case of the respondent there were 380 investors as on 31st March, 2010 who were asking for refund of their money. During the course of hearing of the matter the petitioners have been claiming that out of those 380 persons they had already settled with 233 investors and out of those 233 persons 85 persons been had already been paid full amount as per the settlements. That amount was claimed to be Rs. 4,62, 14,182. To the remaining 148 investors total amount of Rs. 9,66,10,071/- was stated to be payable by the petitioners/Triveni and out of that amount they claimed to have disbursed already a sum Rs. 3,26,70,656/- and the balance amount of Rs. 6,39,39,41 5/- had been agreed to be taken by the investors in installments. The amount payable to the remaining 147 investors according to the petitioners' offer was stated to be Rs. 8,41 ,41 ,006/- calculated after deduction of 20% of the price of the flat/plot from the payments made by them. It was also offered on behalf of the petitioners that since some of the investors were apprehensive that the petitioners may not stick to their commitments as per the out of Court settlements they(the petitioners) would ensure that no default in payments to them takes place in future and in any event they were willing to deposit in Court their money also in this Court so that they can get their money from this Court alongwith other investors.

16. As far as the petitioners' claim that they had already settled with 233 investors out of the total number of 380 investors who had approached the police upto 31st March,2010, as noted already, is concerned the respondent was not able to refute that and it was submitted by the learned APP that the investigating officer had not been able to contact those investors nor those investors themselves had informed him about the settlement.

17. Since there is nothing on record to doubt the claim of the petitioners that they have already arrived at settlements with 233 investors out of 380 investors who had approached the police upto 31st March, 2010 this application is being disposed of keeping in mind the representation of the petitioners to this Court that they have actually settled the claims of 233 investors and accepting that representation and, therefore, for the time being the claims of 147 investors only are being taken care of. Of course, the petitioners have been claiming that they would pay to even those persons who may approach the police in future also seeking refund of their money invested with the petitioners and they shall be bound by that assurance/undertaking. It is also hoped that the petitioners would stick to the settlements allegedly arrived at by them with 147 investors who have not so far received full payments and assurance given on their behalf by their learned senior counsel in that regard is accepted.

18. Thus, considering the submissions made on behalf of the parties during the course of various hearings in the application and particularly the stand of the investors who had been appearing in the matter that they were not interested in the petitioners going to jail so long as they get back their money and also the State's stand that its main aim while contesting this application was to have the investors' money recovered, and without going into the question whether the petitioners have cheated some of the thousands of investors who had deposited money with them for their residential projects, as is being claimed by some investors or whether the investors who have approached the police seeking refund of their money were at fault, as is being claimed by the petitioners, this anticipatory bail application of the three Directors of M/s Triveni Infrastructure Development Company Ltd. is allowed. It is ordered that in the event of arrest of the petitioners they shall be released on bail by the arresting officer subject to their furnishing personal bonds and surety bonds in the sum of Rs. 500,000/- each to the satisfaction of the arresting officer. The bail shall be subject to the following additional conditions also to be fulfilled by the petitioners:

(1). The petitioners, without prejudice to their stand that they had not cheated any of their investors, shall deposit with the Registrar General of this Court a sum which shall be equivalent to 80% of the total money which the 147 investors out of

380 investors/complainants, with whom the petitioners do not claim to have settled out of Court, had paid to the petitioners(and not after deduction of 20% of the base price of the flats/plots from the amounts paid to Triveni)). That amount shall be inclusive of the money which the petitioners have already deposited with this Court. The rest of the claims of the investors of Triveni shall be subject to the decision in the civil litigation in case they choose to initiate any recovery proceedings. The petitioners shall deposit the entire amount in this Court now onwards by way of minimum weekly payments of Rs. 3 1 ,25,000/-(rupees thirty one lacs and twenty-five thousand) as against the weekly payments of Rs. 25,00,000/- presently being made. In case of any default in the weekly payments the relief of anticipatory bail shall be liable to be withdrawn.

(2) As volunteered and assured on behalf of the petitioners, in case any investors, other than the 147 investors in respect of whose claims deposit of money in Court by the petitioners is being ordered for the time being, who had not lodged any complaint with the police upto 31st March,2010 come forward for refund of the money paid to Triveni the respondent or the investors themselves will be at liberty to move this Court for further appropriate directions/modification in the said conditions of bail . The respondent shall also be at liberty to move this Court for appropriate orders in case the petitioners/Triveni default in making payments to those 148 investors with whom they claim to have settled the claims but full payments have not so far been made to them, as is being claimed by the petitioners.

(3) The petitioners shall not leave the country without prior permission of this Court.

(4) It is needless to state that the petitioners shall join investigation as and when required by the investigating agency.