

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

**Date of decision: 25<sup>th</sup> August, 2014**

**+ BAIL APPLICATION 1692/2014**

**SHRI KULDEEP SINGH** ..... Petitioner

Through: Mr. K. Sunil, Advocate.

versus

**STATE** ..... Respondent

Through: Mr. Navin Sharma, APP for the  
State with SI Sanjay Kumar Singh,  
P.S. Burari.

Mr. Sonal Sinha, Advocate for  
complainant.

**CORAM:**

**HON'BLE MR. JUSTICE VED PRAKASH VAISH**

**VED PRAKASH VAISH, J. (ORAL)**

1. This is a second application under Section 438 of Code of Criminal Procedure, 1973 seeking anticipatory bail in case FIR No.398/2013 under Sections 120B/420/201/506/34/406 IPC registered at P.S. Burari, Delhi.

2. Learned counsel for the petitioner submits that the earlier application seeking anticipatory bail filed on behalf of the petitioner was dismissed by this Court on 26.05.2014. Thereafter, the petitioner engaged an handwriting expert to compare the signatures of the petitioner on the alleged agreement to sell dated 17.07.2012, which was entered into between the petitioner and Mr. Manvvar Hussain. The handwriting expert opined that the signature and thumb impression of the petitioner on the Agreement to Sell are an attempt to forge the same. Therefore, he

submits that the signature and thumb impression on the alleged Agreement to Sell are forged.

3. Learned counsel for the petitioner also submits that the petitioner has verified this fact from Shri Satish Kumar Tiwari, Notary Public who had allegedly attested the said Agreement to Sell and it was revealed that there is no entry in the register of Notary Public and the said Agreement to Sell has not been attested by Notary Public, Shri Satish Kumar Tiwari. Learned counsel further submits that the stamp paper on which the alleged Agreement to Sell was executed was sold by one Smt. Babita Sharma vide serial No.825 dated 16.07.2012. The petitioner on the basis of information received under Right to Information Act came to know that the said stamp paper was not sold by Smt. Babita. Learned counsel for the petitioner urges that the Agreement to Sell dated 17.07.2012 is a forged document and does not bear the signatures of the petitioner.

4. Learned counsel for the petitioner has relied upon judgments in cases '**Ram Govind Upadhyay vs. Sudarshan Singh and Ors.**', *AIR 2002 SC 1475*; '**Mohinder Rani Johar vs. State of NCT of Delhi**', *117 (2005) DLT 619*; '**Yogender Pratap Singh vs. State**', *2009 (2) JCC 1314* and '**Qamardin vs. Emperor**', *1922 Lahore 475(2)*.

5. On the other hand, learned APP for the State submits that the petitioner moved an application for anticipatory bail before learned Additional Sessions Judge (Central), Tis Hazari Courts, Delhi, which was dismissed vide order dated 05.04.2014. He also submits that learned Additional Sessions Judge asked the petitioner that whether he is ready to deposit a sum of Rs.1,50,00,000/- (Rupees One crore fifty lakhs only)

which he refused to deposit. He has also pointed out that learned Additional Sessions Judge has observed that on comparison, the admitted signatures on the document produced by the applicant appeared to be the same as the alleged signatures acknowledging the payment on the back of the agreement (Ikrarnama dated 16.07.2012). It was also observed that the receipt of the payment along with the signatures of the applicant also bears his thumb impression and it is a known fact that thumb impression of two persons can never be the same. Thereafter, the petitioner moved an application for anticipatory bail before this Court and same was dismissed on 26.05.2014.

6. Learned APP for the State also submits that the petitioner has not joined the investigation and is absconding. He further submits that non bailable warrants have already been issued against the petitioner and thereafter process under Section 82 Cr.P.C. was also issued by learned Metropolitan Magistrate vide order dated 16.07.2014. The process under Section 82 Cr.P.C. was published but the petitioner did not appear before the trial court and thereafter, process under Section 83 Cr.P.C. was issued. Learned APP for the State further submits that the applicant has been declared proclaimed offender vide order dated 23.08.2014 and, therefore, he is not entitled to anticipatory bail.

7. The facts of the case as set out in FIR are that the applicant executed an Agreement to Sell dated 17.07.2012 in respect of plot measuring 400 sq. yds. situated in Khasra No.27/19, 27/17/20 of Village Jharoda Majra, Burari, Delhi. He further submits that one Mr. Tasim informed the complainant that the petitioner had agreed to sell the said plot to Manvvar Hussain @ Rs. 45,500/- per sq. yards vide agreement

dated 16.7.2012 and the said Manvvar Hussain had paid Rs. 19 lacs to the petitioner as bayana. He submits that on 25.08.2012, the complainant paid earnest money of Rs.21,00,000/- (Rupees Twenty one lakhs only) in cash and two post dated cheques for Rs.7,00,000/- (Rupees seven lacs) to Tasim who in turn handed over a sum of Rs.28,00,000/- (Rupees Twenty eight lakhs) (Rs.21,00,000/- in cash and Rs.7,00,000/- by way of two post dated cheques) to the applicant and obtained the acknowledgement of the said amount at the back side of the agreement dated 16.07.2012. He further submits that the complainant also paid a sum of Rs.15,00,000/- (Rupees Fifteen lakhs only) on 22.09.2012 and Rs.29,00,000/- (Rupees Twenty nine lakhs only) on 25.09.2012 to Tasim, who handed over the said amount to the petitioner and the petitioner acknowledged the same on the back of the agreement and put his signatures and thumb impression. He submits that the complainant also paid a sum of Rs.40,00,000/- (Rupees Forty lakhs only) on 22.10.2012 to Tasim, who handed over the same to the petitioner, but the petitioner showed pistol to Tasim and refused to give any receipt of Rs.40,00,000/- (Rupees Forty lakhs only) and also refused to return the original agreement to sell.

8. The law regarding second application seeking anticipatory bail was considered by the Apex Court in '**Ram Govind Upadhyay vs. Sudarshan Singh and Ors.**', *AIR 2002 SC 1475*, wherein it was held that it is a duty incumbent upon the Court to explicitly state the reasons as to why there is sudden departure in the order of grant as against the rejection just about a month ago.

9. In another case in '**Madhu Mehta vs. Union of India**', *AIR 1989 SC 2299*, it was observed as under: -

“Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact situation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J. only a couple of days before, in the absence of any substantial change in the fact-situation”

10. In '**Lavesh vs. State (NCT of Delhi)**', (2012) 8 SCC 730, Hon'ble Supreme Court of India observed that: -

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was 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 declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

11. In the instant case, the applicant moved an application for anticipatory bail being Bail Application No.849/2014, which was dismissed by this Court by detailed order dated 26.05.2014. The petitioner did not join the investigation and the process under Sections 82

and 83 of Cr.P.C. were issued against the petitioner and he was declared as proclaimed offender.

12. Keeping in view the totality of the facts and circumstances of the case, the petitioner is not entitled to anticipatory bail. Hence, the petition is dismissed.

**Crl.M.A No. 11573/2014**

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)  
JUDGE**

**AUGUST 25, 2014**

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