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

\+ BAIL APPLN. 1762/2016

JITENDER KUMAR CHOPRA ..... Petitioner

Through: Mr. Amit Sahni & Ms. Sunita Ahuja, Advocates.

versus

STATE (GOVT OF NCT OF DELHI) ..... Respondent

Through: Mr. Rajat Katyal, APP and Ms.Ankita Goyal, Advocate, for the State.
Mr. Tanveer A. Mir & Mr. Arvind Nayar, Advocates for the complainant.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **29.08.2016**

Crl. M.A. No.13323/2016

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

BAIL APPLN. 1762/2016 and Crl. M.B. No. 1570/2016

3. The petitioner has preferred the present application under Section 438 Cr.P.C. apprehending arrest in case FIR No.149/2015 under Section 406/ 420/ 120-B IPC registered at Police Station – Economic Offences Wing,

New Delhi on the complaint of the complainant Meena Shah.

4. The allegation against the petitioner is that the petitioner Jitender Kumar Chopra, S.K. Chopra & Priya Chopra approached the complainant with a proposal for re-development of property No. W-99, Greater Kailash Part-II, New Delhi. They represented to the complainant that they would enter into a collaboration agreement with the owner of the property and raise construction thereon. They stated that after raising construction, first floor and the second floor would be given to the builders, namely, Jitender Kumar Chopra, S.K. Chopra and Priya Chopra as their share. They also represented that they would pay Rs.6 Crores to the owner of the property for the transfer of the aforesaid two floors to them.

5. The complainant alleged that she invested Rs.7,97,98,000/- in the said project and a Memorandum of Agreement (MOA) dated 13.08.2012 was entered into between the applicant and the complainant. The complainant allege that after the execution of the MOA, she further paid a sum of Rs.31,15,500/- to the accused persons. The MOA provided that both parties shall invest equal amount on the project and shall divide the profits 55:45%. The complainant allege that she had made payment of a total amount of Rs.8,41,13,500/- comprising of Rs.6,02,65,500/- through cheque and Rs.2,38,48,000/- in cash to the accused.

6. The submission of learned counsel for the petitioner is that the said agreement has run into rough weather. He submits that the dispute between the parties is in relation to a property and is a purely civil dispute. Learned counsel submits that the complainant has already preferred a civil suit, i.e.

CS No.1496/2014 before this Court, which is still pending. The Court has passed orders directing interim arrangement between the parties.

7. Learned counsel for the petitioner has further submitted that the petitioner disputes the claim made by the complainant of having received monies in cash, as recorded in the MOA. He submits that no cash has been received by the petitioner and the other co-accused and the said dispute is a civil dispute which shall be adjudicated by the Trial Court. The complainant has got the FIR registered only with a view to extract money from the petitioner and the other co-accused. Learned counsel submits that initially no FIR was registered. It was only after the complainant preferred an application under Section 156(3) Cr.P.C., that the FIR came to be registered. This itself shows that there is no merit in the complaint and it does not disclose commission of any offence.

8. Learned counsel for the petitioner submits that a writ petition has already been filed before this Court being W.P. (Crl.) No. 419/2015 assailing the order passed by the learned CMM directing registration of the FIR, and the FIR itself. The said writ petition is still pending before this Court and is listed on 03.11.2016.

9. Learned counsel submits that the petitioner was granted interim protection by the Trial Court. While on anticipatory bail, the petitioner joined the investigation and cooperated with the investigation. Learned counsel submits that there was no occasion for discontinuation of the interim bail granted by the Trial Court and that the order dated 01.07.2016 passed by the learned ASJ-02/SE/ND is not justified in the facts of the case.

10. On the other hand, the learned APP as well as the learned counsel for the complainant had opposed the present petition. They have sought to place reliance upon the order passed by the learned ASJ on 01.07.2016, whereby the anticipatory bail sought by the petitioner had been declined for cogent reasons.

11. I have heard learned counsel on both sides. Prima-facie, the MOU, which bears the signatures, *inter alia*, of the petitioner and the complainant records the receipt of, *inter alia*, the amount of Rs.2,38,48,000/- in cash by the petitioner. The petitioner is, however, seeking to deny its receipt. Prima-facie, the said denial by the petitioner, which is contrary to the documents produced by him, itself raises doubts regarding the stand of the petitioner. Prima-facie, it also lends credence to the complainant's claim that the petitioner and the other co-accused intended to cheat the petitioner from the very inception.

12. According to the complainant, the accused persons in common cohort and in a pre-arranged and pre-planned manner made representations to the complainant, which were fraudulent and dishonest. Thereby the complainant was deceived to believe that the petitioner and the other co-accused intended to use the complainant's money in order to raise construction. However, the said monies have been siphoned off and not utilised to raise construction. They have not been accounted for by the accused. The accused never intended to return the investment, much less give any profits thereon to the complainant.

13. The submission of learned counsel for the State as well as the learned

counsel for the complainant is that the custodial interrogation of the petitioner is required to recover the original documents and to ascertain the trail of money received by him by deceiving and misleading the complainant.

14. It is well-settled that the same transaction may give rise to both – civil as well as criminal liability. Merely because the complainant may have invoked the civil remedy already, the initiation of criminal proceedings on the complaint of the complainant cannot be dubbed as mala fide or motivated, or only for the purpose of recovering the money or other valuable. Civil and criminal action can proceed simultaneously and the initiation of a civil suit by the complainant does not come in her way in initiating criminal proceedings.

15. A perusal of the order passed by the learned ASJ on 01.07.2016 shows that the petitioner, despite several directions, did not produce the original documents in respect of the property, namely, the collaboration agreement, GPA and MOA. The said order also shows that the petitioner has not cooperated in the investigation. The vouchers/ bills handed over by the accused to the Investigating Officer (I.O.) in respect of expenditure incurred in the raising of construction were scrutinised by the I.O. He found that some of the bills in respect of cash payment were made on plain paper, and do not bear the names or addresses of the vendors or shopkeepers. Some of the bills even do not clarify the items which had allegedly been procured for raising construction on the property. Several bills produced by the accused did not even contain the name of the party to whom the bill had been issued. Many of the bills submitted did not show supply of material at

the address of the property in question, but at some other property, namely, C-17, Lajpat Nagar-II, New Delhi and E-533, Greater Kailash-I, New Delhi. The bills are relating to expenditure of miscellaneous nature, like petrol, mobile recharge, tea, medicines and car repairs, etc. which are not related to expenses incurred on construction of the property in question. The accused failed to furnish original documents/ photocopy of bills/ vouchers regarding the expenditure incurred for raising construction on the suit property.

16. As rightly observed by the Trial Court, the petitioner Jitender Kumar Chopra is the main offender in the case. He is the person who entered into MOA with the complainant. It is he who received money from the complainant. It is he who induced the complainant to part with her money for investment. Thus, his role cannot be compared to that of the other co-accused S.K. Chopra, who is enjoying interim protection. The allegation against S.K. Chopra was that he introduced his son Jitender Kumar Chopra – the petitioner, to the husband of the complainant to enter into a collaboration agreement. The involvement of S.K. Chopra, in any other way, has not been established thus far. It is not alleged by the complainant that the transaction between the accused Jitender Kumar Chopra and the complainant had any further involvement of S.K. Chopra.

17. The accused after having pocketed the huge amount from the complainant has proceeded to occupy one of the flats, which was supposed to be sold to a buyer and the proceeds shared with the complainant. The accused is occupying the premises without the consent of the complainant. He continues to hold possession of the other flat in the suit property. Thus, the accused is sitting not only on the pile of money received by him from the

complainant, but also occupying two floors in the building in question even though the said floors had to be sold to third parties and the proceeds shared with the complainant.

18. As noticed above, the petitioner has failed to account for the monies received from the complainant. The money trail, and the modus operandi of the petitioner/ accused needs to be unearthed. In these circumstances, I am of the view that the custodial interrogation of the petitioner is absolutely necessary and the order dated 01.07.2016 passed by the learned ASJ is perfectly justified in the facts and circumstances of the case.

19. The petition is dismissed and the petitioner is directed to surrender before the Investigating Officer forthwith.

VIPIN SANGHI, J

AUGUST 29, 2016
B.S. Rohella