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

\+ BAIL APPLN. 721/2016

AMIT KUMAR YADAV ..... Petitioner

Through: Mr.A.K. Verma and Mr.Siddhartha Yadav, Advocates.

versus

GOVT OF NCT OF DELHI ..... Respondent

Through: Ms.Rajni Gupta, APP for the State Mr.Mohit Mathur, Sr. Advocate with Mr.G.S. Chauhan and Mr.Badar Mahmood, Advs. for Complainant

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

<u>O R D E R</u>

% **28.04.2016**

<u>BAIL APPLN. 721/2016</u>

1. By way of this bail application filed under Section 438 Cr.P.C., the petitioner is seeking anticipatory bail in case FIR No. 58/2016 under Section 420 IPC, PS Vasant Kunj South, New Delhi, registered on the complaint made by Rishipal Yadav against Amit Kumar Yadav.

2. The case against the petitioner is that in last week of December, 2013, he contacted the complainant for sale of 1/8th share of agricultural land of the total land measuring 25 Bighas 13 Biswas, bearing Khasra No. 995(4-16), 1008(4-16), 1011(4-16), 1032(2-8), 1033(4-3), 1034/2(3-2), 1035/2(1-12), situated in the revenue Estate of Village Rajokari, District South West, New Delhi, claiming himself to be the sole, absolute and exclusive owner of the said property as he was in dire need of money. The complainant agreed to purchase the said property for a sum of ₹2 crores for which he paid ₹90

lacs vide cheque No. 094729 dated 01.01.2014 drawn on HDFC Bank, village Kapashera, New Delhi and ₹1.10 crores in cash. On 01.01.2014 the petitioner executed the agreement to sell and other documents and also handed over the physical possession of the said property.

3. Thereafter the complainant asked the petitioner to execute and register the sale deed but he started avoiding and even switched off his mobile phone and also left the village. The complainant also contacted the parents of the petitioner but they were also not aware of his whereabouts. Thereafter legal notice was served on the petitioner. The complainant also came to know that the petitioner had also executed agreement to sell dated 22.11.2013 in respect of the same property after receiving the total consideration amount of ₹50 lacs, in favour of M/s Dextrous Builders Pvt. Ltd. Thus he had cheated the complainant for which action was prayed against him and FIR No. 58/2016 under Section 420 IPC at PS Vasant Kunj South, New Delhi was registered.

4. The petitioner filed anticipatory bail application dated 23.03.2016 before the learned ASJ which has been rejected for the following reasons:

> *"During investigation, it has surfaced that on 21.11.2013 applicant/accused had executed GPA and other documents in respect of one bigha of land out of his total share in favour of Sh. Neeraj Kumar for a consideration of ₹3.25 crores and the said Neeraj Kumar is stated to be in possession of 722 Sq. Yds. out of the said land. It has further come in the investigation that immediately on the next day i.e. on 22.11.2013 applicant/accused again executed an agreement to sell in respect of 3000 sq. Yds. i.e. the land in question with Sh. Zhagender Yadav, Director of M/s Dexterious Builders Pvt. Ltd. for a total sale consideration of ₹50 Lacs and the said amount was paid to applicant/accused through two cheques. IO has already seized the bank statement of the applicant/accused showing credit of the said amounts in his*

bank account. Although Ld. Counsel for the defence has denied having executed any GPA or agreement to sell, etc. in favour of the complainant and has taken a plea that he had taken loan of ₹1 Crore but no satisfactory explanation has been furnished how he could sell the same piece of land to Sh. Neeraj Kumar on 21.11.2013 and to Dexterious Builders on 22.11.2013. Applicant has not filed any document in respect of the loan taken by him from the complainant of a huge sum of ₹1 Crore and the purpose for which the said loan was taken, if any. His plea that the applicant/accused signed on blank papers is a matter of investigation. The overall allegations are very serious in nature. Custodial interrogation of the applicant/accused is required to unearth all the facts relevant to the matter.

In totality of the facts and circumstances, it is not a fit case for grant of anticipatory bail to the applicant/accused and hence the present application has no merit and the same is dismissed."

5. Learned counsel for the petitioner submitted that both the parties are closely related to each other. Petitioner and the complainant are cousin as Lt. Sh. Sita Ram was their great grandfather. Regarding the transaction between the parties it is submitted that the complainant gave a loan of ₹1 crore, out of which ₹90 lacs was given vide cheque No. 094729 on 01.01.2014 and ₹10 lacs was given after 10 days vide cheque No. 094730. While giving cheque of ₹90 lacs on 01.01.2014, the complainant with a view to secure his loan, got GPA, Agreement to Sell, Affidavit, Receipt, Possession Letter and Will etc. signed from applicant and also took blank cheque duly signed by the petitioner to further secure the loan. Since, in case of failure to pay back loan, the complainant wanted to take double the amount back, the complainant had mentioned ₹1.10 crore as cash payment to the petitioner which in fact, was not given by complainant. The possession of the land was neither asked by the complainant nor given by the petitioner. Complainant charged interest for five months and then

started pressurizing the petitioner to sell the land. Complainant misused the signed cheque by filling his father-in-law's name i.e. Nand Ram on the cheque as beneficiary and cheque amount of ₹ 2.50 crores and date of 06.10.2015 on the cheque and got the same deposited through his father-in-law. Petitioner offered the complainant to take back the loan amount but he refused hence it is not a case of cheating.

6. It is also submitted that property is worth ₹ 20 crores and could not have been sold for ₹ 2 crores. The complainant had already filed suit for specific performance and while lodging FIR he did not make mention of his father-in-law – Nand Ram who has fraudulently used the cheque given by the petitioner and then filed a false case against him. Police machinery is being used by the complainant as a tool to black mail the petitioner.

7. On behalf of the State it has been submitted that the petitioner had sold the same property to other persons as well after receiving the amount as can be seen from the photocopy of statement of account of A/c No. 16701530000676 of HDFC Bank. State has also placed on record the copy of the GPA agreement to sell and purchase receipt, affidavit as well the copy of the cheque No.094729 dated 01.01.2014 for ₹90 lacs given to the complainant.

8. At the outset, it is necessary to highlight the manner in which un-accounted money is put in circulation and un-registered documents in respect of immovable property are being executed to secure such transactions. During the course of hearing Mr.Mohit Mathur, learned Senior Advocate was asked to explain the source of cash payment of ₹1.10 crores allegedly made by the complainant to the petitioner. Mr. Mohit Mathur submitted that the complainant is having agricultural income. Merely

because person is having agricultural income does not permit him to have liberty to enter into transactions in crores in cash. At the most source of income being agriculture, he may seek exemption from paying income tax on such income. The complainant is not able to explain as to why he is making payment of ₹90 lacs by cheque and why the payment of ₹1.10 crores was made in cash and whether this transaction and mode of payment was reflected in his income tax returns.

9. The nature of transactions and the manner in which they are conducted are pleaded by the petitioner in paragraph 5 to 11 of the application and in paragraph 12 of the application the petitioner has referred to another cheque No 094730 for a sum of ₹ 10 lacs given to him after a few days to contend that when the total consideration was ₹2 crores, ₹90 lacs was paid by cheque and ₹1.10 crores was paid in cash then for what purpose this cheque of ₹10 lacs was given to him.

10. At this stage it is not for this Court to go into this question about the extent of payment made or nature of transaction and what was the total consideration or what is the market value of the property which was allegedly purchased by the complainant for ₹2 crores. However, it is to be highlighted that photocopy of the documents placed on record on non-judicial stamp papers i.e. GPA agreement to sell are notorized copies whereas the immovable property cannot be transacted through un-registered document. As per the complainant the entire transactions was complete on 01.01.2014 including payment of total consideration of ₹2 crores and handing over of the possession then why documents were not got registered remains unanswered in the FIR. It may be necessary to point out here that in paragraph 4 of the application the petitioner has claimed that he along with

his younger brother had around 6,000 sq. yds. of land in village Rajokari, New Delhi. Out of that land around 722 sq. yds. of land was sold to one Mr.Neeraj Yadav for a sum of ₹3.25 crores on 21.11.2013. In paragraph No. 6 of the application the petitioner had stated that on 22.11.2013 he had taken loan of ₹50 lacs from one Sh. Zhagender Yadav @ 3 % per month on interest who gives personal loans on interest. He also secures his loan by getting the signature on blank papers some of which have been used to fabricate an agreement to sell etc. If the petitioner had sold part of his land on 21.11.2013 for a sum of ₹3.25 crores, then on very next day on 22.11.2013 he took ₹50 lacs on loan on monthly interest of 3% by signing blank papers, nature and the manner of such transactions are subject matter of investigation.

11. This is a case falling in the category of economic offences. The manner in which transactions have been conducted by the parties are not permissible under law. In ***State of Gujarat v. Mohanlal Jitamalji Porwal and Anr. AIR 1987 SC 1321***, the Hon'ble Supreme Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:

> *"The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest."*

12. In ***Lalit Goel v. Commissioner of Central Excise 2007 (3) JCC 2282***, this Court, while dealing with bail application in a case of Customs Act, observed that the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Noticing ever growing materialistic outlook setting unscrupulous elements on a prowl to maximize material gains by unlawful means, this Court even suggested appropriate legislative measure and judicial intervention to safeguard the interest of the State and public at large.

13. When the case of the petitioner is examined in the light of above parameters, I am of the opinion that petitioner does not deserve to be released on anticipatory bail which discretion needs to be exercised only in the exceptional circumstances.

14. The application seeking anticipatory bail is dismissed.

15. State is directed to share the information about such type of transactions with the Income Tax Department so that a detailed inquiry into the source of such money and the persons involved in such transactions can be dealt with by the said department.

16. Any observations made hereinabove for the purpose of dealing with the contentions raised for disposing of the bail application, shall not be deemed to be an expression on merits of the case.

CRL.M.A.5690/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

APRIL 28, 2016
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