

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 2286 of 2023

Applicant :- Mahesh Kumar Tulsiani (Mahesh Tulsiani As Per Fir)

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko.

Counsel for Applicant :- Abhinav Mishra, Vaibhav Kalia

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Vaibhav Kalia Advocate, the learned counsel for the applicant, Sri Anant Pratap Singh, the learned AGA for the State and Sri Anuj Tandon, Advocate, who has put in appearance on behalf of the informant and filed his vakalatnama.

2. The instant application has been filed seeking release of the applicant on anticipatory bail in Case Crime No. 595 of 2021, under Sections 409, 420, 504, 506, 467, 468, 471 & 120-B IPC, Police Station Vibhuti Khand, District Lucknow.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 08.11.2021 against the applicant and his brother Anil Kumar Tulsiani, alleging that the complainant had booked three flats in the name of his company in Golf View Apartment Scheme in the year 2012. The flats were not constructed within the stipulated period and the flats had not been finished properly. No penalty was paid for the delay in handing over the flats. The complainant had sold away one flat in the year 2015. The FIR categorically states that some consideration remains to be paid by the complainant. It is further alleged that the entire building had been mortgaged by the accused persons with a bank and the loan account was declared N.P.A. and the bank took over possession of the flats.

4. In the affidavit filed in support of the application, it has been stated that the applicant is innocent and he has falsely been implicated in the present case. In para 59 of the affidavit, the applicant's involvement in 7 other cases have been disclosed. Two F.I.Rs. lodged against him have been challenged before this court, in one case he has been granted bail by this court and two matters have been referred to the Mediation Centre.

5. The learned counsel for the applicant has submitted that the dispute is entirely of civil nature regarding which no civil proceedings have been initiated by the informant. It has also been submitted on behalf of the applicant that one of the co-accused person Anil Kumar Tulsiani has already been enlarged

on bail by this court by means of an order dated 23.08.2023, passed in Criminal Misc. Bail Application No.14783 of 2022.

6. Sri Anuj Tandon, learned counsel for the informant while opposing the anticipatory bail application has submitted that the applicant is not cooperating with the investigation. He has provided a copy of the order dated 09.08.2023, passed by a Division Bench of this Court in Criminal Misc. Writ Petition No.6232 of 2023 in support of his contention.

7. The aforesaid order merely records contention of the petitioner and the court has not made any observations in this regard in the aforesaid order. It has further been submitted that one of the flats allotted to the complainant has been sold to some third party. While granting the bail to co-accused Anil Kumar Tulsiani this court has recorded in the order dated 23.08.2023, passed in Criminal Misc. Bail Application No.14783 of 2022 that *"what prima facie appears from the averments made in the FIR is that the complainant's company had entered into an agreement to purchase three flats in Golf View Apartment Scheme launched by Tulsiani Construction and Developers Private Limited, of which the applicant is a director. The complaint has not disclosed the name of the company which had booked the flats, although the allottee company would be a separate juristic person. From the material available before the Court at this stage prima facie it appears that no registered agreement had been executed between the parties regarding purchase of flats where any agreement for purchase of immovable property of value exceeding Rs. 100/- can only be made through a registered agreement, after payment of the prescribed stamp duty and registration fee."*

8. The corporate entity which had entered into agreement for purchasing three flats and evaded payment of stamp duty and registration fee payable in respect of the agreement for purchase of the flats, and which has kept itself veiled, has committed an offence of evasion of stamp duty payable to the public exchequer, thereby illegally depriving the public at large of the benefits of that amount, which affects every single citizen of the country.

9. Although the amount of stamp duty and registration fee payable in respect of three agreements may prima facie appear to be small, the Court cannot restrain itself from observing that now-a-days a trend is developing very fast that persons acquire interest in immovable properties evade payment of stamp duty and registration fee and the cumulative effect thereof causes a significant loss to the public exchequer. Thereafter when some

disputes occur, the purchasers initiate criminal prosecution for putting pressure on the seller to transfer the property or to repay their amount, because they cannot invoke the civil remedies for the reason that the unregistered agreement is inadmissible in evidence and no rights can be claimed in respect thereof in civil proceedings.

10. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that to other matters of similar nature have been referred by this Court to the Mediation and Conciliation Centre of this court, indicating that in those matters also the view of the court was that the matters can be settled between the parties by payment of some amount, which settlement would obviously be in the nature of a contract falling within the realm of civil law and without making any observations which may affect the outcome of the case, I am of the view that the aforesaid facts are sufficient for making out a case for granting anticipatory bail to the applicant.

11. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of applicant-Mahesh Kumar Tulsiani (Mahesh Tulsiani As Per Fir) before the learned Trial Court in the aforesaid case crime, he shall be released on anticipatory bail on his furnishing personal bond and two solvent sureties, each in the like amount, to the satisfaction of S.H.O./Court concerned on the following conditions and subject to any other conditions that may be fixed by the Trial Court:

(i). That the applicant shall appear before the trial court on each date fixed, unless personal presence is exempted;

(ii). That the applicant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence;

(iii). That the applicant shall not pressurize/ intimidate the prosecution witness.

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(Subhash Vidyarthi, J.)

Order Date :- 18.10.2023

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