

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

% BAIL APPL. NO. 1092/2012

+ Date of Decision: 5th October, 2012

VED PRAKASH YADAV Appellant
! Through: Mr. R.M. Sinha, Advocate

Versus

\$ STATE NCT OF DELHI ...Respondent
Through: Mr. M.N. Dudeja, APP for the State
Mr. N. Hariharan and Mr. Rohit
Sharma, Advocates for the
complainant
Insp. Virender Singh, DIU/South

CORAM:
*** HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

Apprehending his arrest by the police in a case under Sections 420/468/471/448/120-B IPC registered at Safdarjung Enclave police station vide FIR no. 207/2011 on 6th August, 2011 pursuant to the directions of the Metropolitan Magistrate given under Section 156(3) Cr.P.C. in a criminal complaint filed by the complainant against one Vishwa Nath Tiwari the petitioner seeks anticipatory bail.

2. The criminal complaint, in which the learned Metropolitan Magistrate had ordered registration of FIR, was filed by the President of Residents Welfare Association of Krishna Apartments at 20-B/21-A, Krishna Nagar, Safdarjung Enclave, New Delhi on behalf of all the members of the Association. It was alleged in the complaint against Vishwa Nath tiwari that members of the said Association had been allotted 16 flats in the said Krishna Apartments by its owners/developers, one of whom was the present petitioner and the other one was one R.K.Jain. As per the agreements executed with the owners/developers for allotment of flats each one of the allottees was to get car parking space in the basement. Though possession of the flats was given to the allottees during the period 2003-06 but basement was allegedly not completed by the owners/developers by the time dwelling Units were completed and they had been assuring the allottees that the same shall be completed soon. It was further alleged in the complaint that during that period one of the owners/developers R. K. Jain had allowed one of his employees Vishwa Nath Tiwari to occupy the basement to look after the construction work of the parking space and the complainant at that time had allowed accused Vishwa Nath Tiwari to raise a temporary wooden structure to stay in the basement for looking after the construction of the parking space. However, thereafter though the developer initiated the work but kept on lingering on pretext or the other and

neither the parking area was completed in the basement nor accused Vishwa Nath Tiwari vacated the area occupied by him despite the allottees telling him to vacate so that they themselves could get the needful done and instead he started claiming himself to be a tenant since 01.04.2004 under a Rent Deed dated 22nd December, 2010 allegedly executed by the present petitioner. It was further claimed in the complaint that this Rent Deed was forged by the accused only to create his interest in the temporary structure in the basement and thus accused Vishwa Nath Tiwari had committed the offences of cheating, forgery and criminal trespass over the property jointly owned by the constituents of the Association.

3. This anticipatory bail application has been opposed by the learned Additional Public Prosecutor, who was assisted by the learned counsel for the complainant, on the ground that the allottees of the flats had been cheated as entire basement was to be made available to them for parking their cars and to deprive them of that parking space the petitioner had joined hands with accused Vishwa Nath tiwari and had created a false document of Vishwa Nath's tenancy w.e.f. 1-4-2004 and that original Rent Agreement is to be recovered from the petitioner-accused and for that purpose his custody is required by the police.

4. Learned counsel for the petitioner submitted that a purely civil dispute of alleged breach of contract is being converted by the police in collusion with the allottees of the flats into a criminal case to grab the entire basement area which, in fact, was not the term of contract between the parties and only space for one car each was to be given to them and the same was given. It was also submitted that in the FIR itself it had been alleged that the complainant had also allowed Vishwa Nath Tiwari to occupy part of the basement and so there was no question of the allottees being cheated by anyone and certainly not by the petitioner. Even otherwise all the allegations are against Vishwa Nath Tiwari and R.K.Jain and but the police is not arresting R.K.Jain and is only trying to arrest the petitioner in arbitrary exercise of its powers to arrest anyone. It was also contended that if Vishwa Nath Tiwari has forged any Rent Deed the recovery of that document could be made from him only after his arrest and for that reason the custodial interrogation of the petitioner is not required. In support of the submission that the cases which are primarily of civil nature should not be allowed to be converted into criminal cases learned counsel cited two judgments of the Apex Court reported as **“Dalip Kaur & Ors. Vs. Jagnar Singh & Anr.”, 2009 XI AD (SC) 472** and **“V.Y. Jose & Anr. Vs. State of Gujarat & Anr.”, 2009 I AD (SC) 500.**

5. After going through the complaint, which was filed in the Court by the President of the above named Association and which was only against Vishwa Nath Tiwari and it had been claimed therein that R.K.Jain had put him in possession of the disputed portion of the basement and the complainant had also agreed at that time for his being put in possession and the submissions made from both the sides at the time of hearing of this bail application I am of the view that this is a fit case where petitioner should be granted the relief of anticipatory bail.

6. This application is accordingly allowed and the interim anticipatory bail already granted to the petitioner vide order dated 6th August, 2012 is confirmed on the same terms and conditions.

October 5th, 2012

P.K. BHASIN, J