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

\+ **BAIL APPLN.690/2017**

Order reserved on: 8th December, 2017
Order pronounced on: 4th January, 2018

NIKHIL KUMAR KUNDRA ....Petitioner
Through: Mr. Ashutosh Dubey, Mr. Arun Nagar, Mr.Abhishek Chauhan, Advocates.

versus

THE STATE(NCT OF DELHI) .....Respondent
Through: Mr. Mukesh Kumar, APP for State

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 438 of the Criminal Procedure Code,1973 (hereinafter referred as **'Cr.P.C.'**) the petitioner seeks **grant of anticipatory bail** in respect of FIR No. 351/2015, under Section 420 of the Indian Penal Code, 1860 (hereinafter referred as **'IPC'**), registered by P.S. Jagat Puri, New-Delhi.

2. Briefly stated the facts of the case are that the complaint was lodged by Prabhjot Singh/complainant alleging that on 25.03.2014, he purchased a shop out of the property bearing No. 35, ground floor, Gopal Park, Khureji, Delhi-110051, from one Suman Pahuja who executed a sale deed in his favour. One Deepak also purchased two rooms set out the said property via sale deed executed in his favour by Suman Pahuja on 09.05.2014 and since then they were in possession of the said property. However, on

10.03.2015, Deepak saw a notice pasted on the wall of the said property wherein it has been mentioned that the notice was pasted by the receiver appointed by the court for the attachment of the said property and the same was informed by him to the complainant. An inquiry was conducted from the Bank of Punjab & Sindh Bank regarding the said notice and it was informed to them that Ankita Haldar and Nikhil Kumar has obtained loan from the bank to the tune of Rs. 14,00,000/- after mortgaging the property in question. On their default in repaying the same, the bank has initiated such a process. It has been further alleged by the complainant that Ankita Haldar in conspiracy with Nikhil Haldar had forged and fabricated the documents of the said property to obtain the loan from the bank. In that regard, the complaint was filed under Section 420 IPC against the petitioner and hence, the present petition.

3. The learned counsel for the petitioner contended that the present FIR filed against the petitioner is false and fabricated; that on 22.07.2005, petitioner's father sold the said property to his daughter/ Shalini Chopra, who thereafter on 05.05.2011, sold the same property back to the petitioner in his wife's name/Ankita Haldar for Rs. 19,75,000/-;that for the purchase of the said property loan was obtained from the bank for Rs.14,50,000/-; that in the year 2010, the petitioners' father was in need of money so he had approached Narendra Pahuja for obtaining loan in cash, to meet his financial loss; that however Narendra Pahuja, fraudulently, got Agreement to sell, GPA and Affidavit prepared with regard to the

said property, and obtained his father's signature, as he was illiterate, on the said documents fraudulently in return for loan provided by him to his father; that the entire original documents related to the said property is in the possession of his father and there is no entry in the name of Suman Pahuja even in the Government records for being the owner of the said property; that in the year 2014, Narender Pahuja and Vinod Khanna had approached petitioner and his father for purchasing the said property and they informed them about the loan on property; that as they were in need of money, they agreed to sell the property to them with a condition that the loan instalments on the said property would be paid by Narendra Pahuja and after adjustment of amount paid towards loan, sale deed would be executed and registered in favour of Suman Pahuja/wife of Narender Pahuja ; that Narendra Pahuja defied from paying the entire loan instalments and had only paid some instalments in cash to the petitioner; that in return the petitioner gave him the front portion of the said property on the ground floor; that even the constructions on the said property has been carried out by the petitioner and his father; that there is no change in the electricity meter, property tax record; that Narendra Pahuja has illegally encroached/trespassed in the back portion of the said property and allegedly sold it to the complainant; that there is no record to show as to how Suman Pahuja got converted the leasehold property into freehold property and therefore, no ingredient of Section 370 IPC is made out against him. Hence, the petition should be allowed.

4. On the converse, the learned APP for the State contends that benefit of anticipatory bail should not be accorded to the petitioner.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. Perusal of the record shows that the specific allegations have been made by the complainant against the petitioner that he had obtained loan from the bank on mortgaging the alleged property to the tune of Rs.14,00,000/- in the year 2011, instead the alleged property was purchased by Suman Pahuja from the petitioner's father in the year 2010 and the complainant has been in the possession of the said property since the very inception i.e from 25.03.2014, when the said property was purchased by him from Suman Pahuja via registered Sale Deed executed in his favour. He alleged that the claim of the petitioner that the same was executed by the petitioner's father as he was illiterate and unaware of the English language, thinking it to be a loan agreement, casts serious doubt on petitioner's version of the story. As per the allegations made by the complainant, it is seen that the loan was obtained by the petitioner by mortgaging the alleged property in the bank even when the same was not in his possession.

7. As per Status Report, Kishan Kundra/Father/ co-accused has stated during the investigation that the loan of Rs.10,00,000/- was obtained by him through a mediator named Vinod Khanna and Anil Kumar and in lieu of which they got signed the loan agreement as well as the said property documents. The same was verified from Vinod Khanna and Anil Kumar (mediators) and they

have categorically denied the same and supported the version of complainant.

8. On the facts and circumstances of the present case and as per the allegations made by the complainant in his complaint that the loan was obtained by the petitioner on the basis of false and forged documents of the said property and that the petitioner did it with the intention of causing wrongful gain to himself and wrongful loss to the complainant, in my view, since the case is at the threshold, it will be practically scuttling the investigation in case the anticipatory bail is granted to the petitioner which will create hurdles in arriving at the truth.

9. Determining the parameters in granting anticipatory bail in cases of serious offences. The Supreme Court in ***Bhadresh Bipinbhai Sheth vs State Of Gujarat & Anr.*** reported i**n *(2016) 1 SCC 152*** after analyzing the entire law has observed as under:-

> *"(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
> *(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
> *(c) The possibility of the applicant to flee from justice;*
> *(d) The possibility of the accused's likelihood to repeat similar or other offences;*
> *(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused in entitled to an order of bail."

10. In view of the aforesaid settled principles, the facts and circumstances of the present case and perusing the allegations leveled against the petitioner, this court is not inclined to grant anticipatory bail to the petitioner. Accordingly, the petition stand dismissed along with the pending application, if any.

11. Observations made in the order shall have no impact on the merits of the case during trial.

SANGITA DHINGRA SEHGAL, J

JANUARY 4 , 2018 gr//