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

\+ BAIL APPL. 1251/2019

SANJAY GUPTA ..... Petitioner

Through: Ms. Rebecca John, Sr. Adv with Ms.Manisha Parwar, Adv.

versus

STATE ..... Respondent

Through: Ms. Rajni Gupta, APP for State with SI Yograj Dalal, Crime Branch.
Mr. Avinash Trivedi, Adv. for complainant.
Mr. Ranbir Singh Kundu, ASC.

\+ BAIL APPL. 1256/2019

RAJIV GUPTA ..... Petitioner

Through: Ms. Rebecca John, Sr. Adv with Ms.Manisha Parwar, Adv.

versus

STATE ..... Respondent

Through: Ms. Rajni Gupta, APP for State with SI Yograj Dalal, Crime Branch.
Mr. Avinash Trivedi, Adv. for complainant.
Mr. Ranbir Singh Kundu, ASC.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% **17.05.2019**

Crl. M.A. No. 10641/2019(for exemption) in B.A. No. 1251/2019
Crl. M.A. No. 10697/2019 (for exemption) in B.A. No. 1256/2019

Allowed, subject to all just exceptions.

Applications stand disposed of.

Bail. Appl. No. 1251/2019 & Crl. M.B. No. 900/2019 (for interim bail)
Bail Appl. No. 1256/2019 & Crl.M.B. 903/2019 (for interim bail)

These two petitions under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C' for short) for grant of anticipatory bail arise from a common FIR No. 0076/2019 dated 29.03.2019 registered under Sections 420/468/471/120B of the Indian Penal Code, 1860 ('IPC', for short) at PS: Crime Branch and are therefore being considered and decided by this common order.

2. At the outset, it may be stated that the petitioners had filed a bail application bearing No. 740/2019 before the learned Additional Sessions Judge, Rohini Courts, Delhi, who has by order dated 13.05.2019 dismissed the applications and rejected their prayer for anticipatory bail.

3. The genesis of the matter is a transaction whereby the petitioners purchased property bearing No. D-58, Multan Nagar, Delhi from one Sharvan Kumar vide registered sale deed dated 17.10.2018. The sale consideration disclosed in the sale deed was Rs. 2.15 crores, which is stated to have been paid in the manner detailed in the document. The sale deed stands duly registered with the office of the concerned Sub-Registrar of Assurances, Punjabi Bagh, New Delhi on 17.10.2018.

4. It appears that thereafter one Ram Niwas Gupta ('complainant', for short) filed a complaint alleging certain offences *inter alia* against the petitioners, which has culminated in the registration of the subject FIR on

29.03.2019.

5. The complainant claims to be the registered owner of the subject property, having purchased it from one Dharampal Mehra by a registered sale deed; Dharampal Mehra having in-turn acquired the subject property from The Multan Co-operative House Building Society Limited sometime in 1965. The essence and substance of the complaint is that four persons, namely : Sharvan Kumar, Rajiv Gupta, Sanjay Gupta and Piyush Goyal, the two Gupta brothers being the petitioners herein, have caused the subject property to be transferred and conveyed in favour of the petitioners on the basis of forged and fabricated documents in conspiracy with each other and with some other anti-social elements. It is alleged in the complaint that the subject property was mortgaged with the Union Bank of India, Shalimar Bagh, New Delhi since 1998 and could not therefore have been sold in the first place.

6. It is pertinent to record at this point, that Sharvan Kumar who is named as accused No. 1 in the FIR was arrested on 17.04.2019; and after police custody of about two days was remanded to judicial custody on 20.04.2019; and has remained there since.

7. Ms. Rebecca Mammen John, learned Senior Counsel appearing for the petitioners in both the cases, states that the subject property was purchased by the petitioners after conducting due diligence as regards its title and ownership; and for good and valuable consideration that stands paid to the seller. The petitioners have placed on record photocopies of various documents evidencing title and matters ancillary to title, which according to

senior counsel, formed the basis on which the petitioners satisfied themselves as regards the ownership of Sharvan Kumar and his right to sell and went on to purchase the subject property for consideration. The documents so cited include:

(i) Sale deed dated 18.07.1965 which evidences the conveyance of the subject property by The Multan Co-operative House Building Society Limited in favour of the first individual owner Dharampal Mehra, which sale deed appears to be registered with the concerned Sub-Registrar of Assurances on 04.08.1965;

(ii) Sale deed dated 17.06.1987 executed by Dharampal Mehra in favour of one Prithvi Chand Garg in respect of transfer of the subject property to the latter, which also appears to be registered with the concerned Sub-Registrar of Assurances on 18.06.1987;

(iii) Will dated 17.10.1990 executed by Prithvi Chand Garg, bequeathing the subject property to his son Sharvan Kumar, which also appears to be registered, though details of registration are not apparent from the documents placed on record;

(iv) Receipts dated 01.03.2018 and 07.03.2018 issued by the Municipal Corporation of Delhi evidencing payment of arrears of property tax due for the subject property by Sharvan Kumar;

(v) Certificate dated 01.05.2018 issued by the North Delhi Municipal Corporation evidencing mutation of Sharvan Kumar's name in place of Dharampal Mehra as the person primarily liable for payment of property tax for the subject property in the records of the corporation;

(vi) Document dated 21.04.2018 evidencing payment of 'road restoration charges' by Sharvan Kumar to the Delhi Jal Board in connection with the subject property;

5

(vii) Electricity bill issued by BSES in the name of Sharvan Kumar in respect of the electricity connection installed in the subject property;

(viii) Receipts dated 15.04.2018 and 23.05.2018 evidencing payment of society charges by Sharvan Kumar for the subject property to the Multan Residents Welfare Association;

(ix) Public Notice dated 06.07.2018 published in the 'Hindustan Times' newspaper, issued by one of the petitioners *i.e.* Rajiv Gupta, inviting objections from the public at large to the proposed transfer of the subject property; and

(x) Building Sanction dated 03.08.2018 issued by the Building Department of North DMC, granting sanction for erection of building on the subject property, issued in favour of Sharvan Kumar.

8. Ms. John contends that based on a verification of the above documents, in original, Sharvan Kumar was able to satisfy the petitioners as regards his title, ownership and right to convey the subject property in favour of the petitioners; and it was only after undertaking such due-diligence exercise that the petitioners agreed and decided to purchase the subject property. Senior counsel further contends that the sale consideration of Rs. 2.15 crores disclosed in the sale deed dated 17.10.2018 was indeed paid by the petitioners to Sharvan Kumar; and although there were some hiccups in completing payment since some cheques issued by the petitioners were initially dishonoured, subsequently, the entire amount was paid by the petitioners by way of RGTS transfers and cheques to Sharvan Kumar. Petitioners admit though, that a small element of sale consideration comprising Rs. 15 lacs was paid to Sharavan Kumar in cash. Senior counsel also points-out that the sale deed has also been duly stamped, with requisite

stamp duty payable as per the circle rates applicable to the subject property and the category of the colony.

9. On point of fact, it is stated that after obtaining the sanctioned building plan, the petitioners have constructed four floors upon the land comprised in the subject property.

10. On another note, senior counsel contends that two civil suits have come to be filed against the petitioners, one by Sharvan Kumar and the other by Ram Niwas Gupta in this court, making civil claims against the petitioners, which suits are pending adjudication.

11. The principal allegations in the suit bearing CS(OS) No. 185/2019 filed by Sharvan Kumar is that the actual sale consideration agreed upon, which is claimed to be more than Rs. 6 crores in the suit, was never paid and that certain cheques issued by the petitioners to Sharvan Kumar were dishonoured; and also that the purchasers were to give one floor of the subject property to Sharvan Kumar, which they have not done. On these allegations Sharvan Kumar has made certain claims against the purchasers, namely the petitioners herein. In this suit, an interim order dated 02.04.2019 has come to be passed, whereby the petitioners, who are defendants in the suit, have been restrained from parting with possession and from creating any third-party interests in one of the floors of the subject property.

12. In the other suit bearing CS(OS) No. 198/2019 filed by Ram Niwas Gupta the principal contention is that the subject property is owned by the plaintiff, who is the complainant in the FIR; and that the subject property has been transferred on the basis of forged and fabricated documents. In the

second suit, by way of interim order dated 05.04.2019, the petitioners, who are defendants in the suit, have been restrained from carrying-out any construction as also from transferring, alienating or parting with possession of the subject property.

13. For purpose of consideration of the present anticipatory bail petitions however, what is noteworthy is only the following:

(a) The petitioners have admittedly acquired the subject property by way of a sale deed, which is duly stamped and registered and for which a consideration of Rs. 2.15 crores as detailed in the document is stated to have been paid by the petitioners to Sharvan Kumar;

(b) It is not the prosecution case, or indeed the contention of the plaintiffs in the two suits, that sale deed dated 17.10.2018 has *not been executed* by Sharvan Kumar in favour of the petitioners; the allegation is that Sharvan Kumar was not the owner of the property and that the antecedent documents of title on the basis of which Sharvan Kumar claims ownership are forged and fabricated. The other plea of failure of consideration payable by the petitioners to Sharvan Kumar, is not the basis of the allegation of criminality; nor indeed does this plea lie in the mouth of the complainant who was not the person who sold the subject property to the petitioners;

(c) The first accused named in the FIR, that is Sharvan Kumar, was subject to police custody only for two days; and thereafter he has merely been cooling his heels in judicial custody;

(d) From the time of registration of the FIR until now, the investigating officer has not attempted to seek remand of the petitioners; nor is it the prosecution case that the petitioners have evaded investigation.

14. Ms. John also points-out that during the pendency of the bail application before the Additional Sessions Judge, the petitioners were granted interim protection again arrest *vide* order dated 04.04.2019, which was extended from time-to-time; and that the petitioners joined investigation on no less than 12 occasions, which though, is disputed by the prosecution, to say that the petitioners participated in investigation only 5 times. Thereafter the anticipatory bail application was dismissed *vide* order dated 13.05.2019. She further states that one of the main incriminating circumstances sought to be canvassed by the prosecution is that the person who introduced Sharvan Kumar to the petitioners, Piyush Goyal, and at whose instance the petitioners and Sharvan Kumar entered into the transaction, is a person against whom the petitioners have registered a separate FIR and who is also a co-accused in the present FIR, which smacks of criminal conspiracy and wrong-doing. Ms. John disputes this on point of fact, to say that the FIR registered against Piyush Goyal is *not by the petitioners* but by other family members of the petitioners, with whom the petitioners have inimical relations.

15. Opposing the present anticipatory bail petitions, Ms. Rajni Gupta, learned APP for State argues that the petitions must be rejected since the petitioners have, by indulging in forgery and fabrication of documents, purchased a property worth about Rs. 7 crore for a sum of only about Rs. 2

core; and investigation in the matter is still underway. She also submits that although the prosecution had sought extension of Sharvan Kumar's police remand, the same was declined and it is in these circumstances that Sharvan Kumar is now in judicial custody. On being asked a pointed question as to why the prosecution requires 'custodial interrogation' of the petitioners however, she offers no cogent reason.

16. In the foregoing facts and circumstances, while scrupulously avoiding any comment on the merits of the case, the court is satisfied that: firstly, the petitioners have concededly acquired the subject property by paying a substantial sum of around Rs. 2.15 crores, which amount stands-up well against the published circle rates of the subject property in the colony in question. Secondly, investigation in the present case would involve scrutiny, forensic examination etc. of documents that are already available with the prosecution and there would be no requirement of any recoveries to be made. Thirdly, the prosecution has taken no proactive steps to seek custodial interrogation of the petitioners ever since the registration of FIR on 29.03.2019; for which reason, evidently no useful purpose would be served by making such request at this stage. Fourthly, there appears to be a predominant element of civil dispute in the present matter, pursuant to which two civil suits have already been filed making claims based on title, ownership, failure of consideration and such-like aspects in relation to conveyance of the subject property, including a suit by the complainant himself. Lastly, there is no allegation that the petitioners have attempted to flee from justice; or that have not co-operated in the investigation; or that they have attempted to either tamper with evidence or intimidate witnesses.

17. *Prima-facie* therefore the court finds no egregious criminal culpability on the petitioners' part *that would warrant custodial interrogation*. The court is therefore satisfied that the petitioners have made-out a case for grant of anticipatory bail. It is accordingly directed that in the event of their arrest, the petitioners shall be released upon furnishing a personal bond in the sum of Rs. 50,000/- each, with one surety of the like amount, to the satisfaction of the Investigating Officer.

18. It is made clear that nothing contained in this order shall be construed as a reflection of opinion on the merits of the case. The petitioners are also directed to co-operate in the investigation, fairly and sincerely; and to not tamper with evidence or intimidate witnesses or do any other act that may delay, impede or prejudice the course of investigation.

19. The petitions are disposed of in the above terms. Pending applications, if any, stand disposed of.

20. *Dasti*.

ANUP JAIRAM BHAMBHANI, J.

MAY 17, 2019/*uj*