

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

Reserved on: 21st August, 2014

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Date of Decision: 22nd September, 2014

+ BAIL APPLN. No.889/2014

SANJEEV DUTTA

..... Petitioner

Through: Mr. Aman Lekhi, Sr. Advocate with
Mr. Maninder Singh and Mr. Gurpreet
Singh, Advocates.

versus

STATE

.....Respondent

Through: Mr. Navin Sharma, APP for the State
with SI Arun Dev Nehra, P.S. SWR/
Crime Branch.
Mr. Mohit Mathur & Mr. Raj
Malhotra, Advocates for complainant.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By this application under Section 438 of Code of Criminal Procedure, 1973 (hereinafter after referred to as 'Cr.P.C.') the petitioner is seeking anticipatory bail in case FIR No.126/2013 under Sections 406/420/467/468/471/34/120B IPC registered at P.S. Connaught Place, New Delhi.

2. Status report filed on behalf of State is on record.

3. The contextual matrix of the case as borne out from the FIR are that the complainant, Mr. Yogesh Malik lodged a complaint that he along with his wife Ms. Ritu Malik came in touch with Mr. Varun Dutta, Mr. Sanjeev Dutta (petitioner) and Ms. Jyoti Dutta through a

property dealer in respect of farm house located at Dera Mandi, Tehsil Hauz Khas, New Delhi. Mr. Varun Dutta, co-accused claimed that he had the agreement to purchase dated 20.12.2011 with Mandi Valley Infra Pvt. Ltd. for the land measuring 12 bighas, 12 biswas bearing Mushtill No.26, Khasra No. 5(4-12), 6 (4-16), 15/1 (3-4) situated in the revenue estate of village Dera Mandi. He persuaded the complainant to enter into an agreement for purchase of the said land. Accordingly, the Memorandum of Understanding dated 06.03.2012 was executed which was duly signed by Mr. Varun Dutta and the complainant paid a sum of Rs.20,00,000/- (Rupees Twenty lakhs) by cheque and Rs.5,00,000/- (Rupees Five lakhs) was paid in cash as token money for purchasing the said land. Mr. Varun Dutta assured that the said land was measuring 2.5 acres and he will satisfy the complainant regarding the measurement of the said land. However, he delayed and tried to avoid the measurements of the land even after these repetitive assurances. The complainant got the said land measured on his own and found that it was only 1.3 acres.

4. The complainant also alleged that he had already paid a sum of Rs.50,00,000/- to Mr.Varun Dutta who in connivance with his father Mr. Sanjeev Dutta (petitioner) and mother were trying to sell a 1.3 acres land claiming it to be a 2.5acres property. It is also alleged by the complainant that when they asked accused persons regarding measurement, Mr.Varun Dutta assured that the complainant should not worry about the said transaction regarding Dera Mandi as they had various properties to sell, vis-à-vis 3 acres at Triveni Farms in Jaunapur; 2.75 acres Plaza Farms in Sultanpur; approximately 150 sq.

yds. Commercial office building in Basant Lok Market, Vasant Vihar, New Delhi; 400 sq. yds. property in Paschim Vihar, Delhi; and 500 sq. yds. in Greater Kailash property. Mr. Varun Dutta, his father and mother had claimed that all the said properties were their personal assets and are belonging to their family and they offered that these properties can be offered for sale instead of the property at Dera Mandi. They further claimed that they require more money for their mega township project in 500 acres, which they claimed was coming up in Sohna, Gurgaon. The accused persons assured the complainant that the amount paid by the complainant will be adjusted in any of the said properties.

5. The complainant has also alleged that the accused persons persuaded them to visit the farm house. On the said visit, Mr. Varun Dutta and Smt. Sunita Gupta who is owner of Plaza Farm House were present and Smt. Sunita Gupta confirmed that she had sold the said Farm House to Mr. Varun Dutta. During the month of April, 2012, when the complainant wanted to see the original documents of Plaza Farm House, Mr. Varun arranged a meeting at coffee shop in Shangrila Hotel, Delhi. The meeting was attended by Smt. Sunita Gupta as well as her husband and they were carrying the original documents of said Farm House. Mr. Varun Dutta handed over the copy of agreement of purchase, which was executed by Smt. Sunita Gupta. On the basis of various meetings with Sunita Gupta and Varun Dutta the complainant and his wife decided to sign the MOU dated 27.05.2012 and paid an amount of Rs.1 crore by cheque besides the other payments duly made by them. Thereafter, on insistence on behalf of the accused and his

family, the complainant ultimately made a further payment of Rs.1 crore through cheque No.116859 issued in the name of Smt. Sunita Gupta after taking necessary precaution of noting on the back of the cheque which read as “Part Payment towards sale of property known as Plaza Farm (Gadaipur) in the name of Mrs. Sunita Gupta wife of Shree Sunil Gupta”.However, after execution of this cheque dated 17.10.2012, drawn on Axis Bank,the accused started delaying meetings for the final payment. On being suspicious, the complainant made the necessary enquiries with Mrs. Sunita Gupta who told them that she never entered into an agreement with the any of the accused and that she has never signed and executed the agreement dated 24.01.2012.

6. It was further contended that they got to know that cheque no. 116859, of Rs.1 crore, dated 17.10.2012, drawn on Axis Bank, got encashed through Oriental Bank of Commerce Branch, Rajouri/Kirti Nagar, New Delhi. On further enquiries it was revealed that a fake account in the name of Smt. Sunita Gupta was opened in OBC on 19.10.2012 vide account No.00222191006795 and the money was withdrawn from the said account for settlement of dispute of Varun Dutta. For this Plaza Farm house and all other claims of the accused and his family including payments towards Dera Mandi property, payments towards the flat of one Aaron Sidhu and the payments for being appointed as a director of a newly incorporated company. In totality the complainant had made a total payment of Rs 5.35 crores i.e. Rs. 4.10 crores by way of various cheques dated 07.03.2012, 13.4.2012, 10.5.2012, 29.5.2012, 29.5.2012, 27.6.2012, 1.8.2012,

4.8.2012, 6.8.2012, 8.10.2012, 18.10.2012 and 31.1.2013 and Rs.1.25 crores by way of cash on different dates i.e. Rs.5 lakh on 7.3.2012, Rs.25 lakh on 13.4.2012, Rs.75 lakh on 27.6.2012, Rs.10 lakh on 08.10.2012 and Rs.10 lakhs on 31.1.2013.

7. Learned senior counsel for the petitioner contended that there is no allegation against the petitioner and no role has been attributed to the petitioner in the FIR. The petitioner was abroad when the present FIR was registered and he has been falsely implicated by alleging a connection with the alleged acts of his son, Varun Dutta. The complainant malafidely used the name of the petitioner in the FIR at various places and that no role is assigned to the petitioner, apart from taking a receipt on behalf of his son i.e. Varun Dutta. Learned senior counsel further submitted that as per the averments made in the MOU it shows that both the parties i.e. complainant and Varun Dutta jointly agreed to purchase the land in question from Sunita Gupta and thereafter to sell it at profit. As per the MOU dated 27.05.2012, if the dates as shown in the agreement are taken into consideration then the complainant failed to adhere to the terms of the agreement and thus resulted in cancellation of the agreement. Therefore, this suit is a civil suit that is being converted into a criminal one. He also urged that in the chart filed by the complainant a sum of Rs.1.25 crores has been stated to be paid in cash and whereas FIR and MOU suggest a payment of Rs.2 crores.

8. Mr. Lekhi, senior counsel for the petitioner also pointed out that during investigation in the present FIR, the investigating officer along with the complainant, Yogesh Malik called one Rajesh Bhatia to the Police Station and extorted a sum of Rs.20,00,000 on the threats of false implication, an FIR No.151/2013 was registered on the complaint of Rajesh Bhatia dated 14.09.2013 against the IO Gyan Prakash and Yogesh Malik.

9. Learned senior counsel for the petitioner also submitted that the petitioner on the grant of interim bail vide order dated 03.03.2014, passed by learned Additional Sessions Judge, Patiala House Courts, came back to India on 08.03.2014, in order to join the investigation. He also submitted that thereafter the petitioner was granted interim bail vide order dated 13.03.2014 passed by Learned Additional Sessions Judge, Patiala House Court, however vide order dated 16.04.2014, passed by learned Additional Sessions Judge-01, New Delhi the petitioner's bail application was dismissed.

10. *Per contra*, counsel for the complainant submitted that a case against accused Sanjiv Dutta has been brought on the grounds that he is also equally involved in this entire conspiracy to dupe the complainant of their money. He pointed out that Sanjeev Dutta's involvement is self-reflected by way of receipt dated 27.06.2012 wherein he received part sale consideration amounting to Rs.1.25 crores from the complainant towards the sale of Plaza farm house. Sanjeev Dutta signed and executed the said receipt. Learned counsel also submitted that as per the complainant, the petitioner is also

involved in other offences and the petitioner has concealed order dated 15.02.2014 whereby the learned Additional Sessions Judge, New Delhi dismissed application under Section 438 of Cr.P.C. filed by co-accused Jyoti Dutta for Interim Bail. They further submitted that the accused filed a Crl.M.C. No.819/2014 and the same was disposed of with directions to decide the application for anticipatory bail on merits without insisting on personal appearance of the petitioner. This miscellaneous petition was also concealed by the petitioner. He further submitted that the petitioner has concealed the first MOU dated 06.03.2013 and that the discrepancies related to Rs.2 crores were a mere act of creating confusion on behalf of the petitioner. He also submitted that the complainant had paid a sum of Rs.2 crores uptill 29.05.2012 to the petitioner and the other co-accused, so no confusion lies regarding the said sum. The endorsement made by the complainant on the backside of the original cheque had been erased by erasing the name of Sunil Gupta, husband of Sunita Gupta and re-writing "Rajinder" in its place, which is a serious offence of not just cheating, but forging Negotiable Instruments as well as opening fake bank accounts and thus the petitioner's attempt to call it a mere civil dispute is not acceptable.

11. As regards the facts pertaining to the involvement of the petitioner in the present matter, learned counsel for the complainant urged that the present petitioner Sanjiv Dutta himself has received total

payments of Rs.2,25,00,000/- (Rupees two cores twenty five lakhs) from the complainant in the following manner:

- (i) Rs.50,00,000/- vide cheque No.005901, dated 29.05.2012 of Axis Bank,
- (ii) Rs.50,00,000/- vide cheque No.005902, dated 29.05.2012 of Axis Bank,
- (iii) Rs.50,00,000/- vide RTGS's dated 27.06.2012 of Axis Bank,
- (iv) Rs.75,00,000/- cash received on 27.06.2012 vide receipt of Rs.1.25 crore dated 27.06.2012.

12. Learned APP for the State submitted that as per the status report during investigation, present accused denied receiving cash payment of Rs.75 Lakh and declared the receipt of Rs.1.25 crores, dated 27.06.2012 as forged. Learned counsel also submitted that the petitioner admitted the credit of Rs.1.5 crores in his bank account by complainant through two cheques of Rs.50 lakhs each and RTGs of Rs.50 lakhs and further stated that cash of Rs.1 crore were paid by him to the complainant Sh. Yogesh Mailk, through his Son Varun Dutta as Mr. Yogesh Malik was in need of cash of Rs.1 crore against the cheque. The accused admitted receiving payment of Rs.50 Lakhs from the complainant as personal help. He further submitted that the petitioner is a habitual offender and is also involved in two other criminal cases of similar nature, i.e., case FIR No.129/13, dated 25.07.2013 u/s 420/467/468/471/506/120-B IPC registered at P.S. Crime branch, Delhi and case FIR No.727/13, dated 30.07.2013 under

Section 420/120-B IPC, PS Safdarjung Enclave, New Delhi and in both the cases investigation is going on.

13. I have carefully considered the submissions made by learned counsel for the petitioner, learned APP for the State as well as learned counsel for complainant.

14. The petitioner has received a sum of Rs.2.25 crores on various occasions. Thereafter, a sum of Rs.60,00,000/- (Rupees Sixty lakhs) and Rs.11,00,000/- (Rupees Eleven lakhs) were withdrawn in cash by one Chhavi Mehndiratta, who is an employee of the petitioner from the same account in which the complainant deposited a total sum of Rs.2.25 crores. In addition to above transactions, a sum of Rs.10 lakhs, Rs.18,94,247/- and Rs.50 lakhs were also withdrawn from the same account. The receipt of Rs.1.25 crores dated 27.06.2012 shows that he had received the said amount on instructions of his son, Varun Dutta for the sale of disputed property. Learned Additional Sessions Judge, Delhi, after hearing detailed arguments granted interim protection to the petitioner and trail of the cheated money was collected from Oriental Bank of Commerce, Kirti Nagar, Delhi. Subsequently, the petitioner was asked about the money trail leading to his account, which the petitioner failed to explain. The allegations against the petitioner are that he along with his family members are involved in duping people of their money.

15. From the investigation, it is clear beyond any cavil that a sum of Rs.2.25 crores was credited in the account of the petitioner. As per status report the petitioner himself admitted to have the knowledge of certain amount of money being credited to his account. Thus, it is not a fit case for grant of anticipatory bail.

16. Having considered the totality of facts and circumstances of the case, in my view the petitioner is not entitled to anticipatory bail. Accordingly, the application is dismissed.

(VED PRAKASH VAISH)
JUDGE

SEPTEMBER 22nd, 2014
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