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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 716/2017**
RAKESH KUMAR Petitioner
Through: Mr. Vipin Kumar Anand, Advocate.

versus

STATE (NCT OF DELHI) Respondent
Through: Ms. Meenakshi Chauhan, APP for the
State with SI Bhagat Singh, PS Ashok Vihar,
Delhi.
Mr. Naresh Sharma, Advocate for the
Complainant.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

ORDER
% **07.06.2017**

1. Apprehending his arrest in FIR No. 0457/2016 dated 23.09.2016 under Section 420/448/120B/506 of IPC, PS Ashok Vihar, Delhi, the petitioner Rakesh Kumar seeks anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973.
2. It is the case of the complainant that he purchased Property No.25B, 1st Floor, Pocket-A, LIG Flats, Phase-II, Ashok Vihar, Delhi-110052 on 09.11.2015 and Sale Deed was executed by Sh. Shyam Lal Passi in his favour and his wife Preeti Sharma jointly and physical possession of the property was given to them and they put their lock on the said flat. It is further alleged by the complainant that the petitioner refused to vacate the room occupied by him and prevented the complainant from entering the premises. The complainant alleged the offence of criminal conspiracy,

fraud, cheating, misrepresentation, criminal breach of trust and extortion and sought action against the petitioner.

3. It is submitted by the learned counsel for the petitioner that in fact the property in question was allotted to his father by letter No. 35(265)/74 dated January, 1975 by the DDA, however, the Conveyance Deed dated 17.01.2005 was executed by the DDA in the name of his father Sh. Shyam Lal Passi and mother Smt. Sharda Devi jointly. He further submits that his mother had died on 31.01.2013 and under Hindu Succession Act, he inherited 1/6th share in the said property and has filed a Civil Suit for partition, being Civil Suit No. 143/2015, which is pending disposal before the Civil Court. He further submits that his sister has relinquished her share, which she has inherited on the death of her mother by way of Relinquishment Deed dated 14.03.2013 in favour of her father. He submits that her sister also inherited 1/6th share though she executed Relinquishment Deed for more than her share.

4. The petitioner has made a statement in the court of Civil Judge, Delhi in Civil Suit No. 07/1998 on 22.02.1999 filed by his father Sh. Shyam Lal Passi to the effect that he is living in one room set on the first floor of the said property, whereas the plaintiff Shyam Lal Passi is living on the ground floor of the said property and that the plaintiff is the owner of the entire property and he is looking for alternative arrangement for his accommodation and sought time for the purpose. The statement made by the petitioner herein before the learned Civil Judge was not opposed by his father Sh. Shyam Lal Passi and in view of the statement of the parties, the suit of the plaintiff was decreed on 22.02.1999 and the petitioner herein was given two months' time to vacate the portion of the property in his

possession.

5. Learned counsel for the petitioner further argued that admittedly the complainant has not paid him any amount in respect of the property in question from his father and therefore no offence of cheating is made out. He also submits that he is already in possession of the one room set on the first floor and therefore no offence U/s. 448 IPC is made out against him. He further submits that he has never extended any threat to the complainant or his wife. He submits that the petitioner is ready to join the investigation.

6. Learned counsel for the complainant submits that vide publication notice dated 27.05.1996, the petitioner was debarred by his parents from all movable and immovable properties. He further submits that an affidavit dated 27.05.1996 was executed by the father of the petitioner debarring him and his wife from all movable and immovable properties.

7. Learned APP for the State as also the learned counsel for the complainant could not justify as to how the offence u/S. 420 of IPC is made out against the petitioner when no amount of money at any point of time was paid to him by the complainant while purchasing the said property. They have also failed to answer the query of this court as to how the offence u/S. 448 IPC is made out when admittedly the petitioner is in possession of one room set on the first floor of the said property. The statement recorded by the learned Civil Judge in CS 07/1998 is not disputed by the learned counsel for the petitioner but he submits that the possession was not delivered back by him to his father.

8. The contents of the FIR reflect that the petitioner has refused to vacate the room occupied by him on the roof of the flat and started demanding huge amount of Rs.20,00,000/- to vacate the occupied portion.

9. Admittedly, this is a DDA flat and parties have failed to show exclusive user of the terrace of the first floor. The copies of the proceedings of the civil suit No. 07/1998 also reflects that the petitioner has been in possession of one room set on the first floor of the property.

10. Hence, in the facts and circumstances of the case, it is directed that in the event of his arrest, the petitioner Rakesh Kumar shall be released forthwith on bail on his furnishing personal bond in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of the SHO/IO and/or ld. MM/Duty MM/CMM/Trial Court. The petitioner shall join the investigation. He shall not leave the NCT of Delhi without the prior permission of the trial court.

11. Nothing stated herein above shall tantamount to any expression of opinion on the merits of the case and the trial court shall not be influenced while disposing of civil or criminal matter.

13. The application is disposed of.

14. Copy of this order be given *Dasti*, as prayed.

VINOD GOEL, J.
(VACATION JUDGE)

JUNE 07, 2017
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