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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 14th May, 2013

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BAIL APPLN. 699/2013

RENUKA SHARMA

..... Petitioner

Through : Mr.Suhail Dutt, Senior Advocate
with Mr.Neeraj Gupta and
Mr.Azhar Alam, Advs.

versus

STATE OF NCT OF DELHI

.... Respondent

Through : Ms.Fiuzani Hussain, APP for the
State with SI Ganga Ram, PS
Paschim Vihar.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

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PRATIBHA RANI, J. (ORAL)

1. The petitioner Renuka Sharma has filed this bail application seeking anticipatory bail in case FIR No.73/2013 under Sections 420/506/120-B/34 IPC registered at PS Paschim Vihar, Delhi.
2. Earlier the bail applications No.2083 to 2085 filed by Shashank Sharma, Puneet Kumar and Renuka Sharma have been dismissed on 23.03.2013 by learned Addl. Sessions judge recording that investigation is at the formative stage, hence no ground of anticipatory bail exists.

3. After rejection of the application seeking anticipatory bail by learned Addl. Sessions Judge, now the petitioner has approached this Court praying for grant of anticipatory bail in the above noted FIR.

4. In brief, the case of the prosecution is that FIR was registered on 20.03.2013 on the directions given by learned MM in exercise of power under Section 156(3) CrPC in the complaint case filed by Sh. Anup Kumar Chopra, Director of Sainik Welfare Organization India (registered NGO).

5. The contention of the petitioner is that at the most, it can be a case of breach of contract and the status report filed by the Investigating Officer in the above noted complaint was also to the effect that the dispute between the parties was of purely civil nature.

6. The petitioner has claimed that she has been falsely implicated in this case though she has already resigned from the directorship of the accused company on 28.11.2011 and she has never met the complainant nor there is any allegation made against her in the FIR. The petitioner has also placed on record the copy of Form-32 of M/s. Vatika Dynamic Real Estate Pvt. Ltd. Referring to the MOU dated 08.11.2011 between the complainant company and the accused company, it has been submitted that the complainant company was required to make payment of 20% of the total sale consideration of the project land (approximate Rs.4.20 crores) after 60 days of the signing of the said MOU. The complainant company, after making initial payment of Rs.31 lacs, did not come forward to make payment of the remaining amount, thus, the accused company was not able to make further payment to M/s. Ahir Patil & Associates (Developers at Aurangabad, Maharashtra). As a

result, the payment earlier made to M/s. Ahir Patil & Associates by the accused company was forfeited in accordance with the MOU between the accused company and M/s. Ahir Patil & Associates. It is further stated in the application that Mr.Shashank Sharma, husband of the petitioner Renuka Sharma, is Director in M/s. Regaliaa Infratech Pvt. Ltd. and M/s. Vandana Dynamic Housing Projects Pvt. Ltd. These companies are engaged to arrange the other land projects for the complainant company in District Ratna, Bihar, Mhow, Indore, (M.P.) and Mathura, (U.P.) and for that purpose Mr.Shashank Sharma and Mr.Dharamvir Singh (trustees of the complainant company), had been in continuous conversation for the said projects till February, 2013.

7. The petitioner has claimed anticipatory bail on the ground that the amount of Rs.31 lacs paid by the complainant company to accused company has already been paid to M/s. Ahir Patil & Associates and apart from that, accused company has also spent huge amount on the said project which has not been paid by the complainant company to the accused company for which the accused company could be claiming damages from the complainant. The FIR has been got registered against the petitioner and the accused company with malafide intention to escape from the legal consequences. There was no false representation in respect of any transaction by the petitioner or the accused company and the dispute being purely of civil nature, no offence under Section 420/506/120-B/34 IPC is made out, hence petitioner may be ordered to be released on anticipatory bail.

8. On behalf of State, it has been submitted that the FIR No.73/2013 under Sections 420/506/120-B/34 IPC was registered at PS Paschim

Vihar in compliance of the directions of learned MM in the complaint case filed by Sainik Welfare Organization India (registered NGO). As per the complaint, the accused persons got registered a company in the name and style of M/s. Vatika Dynamic Real Estate Pvt. Ltd. and advertised in the newspaper. The complainant NGO contacted the accused company as it was interested in purchasing the property for the welfare of retired defence employees as well for their widows. The accused persons represented their right over the property situated in Village Pharola T. Palthan, Distt. Aurangabad, Maharashtra and in this regard, MOU dated 08.11.2011 was entered into between the accused company and complainant company. As per agreement with accused company, the complainant company transferred an amount of Rs.31 lacs i.e. 20% of the total amount agreed in MOU. Learned APP has further submitted that complainant company contacted the accused persons but all accused persons i.e. Directors of accused company with alleged collectors Shashank Sharma, avoided the complainant and also did not return the money. It has been further submitted that later on, the complainant came to know that the accused did not own any land for the project and also failed to return the amount already paid. Learned APP for the State has also submitted that the accused company is involved in various cases of similar type of offences wherein many investors have been cheated and complaints are pending before EOW.

9. On behalf of petitioner, Mr.Suhail Dutt, learned Senior Advocate has drawn the attention of the Court to the MOU dated 08.11.2011 (annexure-I) wherein as per terms and conditions No.1 and 2, it was agreed :

'1. The First Party undertakes the responsibility to provide the project land including all residential, parks and open spaces as approved by the Town and Country Planning, Aurangabad and make available to the First Party at an average rate of Rs.525/- per square feet for approved and developed saleable area of approximately 39700 sq. mtr. within the project land.

2. The First party undertakes the responsibility to make the title of the Project Land clear and marketable free from all encumbrances & legal consequences for execution of conveyance/transfer of saleable area in favor of the Second Party or its nominated individuals or firms or companies.'

10. Referring to clause 17 of the MOU, it has been submitted that only a sum of Rs.31 lacs was paid as advance for this sale consideration whereas as per clause-19(a), it was agreed that :

'19. The Second Party agrees to make further payments subject to verification of progress of work at the project site as under :

(a) 1st instalment : 20% of total cost in 4 months of effective date of this MOU and at the time of agreement to sell & purchase and subject to completion of levelling, cleaning up of project land and construction of main entry gate.'

11. While emphasising that payment of Rs.31 lacs does not come out to be 20% of the total sale consideration, Mr.Suhail Dutt, Senior Advocate for the petitioner has submitted that as per the agreed rate of the land, the total value of the land come to more than Rs.22 crores and 20% of the said amount, which was required to be paid in terms of clause 19(a), comes to more than Rs.4 crores. It is admitted case of the complainant that except payment of Rs.31 lacs, no amount was paid to the accused company and in the complaint, this amount of Rs.31 lacs has

been claimed to be 20% of the total sale consideration which is not in consonance of the terms and conditions of the MOU. He has further submitted that the accused company parted with the money which was given to M/s Ahir Patil & Associates which had to arrange the land by making payment to the land owners and that it was on account of the failure of the complainant to come forward with the remaining amount that the deal could not materialise and ultimately the amount paid by the complainant company to the accused company and which was further transferred to the local contacts i.e. M/s Ahir Patil & Associates stood forfeited. Thus, there was only a civil dispute due to non-performance of the terms of the MOU by the complainant company for which only civil action is maintainable, hence the petitioner is entitled to anticipatory bail.

12. During the course of hearing, learned Senior Advocate for the petitioner was required to bring something on record as to how the amount of Rs.31 lacs handed over by the complainant company to the accused company, was dealt with and whether any transaction was entered into with the land owners in Aurangabad and further whether on failure of the complainant company to come forwards with the balance amount of 20% of the total sale consideration after adjusting Rs.31 lacs, there was any communication either with M/s Ahir Patil & Associates in Aurangabad or with the complainant in respect of this MOU dated 08.11.2011.

13. In the meanwhile, the prosecution also tried to ascertain the facts from Aurangabad. The Investigating Officer, who visited Aurangabad, obtained photocopies of two cheques i.e. one cheque bearing No.588071 dated 14.11.2011 for a sum of Rs.11 lacs has been issued in favour of

Mr.Bhaskar Vishwanath Aher and authorised signatory of this cheque is Renuka, who is petitioner before this Court. Another cheque bearing No.506224 dated 14.11.2011 for a sum of Rs.10 lacs has been issued in favour of Mr.Pralahad Nivrati Wagh and authorised signatory of this cheque is Shashank Sharma.

14. State has also placed on record the statement of Mr.Pralahad Nivrati Wagh recorded by IO on 12.05.2013 which becomes very crucial to deal with the present bail application. As per the statement made by Pralahad Nivrati Wagh, he was dealing in land in Aurangabad and constituted a partnership firm. While referring to the visit of Shashank Sharma to Aurangabad, he stated that since Shashank Sharma was interested in having land for 260 flats in Aurangabad, he was shown some land and once he selected the land, he agreed for its marketing as well as offered to pay Rs.31 lacs towards security for marketing. He entered into MOU dated 06.11.2011 wherein all the terms and conditions were incorporated. He also handed over two cheques, one cheque bearing No.588071 dated 14.11.2011 for a sum of Rs.11 lacs issued in favour of Mr.Bhaskar Vishwanath Aher signed by Renuka and another cheque bearing No.506224 dated 14.11.2011 for a sum of Rs.10 lacs issued in favour of Mr.Pralahad Nivrati Wagh signed by Shashank Sharma and agreed to pay another cheque after two months.

15. Mr.Pralahad Nivrati Wagh further stated in his statement that thereafter he tried to contact Shashank Sharma number of times but neither he offered the balance amount nor had any conversation so much so that when they visited Delhi to meet him, he did not meet them. They waited for one year for Shashank Sharma to call back and on his failure

to revert to them, they sold the property in the form of plots. IO also collected the photocopy of the GPA dated 09.11.2011 between Khan Alimoddin Jalaluddin Khan and Ahmad Mohd. Pathan & Brothers to bring on record that M/s Ahir Patil & Associates was not having any land on that day and further the copy of sale deed dated 29.12.2011 between Abhiraj Associates Partn. Bhaskar V. Aaher & Ors and Salim Md. Pathan, General Power of Attorney of Khan Alimoddin J. Khan & Ors.

16. As per statement of Mr.Pralahad Nivrati Wagh, the payment of Rs.21 lacs by way of two cheques i.e. one cheque bearing No.588071 dated 14.11.2011 for a sum of Rs.11 lacs issued in favour of Mr.Bhaskar Vishwanath Aher signed by Renuka and another cheque bearing No.506224 dated 14.11.2011 for a sum of Rs.10 lacs issued in favour of Mr.Pralahad Nivrati Wagh signed by Shashank Sharma, was made to him pursuant to the MOU dated 06.11.2011. In the MOU dated 08.11.2011 between the complainant company and accused company, there is no mention of the MOU dated 06.11.2011. Admittedly, the accused company received Rs.31 lacs from the complainant company which was to be utilised for purpose of the project referred to in that MOU. On record what is emerging is that out of that Rs.31 lacs infact the accused company has parted with Rs.21 lacs only and that too in connection with MOU dated 06.11.2011 which was obviously prior to the MOU dated 08.11.2011 with the complainant company. It is necessary to mention here that the cheque of Rs.11 lacs is signed by Renuka Sharma – the present petitioner and she was Director of the accused company on the date of MOU with complainant company.

17. Learned APP for the State has placed on record the details of the cases pending against M/s Saivi Infratech Pvt. Ltd. (Shashank Sharma signed MOU as witness on behalf of M/s Saivi Infratech Pvt. Ltd.) and M/s. Regalia Infratech Pvt. Ltd., Directors of which are Shashank Sharma and Bhupendra Singh, though fairly conceding that Renuka Sharma is not Director in these companies wherein similar modus operandi has been used by the accused company of which Shashank Sharma, the husband of the petitioner is Director.

18. During course of arguments, learned Senior Advocate for the petitioner was requested to show any communication by the accused company either with the complainant or with M/s Ahir Patil & Associates about the steps taken or the instructions given in this regard when complainant company was not coming forward with the balance amount of the 20% of the total sale consideration within the time stipulated in clause 19(a) of MOU dated 08.11.2011. However, nothing could be shown to this Court.

19. The petitioner is seeking anticipatory bail in a case which can be termed as 'While Collar Crime'. In the case ***Lalit Goel v. Commissioner of Central Excise*** 2007 (3) JCC 2282, this Court, while dealing with bail application in a case of Customs Act, observed as under :-

'The economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Noticing ever growing materialistic outlook setting unscrupulous elements on a prowl to maximize material gains by unlawful means, this Court even suggested appropriate legislative measure and judicial intervention to safeguard the interest of the State and public at large.'

20. The complainant company entered into MOU with accused company with a view to procure residence for retired defence employees and their widows. In the case ***Prem Kumar Parmar v. State (CBI)*** 1989 RLR 131, the observation made by this Court is extracted as under:-

‘The offences such as cheating and forgery bring imbalance in the economy of the country, which has the effect of making the life of majority of people, particularly those belonging to economically weaker sections of the society miserable and that such economic offences are worse than murders.’

21. Although as per Form-32, the petitioner resigned as Director w.e.f. 28.11.2011 but it is not disputed that on the date of entering into MOU dated 08.11.2011 she was Director of the company and one of the cheque bearing No.588071 dated 14.11.2011 for a sum of Rs.11 lacs has been issued by her in favour of Mr.Bhaskar Vishwanath Aher. It cannot be inferred from the record that after receiving Rs.31 lacs from the complainant company pursuant to MOU dated 08.11.2011 the said amount was utilised by the petitioner or the accused company for the project formed part of that MOU. Since statement of Pralahad Nivrati Wagh is to the effect that this payment of Rs.21 lacs received by him was in respect of MOU dated 06.11.2011 which at this stage seems to be unrelated to the MOU dated 08.11.2011, it does not appear to be a case where the petitioner can claim her innocence in respect of the alleged offence of cheating complained of vide FIR No.73/2013 under Sections 420/506/120-B/34 IPC, PS Paschim Vihar.

22. In view of above discussion, I do not find it to be a fit case to enlarge the petitioner on anticipatory bail. Bail application is hereby dismissed.

23. Any observations made hereinabove for the purpose of dealing with the contentions of counsel for the petitioner shall not be deemed to be an expression on merits of the case.

PRATIBHA RANI, J

May 14, 2013/‘st’