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

% **Date of Decision: 22.11.2019**

\+ **BAIL APPLN. 2631/2019**

Kishan Lal ..... Petitioner

Through: Mr. D K Sharma and Vinay Tomar, Advocates

versus

THE STATE OF DELHI ..... Respondent

Through: Mr G.M.Farooqui, APP for State alongwith Insp. Ravi Kant, PS Mahendra Park.

Mr. Chetan Bundela & Amar Phogat, Advs. for complainant.

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 kishan Lal under section 438 Cr.P.C. r/w. section 482 CrPC in FIR No. 0357/19 u/s. 406/420/120-B IPC.

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 petitioner is aged about 50 years and is doing the business of sale/purchase of various fruits at New Subzi Mandi, Azadpur, Delhi for the last more than 30 years and main accused Leela Kishan is also engaged in same business and he was one of the partner of the petitioner since last 18 years and running their partnership business from Shop no. B-972, New Subzi Mandi, Azadpur, Delhi (in short 'shop in question') being the joint owners of the shop in equal share of 50% each. Due to financial hardship co-accused Leela Kishan entered into an agreement to sell/purchase with Virender Tuteja in the month of March, 2019 in respect of 50% share of his shop no. B-972, New Subzi Mandi, Delhi and received a sum of Rs.30,00,000/- in cash from Virender Tuteja. Since the petitioner was also having share to the extent of 50% in the said shop, therefore, buyer Virender Tuteja also got signature of the applicant just for the sake of satisfaction that he has entered into a genuine deal but petitioner has not received a single amount from Virender Tuteja. Later on petitioner came to know that some dispute between main accused Leela Kishan and Virender

Tuteja has arisen as regard the sale/ purchase of the shop and said Virender Tuteja has got registered the present FIR against Leela Kishan where he has also named the petitioner. It is submitted that petitioner Kishan Lal had already sold his 50% share to one Deepak Nanda on 02.05.2019 and this fact was well within the knowledge of Virender Tuteja as well as Chowki Incharge and SHO of PS Mahendra Park. After registration of the FIR, co-accused Leela Kishan has executed the ownership documents of the abovesaid 50% share of the 'shop in question' on 02.09.2019 in favour of complainant Virender Tuteja and Vinod Kumar.

3. It is further submitted that co-accused Leela Kishan had taken Rs.2,02,00,000/- from the petitioner Kishan Lal by way of fruits/ goods and in cash, though he had issued a cheque of Rs.90,00,000/- in discharge of part liability of the above said amount, the same was got dishonoured and the petitioner Kishan Lal has already filed two cases i.e. complaint u/s. 200 r/w. Section 156 (3) CrPC and complaint case u/s. 138 of NI Act which is pending in the Rohini Courts, Delhi.

4. It is submitted that petitioner had moved an application u/s.

438 CrPC before Ld. Sessions Judge and the said application was dismissed on 17.09.2019 by the court of Sh. Jitendra Mishra, Ld. ASJ, Rohini Courts, Delhi.

5. It is submitted that dispute between the parties is civil in nature. The petitioner is ready to join the investigation as and when required and in these circumstances, it is prayed that petitioner be released on anticipatory bail/ interim protection to join the investigation and SHO/IO be directed to release the petitioner in the event of his arrest.

6. The anticipatory bail application 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. There are clear allegations of cheating against him. The investigation is still in progress and at initial stage. The petitioner is not cooperating with the investigating officer. He has, therefore prayed for dismissal of the bail application.

7. I have considered the rival submissions. Perusal of the FIR reveals that the same was registered by complainant Sh. Virender Tuteja. He has stated that in March, 2019 petitioner Deepak Nanda

@ Vicky Nanda has approached him with malafide intention to purchase the shop in question by stating that the shop will be available at a price less than the market price and possession will be immediately handed over to him. He had also arranged a meeting with Kishan Lal and Leela Kishan and told that they are owners of the shop. Both of them had assured that the shop is free from all type of encumbrances like mortgage etc. Deal of the said shop was finalized for a consideration of Rs. Two Crore & Ten Lacs only and Rs. Thirty Lacs were paid as earnest money on 13.03.2019 to the petitioner and his co-accuseds and further payments were also made in five instalments in between 19.03.2019 and 28.03.2019 and in this way a total amount of Rs. 90,00,000/- was paid by the complainant. The time fixed for the execution of the sale deed was for a maximum period of 03 months and the complainant was to pay the rest of the consideration amount on or before 03 months. The complainant had also purchased the requisite stamp papers to the tune of Rs.2,40,000/-. However, sale-deed was not executed in favour the complainant.

8. As per the complaint, petitioner Kishan Lal @ Kali, Lila

Krishan and Deepak @ Vickey Nanda kept on avoiding the complainant and did not execute the sale-deed of the property in question in favour of the complainant. When he visited the said shop and came to know that the petitioner Deepak Nanda @ Vicky Nanda is in actual physical possession of the said shop and claimed himself to be the owner of the same. In the agreement to sell and purchase/ bayana it has been specified by petitioner Kishan Lal @ Kali and Lila Krishan that the property in question is in their possession and same is free from all kinds of encumbrances. Part payment of the tune of Rs. 90,00,000/- was made by the complainant. Co-accused Deepak Nanda @ Vickey Nanda, who was instrumental in convincing the complainant to purchase the property, is himself in possession of the 'shop in question' which prima facie shows criminal conspiracy between petitioner Kishan Lal @ Kali and co-accuseds Deepak Nanda & Lila Kishan in order to cheat the complainant. Petitioner and co-accused Lila Krishan have failed to transfer the 'shop in question' in favour of the complainant despite the fact that the complainant was ready and willing to perform his part of the agreement. Thus, prima facie all the three accused persons in a well pre planned criminal conspiracy has cheated the complainant for an amount of Rs. 90,00,000/-. Case is at the initial stage of investigation. Custodial interrogation of the petitioner is required to recover the cheated amount. In these circumstances, no gro`unds for anticipatory bail are made out. The anticipatory bail application is, therefore, dismissed.

BRIJESH SETHI, J

NOVEMBER 22, 2019
Amit