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

\+ **BAIL APPLN. 2052/2014**

PRADEEP CHIKKARA ..... Petitioner

Through: Mr. Pankaj Vivek, Advocate.

versus

THE STATE ..... Respondent

Through: Ms. Radhika Kolluru, APP along with SI Jagmohan, PS-Chhawla, for the State.

Mr. Sunil K. Mittal, Mr. Naresh C. Sharma & Mr. Kshitij Mittal, Advocates for the complainant.

\+ **BAIL APPLN. 2061/2014**

DHARMENDER KUMAR ..... Petitioner

Through: Mr. Ravi Gupta, Senior Advocate along with Mr. Pankaj Vivek, Advocate.

versus

THE STATE ..... Respondent

Through: Ms. Radhika Kolluru, APP along with SI Jagmohan, PS-Chhawla, for the State.

Mr. Sunil K. Mittal, Mr. Naresh C. Sharma & Mr. Kshitij Mittal, Advocates for the complainant.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% **15.12.2016**

1. The petitioners have preferred their respective bail applications under Section 438 Cr PC to seek anticipatory bail in case FIR No.201/2013 under

Section 467/468/471/120B read with 34 IPC registered at PS Chhawla. The aforesaid FIR has been registered on the complaint of one Smt. Birwati, wife of Sh. Rakesh vide DD No.368 dated 27.04.2013 alleging that the two petitioners herein have forged some false documents relating to plot bearing No.31D, Vasant Kunj, which, at one point of time was allotted by the DDA in the name of her ancestors. She alleged that the petitioners had threatened her with implication in a false case.

2. In her FIR, the complainant stated that her father and uncles were jointly allotted plot A-94, Rangpuri, Vasant Kunj by the DDA. She stated that the family had jointly agreed to sell the said flat to one Sh. M.N. Sharma, Raj Nagar, Part II, New Delhi. Subsequently, the DDA cancelled allotment of Plot No.94 and, instead, allotted another plot No.D-31 admeasuring 250 sq mtrs. This plot was also agreed to be sold by the family of the complainant to Sh. M.N. Sharma. However, the DDA again cancelled the allotment of this plot and, instead, allotted Plot No.B-1-2. She stated that since the plot had been allotted in the name of her father and uncles, in order to get the same mutated, her brothers and sister decided to execute a relinquishment deed in her favour by getting the same registered at Kapasehra. She states that since an agreement had been reached to sell the said plot to Sh. M.N. Sharma, Sh. M.N. Sharma asked the owners to come to his office. She states that she and the other owners reached the office of Sh. M.N. Sharma for execution of the relinquishment deed, when Sh. M.N. Sharma sent the accused Pradeep Chikara to Kapashera court along with the complainant and the other owners. At that place, Pradeep Chikara obtained the thumb impression and signatures of the co-owners on many typed and

blank papers. He also obtained the original allotment letter from the complainant by saying that it would be required to be shown to the Magistrate for executing the relinquishment deed. Then he got the relinquishment deed executed. He also kept the receipt with him after getting the relinquishment deed executed.

3. The complainant stated that when Pradeep Chikara was asked about the relinquishment deed and the allotment letter, he kept misguiding the complainant by giving various alibis and reasons. When he was pressurised for the same, he stated that after obtaining the relinquishment deed from the court, when he was going to get the relinquishment deed and the allotment letter photocopied, the said documents fell somewhere on the way. She further stated that on Pradeep Chikara being questioned, he suggested that the complainant should go to the police station and lodge a complaint. Accordingly, the complainant lodged a complaint on 10.05.2012. She further stated that the owners obtained the certified copy of the relinquishment deed and executed registered sale papers in favour of one Puneet Sharma – who is the son of Sh. M.N. Sharma, on 16.11.2014 at Kapasehra Court.

4. The complainant further stated that she obtained possession of the plot from the DDA and delivered the same to Sh. M.N. Sharma and that the plot was in possession of Sh M.N. Sharma. She states that she received a notice from an advocate along with the so-called agreement in favour of one Dharmender Kumar, which was forged and fabricated. She states that she had never seen any person named Dharmender Kumar. She states that she was called in the notice at the disclosed address on 05.03.2013. When she

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went at the given address, the advocate introduced a person sitting there as Dharmender Kumar. She questioned the person that when she had never met him, why he had sent a forged agreement to her. There upon the accused Dharmender Kumar scolded and threatened her. She pointed out several discrepancies in the agreement set up by the accused in the FIR itself. She complained that in order to falsely implicate her and extract money from her, the accused Pradeep Chikara and Dharmender Kumar had defrauded her in a planned manner.

5. The accused filed their respective anticipatory bail application before the Trial Court, which were rejected by a common order dated 09.09.2014. Consequently, they preferred the present anticipatory bail applications before this Court.

6. The petitioners were granted interim protection by this Court, firstly, on 16.09.2014 and the said interim protection has continued ever since. The order sheet shows that the original agreement to sell set up by the accused was sent for forensic examination and to await the forensic report, the matter was adjourned from time to time. Eventually, the report from CFSL Kolkata was received and is placed on record.

7. The submission of Mr. Gupta, learned senior counsel for the petitioners is that on 26.06.2009, an agreement to sell was entered into between various co-owners including the complainant and the petitioner Dharmender Kumar for sale of 1/3rd share in plot No.31-D admeasuring 250 sq mtrs in village Nangal Dewat, Vasant Kunj, Delhi. He submits that this agreement refers to an earlier agreement executed on 24.08.2005, whereunder the petitioner Dharmender Kumar had agreed to purchase 1/3rd

share i.e. 83 sq mtrs area @ Rs.40,000/- per sq. mtr for a total consideration of Rs.33.20 lacs. The agreement to sell also acknowledged that Rs.10 lacs in cash had been received from the agreement purchaser on 24.08.2005. He submits that the agreement dated 26.06.2009 also recorded that the total consideration had been increased to Rs.58.10 lacs by increasing the rate to Rs.70,000/- per sq mtr. The parties had agreed to complete the transaction on possession of the plot being delivered by the DDA.

8. Mr. Gupta submits that when that agreement was entered into, a further amount of Rs.15 lacs in cash was received by the agreement sellers. Thus, at the time when the agreement to sell dated 26.06.2009 was executed, a sum of Rs.25 lacs in cash had been received as earnest advance money/ bayana. Mr. Gupta submits that subsequently, on 05.03.2010, a further sum of Rs.6 lacs was received in cash by the complainant Birwati. Since the plot and its area had been changed by the DDA, the receipt was in respect of an area admeasuring 66 sq. mtrs out of 200 sq mtrs, which was the subject matter of file No.F-18(14)/2009/KSB(R)/1012.

9. Mr. Gupta submits that in the meantime, the co-owners had executed a relinquishment deed and indemnity bond in favour of the complainant Birwati and the original of these documents were also handed over to the petitioner Dharmender Kumar. Mr. Gupta submits that the petitioners filed objections before the sub-registrar on 04.12.2012 since it was apprehended that the complainant would sell the said plot in favour of a third party. He submits that arbitration proceedings were also initiated by the accused in terms of the arbitration agreement entered into between the petitioner and the complainant. In those proceedings on 05.03.2013, the complainant

appeared. Mr. Gupta submits that before the arbitrator, the complainant did not claim that the agreement to sell dated 26.06.2009 was forged or fabricated. He submits that she also filed a Caveat No.373/2013 before this Court on 14.03.2013. On 26.03.2013, the arbitrator passed an interim order of restraint in favour of the petitioner/ claimant.

10. Since it was apprehended that the complainant would not abide by the interim order passed by the learned arbitrator, the petitioner preferred OMP No.385/2013 under Section 9 of the Arbitration & Conciliation Act. On 23.04.2013, the Court directed the complainant to appear in person before the Court on 30.04.2013.

11. Mr. Gupta submits that the complainant appeared in court with her counsel on 30.04.2013. She informed that she had already sold the property in favour of Puneet Sharma vide registered agreement dated 14.11.2012 on receiving full and final payment as consideration. He submits that on that date, the complainant did not claim that the agreement to sell set up by the petitioners was forged or fabricated. Thus, the subsequent claim made by the complainant in her complaint/ FIR questioning the agreement as forged and fabricated itself is highly belated and doubtful.

12. Mr. Gupta submits that on 29.05.2013, this Court passed an order in OMP No.385/2013 directing the complainant to maintain status quo with regard to title and possession of the suit property. An application for impleadment of Sh. Puneet Sharma was also considered by the Court. It was only thereafter, that the present FIR was registered against the petitioners on 03.07.2013. He submits that the FIR came to be registered on the basis of the complaint made by the complainant at 00:15 hrs. He submits that the

complainant is an old lady, and it is not explained as to why she went to the police station to lodge the complaint in the dead of the night. He also submits that the petitioners moved a quashing petition before this Court. He submits in the said quashing petition, the petitioners were directed to join the investigation and their arrest was stayed vide order dated 15.07.2013. On 27.08.2013, though the quashing petition was dismissed, the interim protection granted to the petitioners against arrest was continued. It is not disputed that the said order continuing the protection granted to the petitioners - despite dismissal of the writ petition, was set aside by the Supreme Court on 01.09.2014. Thereafter, the petitioners moved their anticipatory bail application before the Trial Court, which was dismissed on 09.09.2014.

13. The submission of Mr. Gupta is that in these circumstances, the petitioners are entitled to anticipatory bail. The petitioners were required to, and have already joined the investigation and have enjoyed protection against arrest since July 2013. He submits that no useful purpose would be served by the arrest of the petitioners at this belated stage.

14. Mr. Gupta submits that the FIR is vague and evasive as no dates and particulars had been mentioned as to when the complainant and the other co-owners proceeded with the accused Pradeep Chikara to Kapasehra Court for purposes of registration of documents. He submits that the original allotment letter and the original power of attorney executed in favour of the complainant are with the accused on account of the fact that the agreement to sell was initially executed between the complainant and the other co-owners and the accused Dharmender Kumar on 24.08.2005, which was

revised on 26.06.2009.

15. On the other hand, learned APP has pointed out that the CFSL report obtained from Kolkata as damning so far as the petitioners are concerned. She submits that the said report establishes that the agreement to sell relied upon by the petitioners – which is alleged to have been forged and fabricated as per the FIR, bears signature/ thumb impressions which were affixed prior to the printing of the document.

16. Ms. Kolluru points out that the agreement set up by the petitioner is, even otherwise, suspect since he claims to have paid the amount of Rs.25 lacs in two instalments of Rs.10 lacs and Rs.15 lacs in cash only. She also points out that there is no explanation as to why the consideration under the agreement was revised to the disadvantage of the petitioner from Rs.40,000/- per sq mtr to Rs.70,000/- per sq mtr.

17. The status report discloses that the accused relied upon the agreement dated 26.06.2009 in their complaint registered vide DD No.44B dated 02.04.2012. On the said complaint, the said alleged agreement was got verified from the notary public Sh. L.N. Verma, Regn. No.0127/06, who categorically denied about the notarisation of the said document by him, and no entry in this respect was found in his register maintained for the period 25.08.2007 to April 2013. No entry bearing 111/09 was found in the register of the notary public, as mentioned on the agreement produced by the accused. The status report also points out the following incongruities in the agreement set up by the petitioner:

> "*1. Subjected agreement is stated to be an agreement between accused persons and 9 family members of Birwati.*

However, it is observed that this agreement has signatures of only 7 members of Birwati's family. This agreement is devoid of signatures of Tej Ram & Ram Nivas, whereas, their name has been mentioned in the agreement.

2. Subjected agreement contains signatures/ thumb impressions which are either over written or over typed.

3. In contradiction of signature of 7 family members mentioned in point number 1, an MOU which is claimed to be signed on the same date contains signatures/ thumb impressions of all 9 family members.

4. Subjected agreement is claimed to be a revised agreement of an agreement, dated 24.08.2005, however, accused persons failed to produce copy of first agreement.

5. Subjected agreement is claimed to be an agreement regarding plot bearing no.31-D, Vasant Kunj having file number F-18(44)/2005/ LSB(R)/46 whereas on enquiry with DDA, it was brought to the notice that file number for this plot is F18(44)/2008/ LSB(R). It does not match with the above mentioned plot number.

6. In the subjected agreement, accused persons claimed that they have paid Rs.31,00,000/- (Rupee Thirty One Lakhs) to Birwati & others, however, only a single receipt of Rs.6,00,000/- (Rupees Six Lakh) dated 05.03.2010 is produced by the accused persons".

18. The status report also discloses that the stamp paper used in the agreement set up by the accused is found to be issued in the name of Devender Kumar, License No.224, Stamp Vendor, but the stamp vendor register is not traceable in the office of the Collector of Stamps, Rampura, New Delhi. One of the witnesses to the agreement in question is Anil Jakhar – who on interrogation, has stated that he signed the said agreement on the request of the accused Dharmender, although he never met the complainant Birwati and others as mentioned in the agreement, nor any payment was

made in his presence. All the nine alleged agreement sellers have categorically denied about execution of any such document and they have stated that their signatures/ thumb impressions might have been obtained on blank papers by the accused Pradeep Chikara on 24.02.2010, when they visited with him at the sub-registrar office, Kapashera for execution of relinquishment deed. Pradeep Chikara is a witness to the said relinquishment deed.

19. The status report also points out that the aforesaid incongruities were put to the accused persons in their interrogation, but they have deliberately and intentionally avoided to answer the same satisfactorily. It was also pointed out that though the agreement in question is in the name of the accused Dharmender, it was Pradeep Chikara who had filed the complaint dated 02.04.2013 on behalf of the accused Dharmender, which shows the existence of a criminal conspiracy between the two accused. The status report states that custodial interrogation of the accused is necessary for:

i) Investigation regarding stamp papers used in the subjected agreement;

ii) To recover stamp of notary public misused by accused persons while preparing the subjected agreement.

iii) To verify the contradictory version of accused persons in respect of purchasing of stamp paper (During enquiry/ investigation accused Dharmender stated that the stamp papers of subjected was purchased by Smt. Birwati the complainant, whereas on 27.08.2013 advocate on behalf of the petitioners/ accused persons, it has been undertaken by learned counsel that petitioners/ accused persons would accompany the investigating officer to the place from where they had purchased stamp papers and to trace out the person from whom the stamp papers in question were purchased).

iv) To unearth the conspiracy hatched by accused persons.

v) To conclude the investigation of the present case at a logical end.

20. A further status report has been filed premised on the CFSL, Kolkata report.

21. In his rejoinder, Mr. Gupta has submitted that the CFSL Kolkata report is non-conclusive inasmuch, as, in respect of the questioned signatures/ thumb impressions at portions marked Q-2, Q-4, Q-5, Q-6, Q-7 and Q-9, the report is non-conclusive. It has not been possible to conclude whether the finger prints are subsequent to the printing or otherwise in respect of the said questioned signatures/ thumb impressions. He submits that so far as the thumb impression of the complainant is concerned, the report is non-conclusive.

22. Having heard learned senior counsel for the petitioner, perused the record and heard the learned APP, I am of the view that custodial interrogation of the petitioners is essential to effectively investigate the present case. The petitioners have set up an agreement to sell with the complainant and the other co-owners, which is claimed to have been revised after four years (the first agreement claimed by the accused is of the year 2005, and the revised agreement is of the year 2009). The consideration is claimed to have been revised upwards substantially, from Rs.40,000/- per sq mtr to Rs.70,000/- per sq mtr. without explaining as to why it was so revised

to the disadvantage of the accused when they had already allegedly paid Rs.10 lacs in cash as part consideration. Pertinently, the accused, even according to their own showing, did not pay even a single penny by way of cheque or through any other recorded mode. The submissions of the petitioners taken note of hereinabove – with regard to the alleged delay in filing of the complaint and failure to challenge the agreement to sell at the earliest constitute the defence of the accused. Even otherwise, the same does not tantamount to an admission by the complainant of the agreement set up by the accused.

23. As noticed in the status report, there are several incongruities which the petitioners would have to explain. During their interrogation under the Court's protection, they do not appear to have cooperated to provide any satisfactory response. Most importantly, they have to explain as to how the agreement set up by them came to bear the signatures/ thumb impressions – at least some of them, even before the document was printed – as found by the CFSL Kolkata. Pertinently, the agreement entered into by the complainant and the co-owners with the said M.N. Sharma/ Puneet Sharma recites the consideration received from them from time to time through cheques.

24. In view of the aforesaid, there is absolutely no merit in these applications and the same are, accordingly, dismissed.

VIPIN SANGHI, J

DECEMBER 15, 2016
Sr