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

+ **BAIL APPLN. 2018/2017**

JUDGE CHAWLA

.....Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. With Mr.
Vishesh Wadhwa, Mr. Shrey Chathly,
Mr. Sumit Mishra & Ms. Bandana
Grova, Advocates.

Versus

THE STATE OF NCT OF DELHI

.....Respondent

Through : Ms. Anita Abraham, APP for State with
SI Vikram Singh, P.S. G.K.
Mr. Vikas Pahwa, Sr. Adv. with
Mr. Gaurav Sachdeva & Ms. Kinnori
Ghosh, Advocates.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

13.10.2017

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1. By way of the present petition filed under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), the petitioner seeks **grant of anticipatory bail** in FIR No. 103/2017 under Sections 420/468/471/380/120B/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station Greater Kailash, New Delhi.

2. The case of the complainant/Sh. Krishan Kumar Aggarwal is that he is the owner of the Property No. M-26, Greater kailash Part-I, New Delhi 110048 measuring 500 sq. yards; that as he was desirous of selling the said property the petitioner/accused/Judge Chawla approached him and persuaded him to show the property documents; that the complainant handed over the copies of the documents of the said property to the petitioner; that the petitioner projected to the complainant that the property papers were not perfect and therefore he asked the complainant to get fresh documents executed from his brothers at Kenya; that the complainant thereafter realized that the petitioner had taken away few original papers and two sale deeds in respect of the subject property.

It is further alleged that the complainant alongwith his brothers and father has several properties in Kenya and for the partition of which they obtained an arbitral award in Kenya dated 27.12.1979; that by virtue of the said award the subject property fell into the hands of the complainant; that subsequently the High Court of Kenya vide order dated 26.01.1982 decreed the arbitral award; that due to non compliance with the aforestated order of the High Court of Kenya, a Vesting Order in favour of the complainant was passed on 18.07.1983; that the complainant being a citizen of Kenya, was granted permission by the RBI vide letter No. EC.OFCS(iii) 4271/1-80 dated 05.06.1980, to hold, own and possess the subject

property; that since then the complainant has been in complete enjoyment of the subject property; that the complainant entered into a collaboration agreement with one Rajiv Chanana for reconstruction and development of the subject property pursuant to which the existing building was demolished; that before the fresh building plan was sanctioned, one Rajiv Singh filed a civil suit bearing no- CS OS No. 130/2017 claiming that he had purchased 20% undivided share of the said property from the petitioner vide a sale deed dated 23.02.2017; that the petitioner represented himself as a constituted attorney of one Nishant Aggarwal (nephew of the complainant).

The complainant alleged that no such Special Power of Attorney was ever executed by Nishant Aggarwal and he has himself denied having entered into such transaction with the petitioner; that Nishant Aggarwal has also lodged a complaint regarding the forged and fabricated power of attorney against the petitioner with Kenya police. Therefore on the basis of the said allegation FIR was registered against the petitioner under Sections 420/468/471/380/120B/34 of the IPC, 1860

3. The petitioner preferred an application for bail before the Additional Sessions Judge which was dismissed, vide order dated 27.09.2017, on consideration of the facts and nature of allegations leveled against the petitioner and gravity of alleged offence committed by him. Hence, the present bail application.

4. Mr. Mohit Mathur, learned Senior Counsel for the petitioner contended that the petitioner has been falsely implicated in the present case by the complainant; that in fact Krishan Kumar Aggarwal/complainant had agreed to sell 20% of subject property for a consideration of Rs. 1.70 crore and an amount of Rs. 40 lakhs has already been paid by the petitioner as partial payment to the complainant and the same can be proved from the receipt dated 24.10.2016, duly signed by the complainant; that a Special Power of Attorney (SPA) dated 10.02.2017 was duly executed by the nephew of the complainant/Nishant Aggarwal in favour of the petitioner in respect of his 20% share in the subject property and a sum of 5,000 USD was paid as earnest money to Nishant Aggarwal by the petitioner vide demand draft dated 09.02.2017; that on the basis of the said SPA the petitioner executed a sale deed dated 23.02.2017 in favour of Rajvir Singh in accordance with due process of law; that the Vesting Order on which the complainant purports to rely, holds no sanctity in India as the same has not been decreed from any Indian court; that the petitioner has himself joined investigation on multiple occasions as on 18.05.2017, 30.07.2017, 09.08.2017, 10.08.2017, 16.08.2017 and 23.08.2017 and the Investigating Officer has himself stated that he has been joining and cooperating with the investigation; that the complainant also has further entered into an agreement to sell with one Jairaj Developers LLP and after receiving the partial payment

with respect to said agreement, he withdrew his agreement with him in pursuant to which a suit of Specific Performance bearing no. CS OS No. 313/2017 was instituted against the complainant in and is pending adjudication. Therefore, in the said circumstances anticipatory bail be granted to the petitioner.

5. Per Contra, Ms. Anita Abraham APP for the State and Mr. Vikas Pahwa, Senior Counsel for the complainant, vehemently opposed the bail application of the petitioner and submitted that the petitioner has been actively involved in the commission of the offence; that the petitioner is a habitual cheater and does not have clean antecedents; that despite several notices under Section 91 Cr.P.C.; that the petitioner failed to provide the necessary details of payment made by him to Nishant Aggarwal while executing SPA; that even after serving of notices under Section 41A Cr.P.C. to the petitioner, he failed to produce the documents as well as join the investigation ; that there is every possibility of accused evading the process of law and threatening the complainant; that the accused is also likely to tamper with the evidence collected during investigation; that his presence will be necessary for custodial interrogation; that the petitioner is listed as 'B.C of Bundle A' of police station Rajender Nagar and therefore anticipatory bail, as prayed for, be denied.

6. I have heard the learned counsel for the parties and perused the material available on record.
7. Upon careful scrutiny of the case it is observed that the petitioner purports to act as a holder of 20% undivided share in the subject property on the basis of a Special Power of Attorney which as per him, has been executed in his favour by the nephew of the complainant/ Nishant Aggarwal. In lieu of the said SPA the petitioner has also executed a sale deed dated 23.02.2017 in respect of the subject property in favour of one Rajvir Singh. The petitioner also submits that an amount of 5,000 USD was paid as earnest money to Nishant Aggarwal by the petitioner vide demand draft dated 09.02.2017.
8. However as per records, Nishant Aggarwal has executed a Declaration Deed dated 20.03.2017 whereby he states as under:

"1. That Mr. Krishan Kumar Aggarwal S/o Late Sh. Lekh Raj Aggarwal Resident of M-26, Greater Kailash, Part-I, New Delhi and Presently at S-92, (Second Floor) Greater Kailash Part-I, New Delhi is the sole and absolute owner of the property bearing No. M-26. Measuring 500 sq. yards, situated at Greater Kailash Part-I, New Delhi 110048 (hereinafter referred to as the 'Said Property').

2. that I have not executed any so called (alleged) Special Power of Attorney and / or any other documents for self and for and on behalf of my sister in respect our so called share in respect of Property bearing No. M-26. Measuring 500 sq. yards, situated at Greater Kailash Part-I, New Delhi 110048 in favour of

one Mr. Judge Chawla Son of Late Shri. M.L. Chawla Resident of 11-B, Rajendra Park, New Delhi 110060 and/or any other person. I have also not received any so called consideration from any other person towards the so called fraudulent transfer/transaction."

The above declaration by Nishant Aggarwal creates a cloud of suspicion over the capacity of the petitioner to act as attorney over the 20% share in the subject property.

9. Further no explanation has come forth from the petitioner in respect of the original documents and two sale deeds of the subject property alleged to be in his possession and also the same have not yet been recovered.
10. As per the Status Report dated 12.10.2017, several FIR's have been previously lodged against the petitioner primarily for similar offences as those alleged in the present case.
11. It is pertinent to note here that most of the contentions raised on behalf of the petitioner are triable issues which cannot be determined at this stage while deciding the anticipatory bail application.
12. In ***Savitri Agarwal and Others v State of Maharashtra and Another*** reported in (2009) 8 SCC 325 the principles for grant of anticipatory bail have been discussed as under:-

"power of granting 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched

against him or 'there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail' that such power may be exercised."

13. Keeping in view the principles laid down by the Apex Court and from a perusal of the facts and circumstances of the present case it is observed that there are several issues involved herein which necessitates thorough investigation. In order to unearth the veracity of the allegations, authenticity of the documents and the transactions made between the parties, custodial interrogation of the petitioner is mandatory. Hence in order to enable the investigation to proceed without hindrance, to protect the witnesses from being influenced by the petitioner and to prevent his disappearance, arrest of the petitioner is inevitable in the interest of justice. Therefore at this stage, this Court does not deem it fit in this case to grant anticipatory bail to the petitioner.
14. Hence, the present application filed by the petitioner is dismissed and is accordingly disposed of.
15. Before parting with the above order, it is made clear that observations made in the order shall have no impact on the merit of the case.
16. Copy of Order be given dasti under the signatures of Court Master.

SANGITA DHINGRA SEHGAL, J

OCTOBER 13, 2017//gr