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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1249/2012

S L MALOO

..... Petitioner

Through: Mr.Pradeep Kaushik and Dr.Sunil
Kumar, Advocates

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Dayan Krishnan, ASC for
State with Inspector Amardeep
Sehgal, from PS Barakhamba Road.
Mr.Manoj Taneja, Advocate for
Complainant.

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Date of Decision: 5th September, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J : (Oral)

Crl.M.A.No.14397/2012

Exemption allowed, subject to just exceptions. The application
stands disposed of accordingly.

Crl.M.A.No.15834/2012

Though the present application has been filed for withdrawal of Bail Application No.1249/2012, but learned counsel for the petitioner states that he has instructions not to press this application. Accordingly, the present application is dismissed as withdrawn.

BAIL APPLN. 1249/2012

1. The present petition has been filed seeking anticipatory bail in FIR No.19/2012 registered with Police Station Barakhamba Road under Section 420 IPC against the petitioner.
2. At the outset, learned counsel for the petitioner states that he has instructions from the petitioner to withdraw the allegations against his lawyer Mr. Neeraj Kumar Singh. The said statement is accepted by this Court and the petitioner is held bound by the same.
3. The relevant facts of the present case are that the aforesaid FIR was registered on the complaint of Mr. Ram Bihari Sachan, Authorized Representative of the complainant company M/s. Universal Finance and Traders Ltd. In the complaint, it has been stated that the complainant company had been taken over by the new management in the year 2007 vide Share Purchase Agreement dated

13th February, 2007. According to the complainant, as per the financial statements handed over by the earlier management, the complainant company was the sole owner and in exclusive possession of flat No. 10 H Vandana Building, Tolstoy Marg (hereinafter referred to as the 'aforesaid flat'). In the complaint, it was also stated that as per the records available with the Registrar of Companies, there was no mortgage/charge shown on the said flat. According to the complaint, believing the said assertions to be true and correct they decided to take over the control and ownership of M/s. Universal Finance and Traders Ltd.

4. As the new management was informed that the title deeds of the aforesaid flat had been misplaced by the previous management, the complainant company lodged a police report dated 21st June, 2007 with regard to loss of original title deeds.

5. In the FIR, it was further stated that as in August, 2011, the petitioner made certain queries from the complainant company with regard to the aforesaid flat, the complainant became suspicious and on enquiry it came to know that in a recovery suit bearing no. CS(OS)154/99 pending before this Court, the petitioner through his

counsel, had offered the aforesaid flat for sale to offset an alleged debt taken from Mrs. Sudesh Madhok by M/s. Lunar Diamonds Ltd., M/s. Lunar Gold International Private Ltd., M/s. Lunar Finance and M/s. Sunrise Securities Ltd. and complainant company. It was also stated in the complaint that when the complainant intervened in the recovery suit proceedings, it was directed by the said Court to furnish bank guarantee to the tune of Rs. 2.25 crores in order to prevent the aforesaid flat from being sold and to secure the claim of the plaintiff namely Mrs. Sudesh Madhok.

6. The learned Additional Sessions Judge (in short 'ASJ') while dismissing the anticipatory bail application filed by the petitioner has observed as under:-

“15. I have considered the submissions and have gone through the judgments.

16. The accused/applicant had made a statement before the Hon'ble High Court on 01.04.2011 in Civil Suit No.154/1999, wherein it was stated that “the documents relating to the flat were given to Mrs. Sudesh Malik”. In the Agreement to Sell dated 29.07.1998 it was mentioned that all the original documents of the Flat had been handed over to M/s Universal Finance Traders Ltd. On 01.04.2011, the accused/applicant could not have made a statement on behalf of the complainant company. Why had he made a statement is a fact known only to the accused/applicant. It was only on the assertion of the

accused/applicant that the complainant company was directed to furnish the bank guarantee. The accused/applicant did not disclose to the complainant company about pendency of Civil Suit (OS) No. 154/99 at the time of transfer of share. This is one aspect.

17. The other aspect is that earlier also in 2002, 2003, 2004 and 2008 he was arrayed as an accused. After settlement with the complainant, those FIRs were got quashed. Another FIR bearing No.55/2012 is pending investigation with EOW Cell Crime Branch.

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18. The third aspect is that though the applicant is named in the FIR, yet in the application, it has been asserted that he has not been named. The Civil Suit (OS) No. 154/99, has been partly decreed but this fact is not mentioned in the application. No reply with regard to the allegations of forgery of the Agreement to Sell except that it would not have benefited the accused/applicant, has been given”

7. Learned counsel for the petitioner submits that M/s Sunrise Securities Ltd. (now known as M/s Websity Infosys Ltd.), M/s Lunar Diamonds Ltd., M/s Lunar Finance Ltd. and M/s Universal Finance Traders Ltd. are the owners of aforesaid flat. He further states that the aforesaid flat was never mortgaged to anyone as no Form 8 had been filed. He also states that the disputes between the parties are of civil nature and the same could not have been converted into a criminal complaint.

8. However, Mr. Dayan Krishnan, learned Additional Standing Counsel for the State points out that title deeds of the aforesaid flat were deposited by the Companies managed by the petitioner with Mrs. Sudesh Madhok to whom M/s. Lunar Gold International Private Ltd. was indebted to the extent of Rs. One crore. He also points out that to secure the said loan, M/s. Lunar Diamonds had furnished a Demand Promissory Note and M/s. Lunar Finance had furnished a Deed of Guarantee and also pledged four lakh shares of M/s. Sunrise Securities in favour of Mrs. Madhok.

9. Mr. Dayan Krishnan further states that on 29th July, 1998, an alleged Agreement to Sell was executed between M/s. Sunrise Securities, M/s. Lunar Diamonds, M/s. Lunar Gold and M/s. Universal Finance Traders Limited by virtue of which all rights in the aforesaid flat were transferred to M/s. Universal Finance Traders Limited. He points out that investigation has revealed that Notary Public Mr. Mahavir Singh who is alleged to have notarized the said agreement to sell on 29th July, 1998, had expired on 2^{0th} May, 1997 and the stamp vendor from whom the stamp paper for the July, 1998 had been purchased, did not exist.

10. Mr. Dayan Krishnan states that for the first time in 2006 the aforesaid flat was shown in the balance sheet of M/s Universal Finance Traders Ltd. and subsequently by a Sale Purchase Agreement dated 13th February, 2007, the entire shareholding of M/s Universal Finance Traders Ltd. was sold to the complainant.

11. Mr. Dayan Krishnan lastly states that in view of the investigation carried out till date, Sections 418, 467, 468 and 471 have been added.

12. Mr. Dayan Krishnan points out that proceedings under Section 82 Cr.P.C. have been initiated against the petitioner and the proclamation requiring his appearance has been published today in newspapers. He also states that the present petitioner has six previous involvements. The details of his previous involvements are as under:-

- “1. FIR No.387/2000 u/s 420/416/418/468/471/406 IPC of PS C.R. Park.*
- 2. FIR No.179/2003 u/s 420/406/468/471 IPC of PS C.R. Park.*
- 3. FIR No. 372/2004 u/s 420/406 IPC of P.S. Okhla*
- 4. FIR No. 168/2008 u/s 420 IPC of Economic Offences Wing (EOW)*
- 5. FIR No. 55/2012 u/s 420 IPC of Economic Offences Wing (EOW)*
- 6. FIR No. 54/2008 u/s 420/467/464/506/120-B IPC of PS DLF Gurgaon.”*

13. Learned counsel for the complainant states that the complainant had to furnish a bank guarantee of ₹ 2.2 crores in the recovery suit filed by Mrs. Madhok so as to prevent auction of its own property.

14. After hearing the parties, this Court is of the view that it is first essential to determine the parameters for grant the anticipatory bail in serious offences. Recently, the Supreme Court in **Jai Prakash Singh v.State of Bihar and Anr. (2012) 4 SCC 379** after analyzing the entire law has observed as under:-

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons thereof. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty.”

15. The Supreme Court on 31st August, 2012 in **Lavesh v. State (NCT of Delhi)** in **Crl.A. No. 1331/2012** has held as under:-

“6.....While considering such a request, the Court has to take into consideration the nature and the gravity of the accusation, antecedents, possibility of the applicant to flee from justice etc. Further, normally, the Court should not exercise its discretion to grant anticipatory bail in disregard of the magnitude and seriousness of the matter. The matter regarding the unnatural death of the daughter-in-law at the house of her in-laws was still under investigation and the appropriate course to adopt was to

allow the concerned Magistrate to deal with the same on the basis of the material before the Court.

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10. From these material and information, it is clear that the present appellant was not available for interrogation and investigation and declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declare as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory bail”

16. In view of the aforesaid, this Court is of the view that this is not a case where the petitioner has been falsely implicated in a crime. Prima facie, it seems to this Court that the petitioner who was a Director of Lunar Diamonds Limited, Lunar Gold International (P) Ltd., Lunar Finance Ltd., Sunrise Securities Ltd. (now Websity Infosys Ltd) and Universal Finance Traders Ltd. has, after depositing title deed of the aforesaid flat with one creditor, tried to encash the property once again by fraudulently transferring the ownership rights in the aforesaid flat to the complaint company by forging an Agreement to Sell and thereafter transferring the complainant company to a new management. Moreover, as the petitioner has six

previous involvements and proceedings under Section 82 Cr.P.C. have been initiated and the investigation has revealed that neither the Notary Public was alive nor the Stamp Vendor was in existence on the date of the Agreement to Sell, this Court is of the opinion that the petitioner is not entitled to any protection from this Court. Accordingly, this Court sees no merit in the petition and the same is dismissed. However, needless to say that the observations made by this Court would not prejudice either of the parties at the stage of trial.

MANMOHAN, J

SEPTEMBER 05, 2012

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