

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

% *Date of Decision: 12th October, 2017*

+ **BAIL APPLN. 2038/2017**

VIKAS CHADHA

..... Petitioner

Through: Mr.Rishi Pal Singh, Advocate

versus

STATE (GOVT OF NCT) OF DELHI Respondent

Through: Mr.Amit Chadha, APP for the
State with SI Vikas, PS Patel Nagar, Delhi.
Mr.Vipul Srivastava, Adv. with Mr.Rajindra
Vats, Adv. for Complainant.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

CrI.M.A. 16678/2017 (exemption)

Exemption allowed subject to all just exceptions.

Application is disposed of.

BAIL APPLN. 2038/2017

1. Notice. Learned APP for the State, who appears on advance copy having been served, accepts notice.
2. Apprehending his arrest in a case registered against him and his wife Smt.Aarti Chadha vide FIR No.95/2017 dated 18.03.2017, PS Patel Nagar, Central District, Delhi under Section 420/406 of Indian Penal Code, 1860 (in short 'IPC'), the petitioner has

approached this court for granting him anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (in short 'Cr.PC').

3. Learned counsel for the petitioner submits that the anticipatory bail application of his wife, being Bail Appln. 1563/2017, was dismissed by this Court on 11th August, 2017. He submits that there is no reason as to why the investigation of this case cannot be completed without apprehending and arresting the petitioner. He submits that under Section 438 of Cr.PC there is a provision for grant of interim protection. He submits that the IO has not made compliance of the judgment of the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar & Anr., (2014) 8 SCC 273**.
4. He submits that the petitioner is not the owner of the property in question. He is not the signatory to the collaboration agreement dated 3rd February, 2016. He submits that in fact the wife of the petitioner is the owner of the property in question and she had entered into the collaboration agreement with the complainant and received the amount and the petitioner has nothing to do with the collaboration agreement or receipt of the payment.
5. Per contra, the request of the petitioner is vehemently opposed by the learned APP for the State. He submits that the petitioner was issued a notice by the IO on 25th August, 2017 but he failed to join the investigation. He submits that there are serious allegations against both of them i.e. the petitioner and his wife. He submits that though technically the wife of the petitioner is

the owner of the property and signed the collaboration agreement with the complainant but there are specific allegations that the petitioner along with his wife Smt.Aarti Chadha had approached the complainant and entered into the transaction in question. He submits that at the time of collaboration agreement, the petitioner and his wife had assured the complainant that the property in question is free from all encumbrances i.e. sale, mortgage, gift, lease, family dispute, attachment, litigation, acquirement, notification etc. However, in December, 2016 when officials of M/s.Dewan Housing Finance Ltd. (in short 'DHFL') visited, they informed him about mortgage of said property and outstanding liability of over Rs.5 crores. He submits that to further cheat the complainant, a Sale Deed dated 07.01.2017 was executed by which the roof/terrace of the entire first floor with construction right of the second floor and third floor with further roof/terrace right up to sky for a valuable consideration of Rs.1,50,00,000/- was sold to one Narender Kumar knowing fully well that the possession of the property was with the complainant. He submits that though the said sale deed was executed by the wife of the petitioner, being the recorded owner, yet the petitioner had all along been active participant in the transactions. He submits that the custodial interrogation of the petitioner is required for the purpose of the investigation. He submits that the petitioner and his wife have been absconding and attempt of the IO to locate

and arrest them remained unsuccessful despite raids being conducted at their residence and at Banaras.

6. I have heard the learned counsel for the petitioner, learned APP for the State and learned counsel for the complainant.
7. Pursuant to the Collaboration Agreement with the complainant by the petitioner and his wife, the complainant had raised and completed the construction of basement, stilt car parking, upper ground floor and first floor. The petitioner and his wife never disclosed that the property in question was already under mortgage with DHFL and a more than Rs.5 crore was outstanding amount. The petitioner and his wife were to make the payment of balance amount of Rs.2,20,00,000/- to the complainant at the time of taking over the physical possession of the said property. The petitioner and his wife got the property constructed at huge cost of the complainant without making payment and by concealing the factum of mortgage to secure loan and huge outstanding amount and thereby cheated the complainant.
8. Here it will not be out of place to mention the concern shown by Hon'ble Supreme Court in its various judgments while considering request for bail. Hon'ble Supreme court in **Parvinderjit Singh & Anr. v. State (U.T. Chandigarh) & Anr., 2008 (4) SCC 2873**, held in para 17 as under: -

“17. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail

regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance to maintain law and order in the locality. For these or other reasons, arrest may become inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well-defined and the jurisdictional scope of interference by the Court in the process of investigation is limited. **The Court ordinarily will not interfere with the investigation of a crime or with the arrest of accused in a cognizable offence.** An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code. The above position was highlighted in *Adri Dharan Das v. State of West Bengal* (2005 (4) SCC 303).

9. On the similar points there is another judgment of the Apex Court in **State Rep. by the CBI v. Anil Sharma, (1997) 7 SCC 187**, on the requirement of the accused for custodial interrogation. Para 6 of the said judgment reads as under:

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations

and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.”

10. Keeping in view the serious nature of the offence committed and gravity of the accusation and the fact that investigation is at initial stage and that the petitioner along with his wife had received a huge amount of Rs.55,00,000/- from the complainant by making false representation to the complainant that the property is free from all sorts of encumbrances and the fact that they had subsequently sold the roof/terrace of the entire first floor with construction rights of the second floor and third floor with further roof/terrace rights up to sky to one Narender Kumar for a huge sum of Rs.1,50,00,000/- by registered Sale Deed without making payment of Rs.2.5 crores to the complainant and the fact that the petitioner is not joining investigation and is on the run and the submission of learned APP for the State that the custodial interrogation of the petitioner is required to recover said amount of Rs.55 lac paid to the petitioner and his wife, I do not find any

justifiable ground entitling the petitioner for grant of relief of anticipatory bail to him.

11. The application is dismissed.

VINOD GOEL
(JUDGE)

OCTOBER 12, 2017/jitender

