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

+ **BAIL APPLN. 951/2011 & CrI.M.A. 7938/2011**

RENU KAUSHIK Petitioner
Through Mr. Satish Aggarwala, Adv.
versus

STATE NCT OF DELHI Respondent
Through Mr. Pawan Bahl, APP for the State with
S.I. K.P. Sah, P.S. Amar Colony.
Ms. Shashi Shankar, Adv. for the
Complainant along with Complainant in
person.
Mr. Ravinder Narayan Adv. for
Kailash Hotwani and Mr. Sanjay Arora.

AND

+ **BAIL APPLN. 952/2011 & CrI.M.A. 7941/2011**

S.MOHIT Petitioner
Through Mr. Satish Aggarwala, Adv.
versus

STATE NCT OF DELHI Respondent
Through Mr. Pawan Bahl, APP for the State with
S.I. K.P. Sah, P.S. Amar Colony.
Ms. Shashi Shankar, Adv. for the
Complainant along with Complainant in
person.
Mr. Ravinder Narayan Adv. for Mr.
Kailash Hotwani and Mr. Sanjay Arora.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

ORDER
27.07.2011

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By these petitions, the Petitioners seek anticipatory bail in FIR No.398/2010 dated 1st September, 2010 registered at Police Station Amar Colony under Section 420 IPC.

Learned counsel for the Petitioners contends that the investigation is pending for the last more than 13 months. The Petitioners have joined the investigation. Nothing is required to be recovered from the Petitioners. Search of the Petitioners' premises has already been conducted and thus, there is no requirement of any custodial interrogation. The matter between the parties is purely civil in nature. A civil suit between the parties is already pending. The Petitioners were granted interim protection by the learned Additional Sessions Judge. However, as mediation proceedings did not result in a settlement, the bail applications were dismissed. The main accused namely Mr. Kailash Kumar Hotwani and Mr. Sanjay Arora have already been granted anticipatory bail. There is no evidence that the Petitioners executed the mortgage in favour of Mr. Harmeet Singh. According to the Petitioners, the money was not received by Ms. Renu Kaushik and Mr. S. Mohit, the same was given to Mr. Kailash Kumar

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Hotwani vide receipt dated 2nd June, 2010, a copy of which is at page 125 of the paper book. A perusal of the receipt dated 2nd June, 2010 itself shows that the Petitioners had returned Rs.10 lakhs to Mr. Kailash Kumar Hotwani and only Rs.4 lakhs remained due.

Relying upon *Miss Harsh Sawhney v. Union Territory (Chandigarh Admn.)*, (1978) 2 SCC 365 and *Siddharam Satlingappa Mhetre v. State of Maharashtra and others*, (2011) 1 SCC 694 it is contended that anticipatory bail should be granted to the Petitioners.

Learned APP on the other hand contends that a civil suit was filed by the Petitioner Renu Kaushik against Smt. Alka Alag, Mr. Kailash Kumar Hotwani, Mr. Manish Alag, Smt. Parveen Oberoi and Mr. Naveen Oberoi seeking injunction against dispossession. In fact, the Petitioner Renu Kaushik entered into a contract with Mr. Kailash Kumar Hotwani for sale of the property for a consideration of Rs.28 lakhs out of which Rs.2.8 lakhs was given as earnest money. As Mr. Kailash Kumar Hotwani, the co-accused was unable to make the payment so he entered into an agreement with the complainant who agreed to pay the remaining amount in consideration of half portion of the property. Out of Rs.17 lakhs, which was required to be paid, the complainant Ms. Alka Alag paid Rs.13.50 lakhs

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from 28th April, 2010 to June, 2010. On 2nd June, 2010, the Petitioner entered into an agreement with Mr. Kailash Kumar Hotwani with regard to the remaining Rs.3.5 lakhs balance amount.

After having received the money from the complainant, which fact was duly acknowledged by the Petitioners having received the money, they mortgaged the property to one Mr. Harmeet Singh. All transactions between the complainant and Mr. Kailash Kumar Hotwani were entered into in the presence of Petitioners and money was duly transferred to the Petitioners. In the civil suit filed on 10th June, 2010, it is admitted that the property has been mortgaged to one Mr. Harmeet Singh. Thus, this property was dubiously mortgaged to Mr. Harmeet Singh before taking the money from the complainant. The complainant paid Rs.11.5 lakhs in cash but also paid Rs.1.5 lakhs by way of two cheques of Rs.75 thousands each, which have been duly encashed by the Petitioner Renu Kaushik. The Petitioner Renu Kaushik in her interrogation has admitted receipt of the two cheques for Rs.75 thousands each. Thus, after having received Rs.24 lakhs out of Rs.28 lakhs during the transaction, the Petitioners did not part with the property rather mortgaged the same to one Mr. Harmeet Singh, whose whereabouts are not known.

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I have heard learned counsel for the parties.

Briefly the prosecution case as per the abovementioned FIR registered on the complaint of one Ms. Alka Alag is that she was cheated for an amount of Rs.13.50 lakhs by promising to sell half portion of 3rd floor of property bearing No.D-56, Old Double Storey, Lajpat Nagar. According to the complainant, she wanted to purchase the property for investment purposes. One Mr. Sanjay Arora showed her the property bearing No.D-56, 3rd Floor, Old Double Storey, Lajpat Nagar IV, New Delhi where she met the Petitioners who were the owners of the said property. The property consisted of two portions i.e. front portion and the rear portion. Before the complainant met the Petitioners, the Petitioners had already entered into an agreement to sell of two portions with one Mr. Kailash Kumar Hotwani for a total consideration of Rs.28 lakhs. As due to financial constraints Mr. Kailash Kumar Hotwani could not pay the balance amount, he proposed to sell half of this property to the complainant. The complainant agreed to purchase the front portion for a consideration of Rs.17 lakhs. The deal was finalized between the Petitioners, Mr. Kailash Kumar Hotwani, Mr. Sanjay Arora and the complainant. The complainant paid Rs.3 lakhs to Mr. Kailash Kumar Hotwani to be paid to the Petitioners, as the first installment,

thereafter, she also paid Rs.4 lakhs on 4th May, 2010, Rs.3 lakhs on 6th May, 2010 and Rs.1 lakh on 12th May, 2010. On 15th May, 2010, advance receipt cum agreement to sell and purchase was executed between the complainant and Mr. Kailash Kumar Hotwani. Mr. S. Mohit also signed the agreement and the payment scheduled was written on the back side of the non-judicial stamp paper. Mr. Kailash Kumar Hotwani deliberately destroyed the advance slip on 31st May, 2010. The complainant also gave two cheques of Rs.75,000/- each drawn on HDFC Bank to Mr. Kailash Kumar Hotwani. Thereafter, she paid Rs.1 lakh on 3rd June, 2010. Thus, till that time she had paid a sum of Rs.13.50 lakhs and only Rs.3.50 lakhs remains to be paid. When the complainant contacted Mr. Kailash Kumar Hotwani to execute the agreement, he showed his inability as the Petitioners had mortgaged the property to one Mr. Harmeet Singh. The Petitioners refused to part with the property after taking Rs.24 lakhs on the ground that they had already mortgaged the property to one Mr. Harmeet Singh. On investigation Mr. Harmeet Singh was found to be a non-existing person. Thus, evidence collected clearly shows that a case of cheating is made out against the Petitioners. The Petitioners have cheated the complainant for a sum of Rs.13.50 lakhs. The reliance of the Petitioners on the receipt dated 2nd June,

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2010 is wholly misconceived. A perusal of the photocopy of the said receipt shows that the Petitioner Ms. Renu Kaushik admitted having received Rs.10 lakhs and not having given Rs.10 lakhs and Petitioner S. Mohan admitted that the balance amount of Rs. 4 lakhs was due. The stand taken in the civil suit filed by the Petitioner Renu Kaushik is that she entered into an agreement with defendant No.1 i.e. Mr. Kailash Kumar Hotwani for a sum of Rs.28 lakhs and he paid earnest money of Rs.2.8 lakhs. However, as he failed to make the complete payment, the Petitioner mortgaged the property to one Mr. Harmeet Singh. The case of the Petitioner in the civil suit is that complainant Smt. Alka Alag, who was residing in her neighbourhood, used to borrow the money from the Petitioner and used to return the same from time to time. According to the Petitioner, the complainant had taken Rs.1.5 lakhs cash from the Petitioner and handed over two cheques for Rs.75 thousands each in lieu thereof. The defendants in the civil suit visited the premises of the Petitioners to get her signatures by threatening them. However, the Petitioners refused to do the same. The whereabouts of Mr. Harmeet Singh to whom the Petitioner mortgaged the property are not known. Despite having joined the investigation, the Petitioners have not disclosed the whereabouts of Mr. Harmeet Singh, though they have

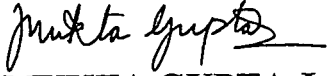
admittedly entered into an agreement to mortgage the property with him. Also, throughout the transaction S. Mohit, husband of Renu Kaushik was present with her and has actively participated in the said transaction. Petitioner S. Mohit has made alterations on the agreement after its execution. The overwriting in the agreement was signed/initialed by one 'SM' in one photocopy of the agreement while the other photocopy shows the overwriting but the same is not initialed. Thus interpolation with the document is clear. I find no merit in the contention of learned counsel for the Petitioner that the case is essentially a civil dispute and they should be released on bail. It is further incorrect that no useful purpose will be served in custodial interrogation. In the present case, the whereabouts of Mr. Harmeet Singh with whom the Petitioners have mortgaged the property have to be found out. Reliance on *Siddharam Satlingappa Mhetre* (supra) is misconceived as the offence is grave and serious in nature and the Petitioners till date have not disclosed the whereabouts of Mr. Harmeet Singh. There is material on record against them. Further in *Siddharam Satlingappa Mhetre* (supra) a word of caution has been laid down that while granting anticipatory bail to the accused person the gravity of accusation, nature of offence and role of accused person must be comprehended and

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kept in mind. Therefore, in view of the facts of the present case, the benefit granted in *Siddharam Satlingappa Mhetre* (supra) cannot be extended to the Petitioners herein. Though FIR was registered 13 months ago, however, I still do not feel it imperative to grant anticipatory bail to the Petitioners.

The Bail applications and the applications are dismissed.


MUKTA GUPTA, J

JULY 27, 2011
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