

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 2896/2015 and Crl.M.A.3915/2016

STATE OF NCT OF DELHI & ANR Respondents
Through : Mr. Avi Singh, ASC (Crl.) and Ms.
Megha Bahl, Adv. with Inspector
Prabhu Dayal PS Vasant Kunj North.
Mr. A. Tewari, Adv. for complainant.

ORDER
02.08.2016

On an oral prayer made by the learned counsel for petitioner, present petition is treated as bail application under Section 438 Code of Criminal Procedure, 1973.

Bail Application NO. _____/2016 (to be numbered)

It is not in dispute that petitioner had agreed to sell the Flat No.B-11/8049, Vasant Kunj, New Delhi to complainant/respondent no.2, vide agreement to sell dated 13th June, 2012 for ₹2,90,00,000/- and

₹50,00,000/- was paid towards earnest money by the complainant to petitioner. As per the agreement to sell, sale deed was to be executed on 30th September, 2012, on receipt of the balance sale consideration. As per the agreement, petitioner was to get the flat converted from leasehold to freehold and in fact got the flat converted from leasehold to freehold. It is also an admitted case of the parties that another sum of ₹75,00,000/- was paid as part payment, and it was agreed that sale deed would be executed on 29th November, 2012. Respondent No.2 lodged the FIR on the allegations that though balance payment was arranged but petitioner did not come forward to execute the sale deed on 29th November, 2012. Instead he left for London on the pretext that his son was not well and has not returned thereafter. Complainant has alleged in the FIR lodged on 27th April, 2013 that she was afraid that petitioner was cheating her.

Learned counsel for the petitioner submits that respondent no.2 has already filed a civil suit for specific performance being CS (OS) No.1240/2013 and the same is pending. Respondent no.2 did not make the balance payment and breached the agreement. In the written statement petitioner has taken a plea that respondent no.2/complainant was never ready and willing to perform her part of the contract, in terms of the agreement to

sell dated 13th June, 2012 as she did not come forward to pay the balance sale consideration, inasmuch as, did not purchase the complete stamp duty as on 29th November, 2012. Stamp duty of about Rs.15,00,000/- was payable but respondent no.2 had purchased stamp duty of ₹3 Lakhs only. Disputes are civil in nature. FIR has been filed to pressurise the petitioner to give up his defence. Petitioner had no intention to cheat the respondent no.2, which is evident from the fact that he got the flat converted from leasehold to freehold in terms of the agreement. Petitioner is still owner of flat, inasmuch as, his wife is still living therein. Petitioner had gone to United Kingdom to see his ailing son and could not return due to compelling reasons. Petitioner is ready and willing to execute the sale deed on receipt of the balance payment of Rs.1,65,00,000/- from the respondent no.2, even though respondent no.2 has flouted the agreement and advance is liable to be forfeited.

Learned counsel for the respondent no.2 submits that petitioner is liable to pay interest as he had retained Rs.1,25,00,000/- of respondent no.2 therefore ₹1,65,00,000/- being balance sale consideration is not payable. Learned counsel for the petitioner submits that no interest is payable since respondent had not paid balance sale consideration in time and it is the

complainant/respondent no.2 who was not ready and willing to execute the sale deed.

Learned additional standing counsel submits that petitioner has already been declared a proclaimed offender on 5th March, 2016, therefore, is not entitled to anticipatory bail. Learned counsel for the petitioner by placing reliance on Jagdish Nautiyal Vs.State, MANU/DE/6227/2012 has considered that merely because petitioner is a P.O. will not be ground to reject anticipatory bail application, more particularly, when the disputes in this case are primarily of civil nature, and disputed questions of fact arises in the civil suit.

Keeping in mind the totality of the facts and circumstances as detailed above, it is ordered that in case of arrest, petitioner be released on bail, subject to his furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one surety of the like amount to the satisfaction of Investigating Officer/Arresting Officer/SHO concerned.

Application is disposed of in the above terms.

Dasti.

A.K. PATHAK, J.

AUGUST 02, 2016/dk