

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49806 of 2023

Applicant :- Vinay Kumar Dubey

Opposite Party :- State of U.P.

Counsel for Applicant :- Awadhesh Kumar Srivastava, Santosh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal, J.

1. Heard Sri Awadesh Kumar Srivastava, learned counsel for the applicant, Sri Jitendra Kumar Jaiswal, learned A.G.A. for the State and perused the entire material brought on record.

2. The present application under Section 439 Cr.P.C has been filed seeking bail in Case Crime No.51 of 2022, under sections 406, 420, 467, 468, 471, IPC, Police Station Bhadohi, District Bhadohi.

3. Learned counsel for the accused-applicant submitted that the applicant is innocent and he has been falsely implicated in the instant case due to ulterior motive. Informant is the Branch Manager of the Union Bank of India, S.S.I. Branch, Bhadohi. Occurrence is said to have taken place during the time period of 03.02.2016 to 27.11.2021, however, the F.I.R. has been registered on 09.03.2022 i.e. almost after six years of the alleged incident. During the investigation statements of informant were recorded on 21.03.2022 and additional statements were recorded on 25.10.2022. Allegations levelled as per the FIR is that Laxmi Shankar Mishra had taken loan to the tune of Rupees Twenty Five Lakh under housing loan scheme on 03.02.2016 for purchasing flat from M/s Deep Construction Vivekanandpuram Colony, Varanasi, through its Director Vinai Kumar (the present applicant) in Arazi No.108. Registered agreement to sell

No.9144 dated 21.12.2015 was executed and in pursuance of registered agreement to sell, sale deed No.831 dated 06.02.2016 was executed in favour of Laxmi Shankar Misha for Flat No.G-1 ground floor area 1220 sq. mets. The alleged sale deed No. 831 was taken in by the Bank as security against mortgage. In the above noted sale deed No.831 dated 06.02.2016, the name of Subash Mishra and Smt. Poonam Mishra were wrongly mentioned, who had taken as a guarantor of disbursement of loan. Co-accused Gopal Pandey, had also obtained loan amount of Rupees Nineteen Lakh Twenty Thousand under the same scheme from from the complainant Bank for flat No.G-2 ground floor, from the same construction company M/s Deep Construction Company and agreement to sale No.8795 dated 08.12.2015 had taken place. Finally sale deed No.343 dated 21.01.2016 was executed in the name of co-accused Gopal Pandey. Sale deeds were taken in possession by the complainant Bank as a security against the mortgage. It is also stated that one person namely Lallan Pandey was mentioned as a guarantor. It is further stated that an inspection was conducted by complainant bank of the alleged property in dispute and it was found that on ground floor only parking place has been shown and there was no flat construction on ground floor. The map was properly sanctioned by the developing authorities on 15.07.2014 and construction was not made according to sanctioned map. It is further stated that builder/developer and two co-accused stated that inadvertently flat no.G-1 and G-2 are wrongly mentioned in the place of 101 and 102, respectively, therefore, modification application was moved before Sub-Registrar, Varanasi for correction in the deed No.725 dated 29.10.2020 and correction deed No.8795 dated

20.11.2020, respectively. Complainant bank again inquired through its bank penal lawyer Rajendra Krishn Srivastava, who submitted reports dated 04.11.2020 and 21.11.2020 by which supplementary correction deed has been found correct. When the bank authorities reached on the spot for inquiry, it was found that one Smt. Suman Singh was in possession over flat no. 101 by sale deed No.4859 dated 03.08.2018, which was executed by applicant in her favour. The correction deed papers were not found in the office of Sub-Registrar, Varanasi. Both the mortgage were declared Non Performing Assets (NPA) and outstanding amount of Rupees Twenty Six Lakhs and Sixty Four Thousand Four Hundred Fifteen is shown as balance against the account of Laxmi Shankar Mishra and outstanding balance against Gopal Pandey is found Rupees Seventeen Lakh Fifty Four Thousand Seven Hundred Eighty Nine. Thereafter, FIR was lodged against the present applicant that after collusion with two other co-accused, forged document were prepared under the conspiracy and fraud has been committed for the total amount of Rs.44,19,2046/-. It is submitted that during the investigation name of Gopal Pandey has been struck off as he has deposited Rs.19 lacks of the loan amount. Criminal history of the applicant of 8 cases have been explained in para-21 to the affidavit filed in support of bail application. It is submitted that applicant has no concern with the complainant bank neither applicant has taken any loan from bank nor any assets property belonging to applicant has been mortgage before the bank. No offence under sections 406, 420, 467, 468, 471, IPC, is made out against the applicant. Applicant is languishing in jail since 28.07.2023 in Case Crime No.866 of 2022, under sections 147, 452, 304 read with section 34 IPC, Police Station

Aurai, District Bhadohi. If the applicant is released on bail he shall not misused the liberty of bail and shall co-operate with the trial. There is no chance of absconding or tempering with the prosecution witnesses.

4. On the contrary, learned AGA for the State has opposed the prayer of bail and submitted that applicant has criminal history of same nature and he had committed same nature of crime in Bhadohi, Varanasi and Bareilly, etc. In the scheme of construction, no flat was to be constructed on ground floor, however, to obtain the loan with the collusion of co-accused Gopal Pandey and Laxmi Shankar Mishra applicant managed to obtain loan without any intention to return it and executed sale deed in favour of co-accused Laxmi Shankar Mishra and Gopal Pandey without any such property. It is further submitted that two supplementary correction applications are said to have filed with the office of Sub-Registrar, but on the inquiry no such supplementary correction applications was found. It is further submitted that flat No.101 is registered in the name of one Smt. Suman Singh wife of Pradeep Kumar and the sale deed was executed by the present applicant Vinay Kumar Dubey vide sale deed no.4859 dated 03.08.2018. Learned Standing Counsel for Bank Sri Sanjay Srivastava has specially stated in his statement under section 161 Cr.P.C. that he is engaged only for documentation and and he is not expected to report regarding the factual position of property and when two different sale deeds were found and no supplementary correction deed is found in the Sub-Registrar, Office he reported the same to the bank. Field officer Supriyo Hazara stated in her statement that both the impugned flat were facing each other and construction was

in the last stage, however, she could not disclose the floor of said flats. It is further submitted that accused is habitual offender and if he is released on bail he shall repeat the crime of like nature and not co-operate with the trial.

5. I have heard the rival submissions advanced on behalf of the parties and perused the entire material brought on record.

6. From the perusal of records it transpires that M/s Deep Construction Company is under the directorship of the present applicant who sold the flats to the different purchasers. It is admitted fact, corroborated with annexure no.7 that buyers have agreed residential flat no.G-1 ground floor, having super buildup area 1220 sq. fit. in the apartment known as Deep Residency. It is also admitted that there is no flat on the ground floor and the construction was started from first floor. Flat No.101 is owner in possession of Smt. Suman Singh wife of Pradeep Kumar. As per the report of second lawyer Sri Sanjay Srivastava, no supplementary correction deed was found in the office of Sub-registrar. It is also on record that applicant as well as Lakshmi Shankar Mishra were absconding from their residential addresses and if they are released on bail then there is strong probability that applicant shall not co-operate with the trial. Applicant has criminal history of 8 cases of like nature, which have been explained in para-21 of the affidavit filed in support of bail application and in all the cases he has been enlarged on bail. The criminal history of the applicant goes to show that after releasing on bail, the applicant has repeated the new crime. As per the authorized map of V.D.A. regarding the disputed property three floors are to be constructed besides the basement. There is no basement found on the spot. Apparently the applicant executed sale deeds of those

so called flats G-1 and G-2 to the co-accused Laxmi Shankar Mishra and Gopal Pandey, which are not in existence nor they are approved in the map, hence, the applicant has initially in-intention to cheat the buyers by conspiracy and collusion with the co-accused. Hence at this stage the applicant do not deserves leniency to be released on bail and his bail application is liable to be rejected.

7. In the aforesaid circumstances as well as considering the gravity of offence, no ground for bail is made out at this stage.

8. Accordingly, the present bail application is hereby rejected at this stage.

(Renu Agarwal,J.)

Order Date :- 30.11.2023
VKG