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

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Reserved on: 07.11.2023
Pronounced on: 17.11.2023

+ **BAIL APPLN. 2012/2018**

JAIKARAN

..... Petitioner

Through: Ms. Shalini Kaul, Advocate.

versus

STATE (NCT) OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the State.

Mr. Hamid Ali, Advocate for
 respondent No. 2 along with
 respondent No. 2 in person.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant application under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by applicant seeking anticipatory bail in FIR bearing no. 58/2018, registered at Police Station Sarita Vihar, Delhi, for the offences punishable under Sections 403/406 of the Indian Penal Code, 1860 ('IPC').

2. Briefly stated, the facts of the case are that the complainant Mr. Ravinder Singh had filed a complaint alleging therein that in the year 2012, the applicant Jaikaran and his sons had induced him to make



investment through them for earning good profits and they had told him that they had good knowledge of locality of District Palwal. On their assurance and inducement, the complainant had agreed to invest in the property/land situated at Village Rasoolpur, Palwal. A meeting had taken place at the residence of the complainant with the landlords/owners of the property i.e. Narender, Sardar and Govind in presence of applicant and his sons. After negotiations, the landlords of the land had agreed to sell their land measuring 5 acres @ Rs.42 Lakhs per acre. On the same day, the complainant had given Rs. 40 Lakhs to the applicants, which were given to the landlords by the applicant in the presence of the complainant. At the time of handing over of the money, one Mahender was also present there since all of them were relatives and he had agreed to purchase the said land. It is alleged that applicant had also convinced the complainant to get registered the said land in his name directly as he was residing in Delhi. Both the sons of applicant had also supported the version of their father and at their assurance, the complainant had agreed to get the land registered in the name of applicant and the agreement to sell of the land registered in the name of applicant and the agreement to sell the land was executed in favour of the applicant by the complainant. A commission at the rate of Rs. 5 Lakhs per acre was fixed which was to be paid by the applicant for his role in the deal. It is further the case of the prosecution that the complainant and accused persons had contacted the owner of M/s Karambhoomi Real Estate to sell their plots at the rate of Rs. 2,000/- per sq. yrd. and an advance payment of Rs. 4,51,000/- was made to the complainant by one Mr.



Karambir Lohia, the owner of Karambhoomi Real Estate. The complainant had handed over the same amount to the applicant for the purpose of making payment to the landlords and had also informed Mr. Karambir Lohia to make payment directly to the applicant on his behalf. The applicant had also assured the complainant that he would make payment to the landlords and hand over the rest of money to him after deducting his commission. No written agreement was executed between them as both of them were relatives. The complainant was assured that the accused persons were doing their job properly but they had not given any money to the complainant despite lapse of two years. When the complainant had approached them for the details of the money received by applicant from buyers, applicant had started ignoring him and had told him that he had not received money from Karambir Lohia. Thereafter, the complainant had approached M/s Karambhoomi Real Estate and had come to know that accused persons had already received Rs. 2,90,51,400/- till that day. Thereafter, he had again asked the accused persons about the money received from M/s. Karambhoomi Real Estate and on 07.02.2014, the applicant had given to the complainant in writing that he will give Rs. 1,61,00,000/- to him. Subsequently, the applicant had returned Rs. 30 Lakhs and had assured the complainant that he would make payment of remaining amount as soon as possible after making arrangement of money. However, no payment was made to the complainant, leading to the registration of present FIR under Sections 403/406 of IPC and during investigation, Sections 420/34 IPC were invoked in the present case.

3. During investigation, necessary documents were collected from



the complainant and original settlement papers were also taken in possession by police. As per prosecution, settlement papers reflect that the applicant had given in writing that an amount of Rs. 1,61,00,000/- was to be paid to the complainant by him. Some other witnesses including landlords, and the partners of M/s Karambhoomi Real Estate were also examined who corroborated the version of the complainant.

4. Learned counsel for applicant argued that the dispute in this case is civil in nature between the parties over some business transactions which has been given colour of criminal case. It is stated that applicant is willing to join investigation and since there is no requirement for custodial interrogation of applicant therefore, bail application be allowed.

5. Learned APP for the State, on the other hand, submits that the interim protection in this case was obtained on false pretext by misleading this Court, and the applicant had not co-operated with the investigating agency after interim protection was granted to him. It is further argued that FSL report in this case is against the applicant which was received after interim protection was granted to him. It is stated that in view of the same, custodial interrogation of the accused is required for ascertaining the facts and for establishing the money trail. It is also stated that in order dated 14.02.2019, it has been mentioned by the complainant that applicant has assured him payment of sum of Rs.1,61,00,000/-. It is stated that a false statement has been made by the applicant before this Court that he had not entered into any agreement with the complainant, whereas the FSL report supports the prosecution case that the entries in the diary are in



the hand writing of applicant. It is further submitted that though the parties were referred to mediation by this Court, the accused has also failed to settle the matter with the complainant. Therefore, it is prayed that present bail application be dismissed.

6. Learned counsel for applicant, to the contrary, argues that the diary entries were merely made in anticipation as to how much profit the applicant may get in the transactions between the parties which are civil in nature.

7. This Court has heard arguments addressed by learned counsel for applicant and learned APP for the State, and has perused the material on record.

8. In the present case, witnesses have corroborated the case of prosecution in their statements regarding the transactions and the money owed by the present applicant to the complainant. In the order dated 01.05.2023, this Court had already recorded detailed observations on the aspect of hand-written notes of the applicant regarding his liability of Rs.1,61,00,000/- towards the complainant. The relevant portion of this order is extracted hereunder for reference:

“8. ...An order dated 14.02.2019 vide which interim protection had been granted to the present accused/applicant shows that learned counsel for applicant had disputed the hand written notes and signatures thereon of the applicant on the note of accounts which mentions that the applicant had to pay a sum of Rs. 1,61,00,000/- to the complainant. The FSL report which has been received in the Court today, however, now makes it clear that the note of account is in the hand writing of the present applicant wherein he has mentioned that a sum of Rs. 1,61,00,000/- has to be given to the complainant.



9. Moreover, in furtherance of order dated 14.02.2019, though the applicant had joined the investigation, he had not co-operated with the investigating agency. He has also paid a sum of Rs. 30 Lakhs to the complainant towards part of his liability of Rs.1,61,00,000/-. Learned counsel for applicant had placed reliance on the decision of ***L.K. Advani vs. Central Bureau of Investigation (supra)*** regarding the entries in the hand writing of the concerned parties, however, the said judgment is of no help to the applicant since that was on different facts & circumstances. In this case, the entries of note of account are in the hand writing of the applicant himself where the parties have mentioned as to what is the amount owed and the manner in which it is owed to them. While deciding this application, this Court also takes note of the fact that the parties belong to rural background and the note of account is thus made in their own handwriting as generally people who are close relatives as they are in the present case make...”

9. The relevant portion of FSL report is also reproduced below, which reads as under:

“(a) The person who wrote the red enclosed writing stamping and marked S1 to S11 also wrote the red enclosed writing similarly stamped and marked Q1. (*applicant/accused*)
(b) The person who wrote the red enclosed writing stamped and marked S12 to S21 also wrote the red enclosed writing similarly stamped and marked Q2 to Q4. (*complainant*)
(c) The tint & luster of the ink of writing existing in red enclosed portions marked Q1 and Q2 to Q4 is found to be similar in nature.”

10. However, this Court had granted one more opportunity to the applicant to join investigation. The Court had also suggested to both the parties to explore possibility of mediation and had accordingly referred the matter to mediation *vide* order dated 01.05.2023. On 10.08.2023, however, it was stated by learned counsel for the accused/applicant that the mediation in this case could not succeed.



11. This Court *vide* its order dated 01.05.2023, had also directed applicant herein to join investigation, however, he had not co-operated with the investigating agency, as stated on behalf of the State. Learned APP for the State, on the instructions of the Investigating Officer present in the Court has stated that custodial interrogation of applicant/accused is required to unearth the conspiracy, and for establishing the money trail. As per version of the complainant, applicant/accused had earlier paid a sum of Rs.30 Lakhs to complainant towards part of his admitted liability of Rs.1,61,00,000/- and has failed to make payment of remaining amount to the complainant. Further, the FSL report regarding the hand written notes is against the applicant/accused.

12. Considering the overall facts and circumstances of the present case and the material against the applicant as discussed in preceding paragraphs, and in view of the fact that applicant has not cooperated with the investigating agency, this Court finds no ground to grant anticipatory bail to the applicant/accused. In view thereof, the interim order stands vacated.

13. Accordingly, the present bail application is dismissed.

14. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 17, 2023/kd