

\$~

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

% **Date of Decision: 24.12.2019**

+ **BAIL APPLN. 3184/2019**

**Mohd. Mustaqueen** ..... Petitioner

Through: Mr. Karan Sachdeva,  
Mr. Sanajay Sharma and Ms.  
Richa Sharma, Advocates

versus

**THE STATE OF DELHI** ..... Respondent

Through: Mr G.M.Farooqui,  
APP for State.

**CORAM:**

**HON'BLE MR. JUSTICE BRIJESH SETHI**

### **J U D G M E N T**

#### **BRIJESH SETHI, J (ORAL)**

1. Vide this order, I shall dispose of an anticipatory bail application filed on behalf of the petitioner Mustaqueen under section 438 Cr.P.C. in FIR No. 166/18 u/s. 380/448/120-B IPC, P.S. Kotwali.

2. Ld. Counsel for the petitioner has prayed for anticipatory bail on the ground that petitioner is innocent and has been falsely implicated in the present FIR. The FIR has been registered on forged, false and fabricated facts. It is submitted that complainant

got registered the present FIR against petitioner to pressurize the petitioner and his brother to illegally handover the property bearing no. 1413-1415, Katra Jhajjar Wala, Chandni Chowk, Delhi-110006. The petitioner and his brother being the co-owners of the above said property have already sold it to Sh. Narottam Kumar Sharma vide Sale-Deed dated 27.12.2016. Even Sh. Narottam Kumar Sharma has been arrayed as an accused in the above mentioned FIR. Sh. Narottam Sharma is in the possession of the above said property and now the petitioner and his brother have no concern with the property. A civil suit bearing no. 559/2008 qua the said property is already pending for the last 11 years between the complainant and the petitioner and complainant is trying to give criminal colour to a dispute of civil nature. On 07.11.2016 a kalandra u/s. 107/50 CrPC was made by the police officials of PS Kotwali against the petitioner and his brother and against the complainant in which statements of the complainant, as well of the accused and the neighbours of the property no. 1413-1415, Katra Jhajjar Wala, Chandni Chowk, Delhi-110006 were recorded.

3. It is submitted that ingredients of Section 420/468/471 IPC

are not fulfilled as no wrongful loss has been caused to the complainant. Neither petitioner nor Sh. Narrotam Kumar Sharma have forged documents and for this the petitioner had filed a quashing petition bearing no. WP(Crl) No. 3033/2019 and a co-ordinate Bench of this Court has opined that no forgery has been committed by the petitioner and thereafter Investigating Officer has dropped Sections 420/468/471 IPC from the present FIR and now only Section 380/448/120-B IPC remain against the petitioner. The petitioner had moved an application u/s 438 CrPC seeking anticipatory bail before Ld. ASJ, Central, Tis Hazari Courts, Delhi. However, the said application of the petitioner was dismissed by the Ld. Trial Court vide order dated 11.07.2019. The petitioner had thereafter, approached the co-ordinate Bench of this Court for grant of anticipatory bail vide bail application no. 1802/2019 but the said petition was dismissed as withdrawn by the petitioner vide order dated 14.10.2019. However, in view of the order of co-ordinate bench of the court observing that no case of forgery is prima facie made out, the petitioner be released on bail in the event of his arrest and it is further submitted that he is ready to join the investigation as

and when required.

4. The anticipatory bail is opposed by the Ld. APP for the State on the ground that the allegations against the petitioner are serious in nature. Petitioner is not joining the investigation. The investigation is still in progress and at initial stage. The petitioner is not cooperating with the investigating officer. Custodial interrogation of the petitioner is required. He has, therefore prayed for dismissal of the bail application.

5. I have considered the rival submissions. Learned Counsel for the petitioner has relied upon following judgments:-

- i) State of Madhya Pradesh Vs. Pradeep Sharma, CrI. A. 2050/2013 (Arising out of SLP (CrI.) No. 4406/2013).
- ii) Gurbaksh Singh Sibbia and Ors. Vs. State of Punjab, MANU/SC/0215/1980

I have gone through the above case law. There is no quarrel with the proposition of law laid down therein. However, these authorities are distinguishable on the basis of facts and circumstances stated therein

6. Perusal of the FIR reveals that complainant Rajiv Vaid had made a complaint on 16.06.2018 alleging that petitioner along with other co-accuseds prepared false and forged Sale-Deed dated

27.12.2016 in respect of 1<sup>st</sup> Floor of property bearing no. 1413-1415, Katra Jhajjar Wala Mandir, Chandni Chowk, Delhi-110006 with terrace and roof rights for cheating and using as genuine the forged documents to grab the said property and for trespass. However, it is submitted that Investigating Officer has dropped Sections 420/468/471 IPC from the present FIR on the direction of the co-ordinate Bench of this Court in quashing petition bearing no. WP(Crl) No. 3033/2019. However the fact is that the petitioner is not joining the investigation. Proceedings under Section 82 CrPC have been initiated against him. The investigation is still in progress and at initial stage. Custodial interrogation of the petitioner is required for the purpose of recovery. In view of the above facts appearing on record, no grounds for anticipatory bail are made out. The anticipatory bail application is, therefore, dismissed.

**BRIJESH SETHI, J**

**DECEMBER 24, 2019**

Amit