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

\+ BAIL APPLN. 1318/2017

DANISH ..... Petitioner

Through: Mr.F. Haq, Advocate.

versus

STATE ..... Respondent

Through: Mr.Akshai Malik, APP for State with SI Ashish Sharma, PS Sadar Bazar, Delhi.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

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

% 27.07.2017

1. Status report has been filed.

2. Apprehending his arrest, the petitioner has invoked the jurisdiction of this court under Section 438 of the Code of Criminal Procedure, 1973 for his release on bail in the event of his arrest in FIR No. 63/2017, U/s. 420/120B/506/34 of IPC, PS Sadar Bazar, Delhi registered against him.

3. As per the case of the prosecution, the complainant has agreed to purchase a flat from the petitioner and his co-accused Akram and Zukuruf @ Raja, who had shown her a property bearing No. 7312-7320, Gali Khatikon, near Kallu Wali Masjid Qasabpura, Sadar Bazar, Delhi, where the construction work was going on. The petitioner and his co-accused assured the complainant that the construction would be completed and possession will be delivered to her within three months. Believing their version to be correct, the complainant had

agreed to purchase the second floor of the said flat, which was under construction and entrusted the accused persons with a sum of Rs.14,50,000/-. In consideration of having received the said amount of Rs.14,50,000/- from the complainant by the accused persons, the co-accused of the petitioner Akram executed a General Power of Attorney, Will, Agreement to Sell, Affidavit, Receipt and Possession Letter on 01.07.2014 and a receipt of Rs.14,50,000/-. It is further alleged by the complainant that some time later, the accused persons stopped the construction. They did not handover the physical possession of the flat to the complainant despite repeated requests. When the complainant visited the accused persons, they threatened to kill her, if she demanded back the money or lodged any report against them.

4. On this complaint, the present FIR was registered. During the course of investigation, original General Power of Attorney and other documents executed by co-accused Akram in favour of the complainant were seized. It is found that as per the documents, accused Akram had shown himself to be the owner of the First and Third Floor of the said property whereas he had agreed to sell the Second Floor of the said property of which he was not the owner.

5. During the course of investigation, actual owner Mohd. Israr and Mohd. Intizar were examined, who stated that they did not execute any Power of Attorney regarding the said property in favour of Akram and it was only an agreement for the purpose of construction of the building.

6. Learned counsel for the petitioner argued that the case was registered

under Section 420 of IPC and the punishment prescribed is 07 years and as such the IO is required to issue a notice under Section 41 (A) of the Cr.PC to the petitioner. He cites the judgment of Hon'ble Supreme Court in **"Arnesh Kumar v. State of Bihar & Anr.,** ***(2014) 8 SCC 273.*** He also submits that it is a civil dispute which has been given the colour of criminality. He further submits that the petitioner is ready to join the investigation and he should be granted anticipatory bail.

7. Per contra, it is submitted by the learned APP through the IO that during the investigation the statement of the actual owner Mohd. Israr was recorded who had stated that he did not execute any deed of sale agreement in favour of the co-accused Akram in respect of the said property on 11.02.2014 and the accused persons have not only forged the said documents but also used the same with malafide intention and as such Section 467/468/471 of IPC were also added. In this regard, learned PP has shown the case diary.

8. During investigation, on physical checking, it was found by the IO that the second floor allegedly sold to the complainant was found in possession of one Ms.Zubeda, who stated that she has been residing for the last nine months and this floor was agreed to be her husband's share mentioned in the agreement executed between them and the accused persons.

9. Learned APP submits that the accused persons have been absconding. The petitioner is not found residing at the given address. The investigation is at its initial stage. The petitioner along with co-accused had threatened the complainant to kill her, if she demands her

money back. He further submits that the custodial interrogation is required to ascertain his role in preparing and using the false and forged documents. His custodial interrogation is also required to recover Rs.14,50,000/-, which the complainant had paid to them. He also submits that the petitioner is also involved in similar FIR No. 375/2016 dated 02.07.2016 PS Jahangir Puri, Delhi.

10. I have heard the learned counsel for the parties.

11. The petitioner and his co-accused have not only forged and created the documents but also after using the forged documents received hefty amount of Rs.14,50,000/- from the complainant. The case is at the initial stage of the investigation and co-accused are also on the run and in case the petitioner is released on bail, there is every likelihood of his influencing and threatening the complainant and his family members. Vital documents and money taken by the petitioner and his co-accused from the complainant are yet to be recovered. It is yet to be ascertained as to where this amount was used or deposited/invested by the petitioner and his co-accused. Considering the gravity of the offence and serious nature of allegations and the fact that custodial interrogation of the petitioner is required, I do not find any ground entitling the petitioner for grant of anticipatory bail.

12. The bail application is dismissed.

VINOD GOEL, J.

JULY 27, 2017
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