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

% Reserved on: 1st October, 2019
Date of Decision: 17th October, 2019

\+ **BAIL APPN.1900/2019**

SHYAM SUNDER ..... Petitioner
Through: Mr. Pramod Kumar Ahuja, Adv.

versus

STATE OF NCT OF DELHI ..... Respondent
Through: Mr. Amit Chadha, APP with Insp. Ravinder Pandit, PS C.R. Park, Delhi
Mr. Manmeet Singh Arora and Ms. Hemakshi Rajawat, Advs. for complainant

CORAM:
HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. The petitioner has filed the present application under Section 438 of the Code of Criminal Procedure, 1973 for the grant of anticipatory bail in FIR No.0071/2019 under Sections 406/420/120-B of the Indian Penal Code, 1860 (IPC), registered at PS C.R. Park, Delhi.

2. Learned counsel for the petitioner submitted that the petitioner apprehends arrest at the hands of the Investigating Officer (IO) after dismissal of his anticipatory bail application on 25.07.2019 by the Additional Sessions Judge, Saket Courts (South East), New Delhi.

Learned counsel for the petitioner further submitted that the petitioner has been falsely implicated in the case.

3. It would be quite relevant and appropriate to reproduce the impugned order dated 25.07.2019, which reads as under:

> "It is argued by learned counsel for applicant that one plot/immovable property/land was lying at Lucknow and the documents of the same were executed in the name of the applicant by the Raja of Panna, MP who is the owner of the said property. It is further submitted that the complainant was interested to invest his money in the land and due to this reason the complainant and his wife personally visited to the plot/property and also verified the actual status of land from the revenue authorities. He further argued that the complainant and the applicant executed agreement regarding the property/land situated at Lucknow, UP for a sum of Rs.4,70,00,000/-. Complainant paid token/bayana of sum of Rs.20,00,000/- by way of RTGS in the bank account of applicant. He has further submitted that the agreement dated 29.4.2016 regarding sale purchase of the said property was duly signed by the complainant and the applicant and the same was attested by notary public on 29.4.2016. Learned counsel for the applicant has argued that the original chain of documents was still lying with the complainant and the same was misused by the complainant. He further submitted that the entire deal of repair work finalized of Rs.2,00,000/- and complainant further authorized the applicant to remove the waste lying material in the flat and also given letter to the security incharge of area of NRI Complex. The complainant played a fraud with the innocent applicant and not returned the amount of Rs.2,00,000/- which was due towards the renovation work of flat. The applicant regularly approached the applicant to clear the further documentation and payment of Lucknow property/land. The complainant

showed his inability to arrange the further amount of Rs.4,50,00,000/- to the applicant and due to this reason deal of property is not finalized and complainant further played mischief with the applicant and took one post-dated signed cheque amounting to Rs.20,00,000/- as security towards the deal of property. The complainant misused the cheque after filing a complaint case u/sec. 138 NI Act against the applicant. Learned counsel for the applicant further submitted that the complainant alleged against the applicant that he committed theft in the flat and stolen some papers from there. He further submitted that the complainant was in acute financial crisis due to demonetization and proposed the applicant to purchase the flat bearing No.58, NRI Complex, GK-IV, New Delhi in a sum of Rs.1,10,00,000/-. The applicant prepared for the same and arranged the money from his saving funds and paid a sum of Rs.50,00,000/- in six instalments. The agreement regarding sale purchase of the flat was duly executed between the applicant and the wife of complainant after receiving the amount of Rs.50,00,000/-. The complainant also took a post-dated signed cheque amounting to Rs.20,00,000/- from the applicant as a security towards the deal of flat. Learned counsel for the applicant further argued that the complainant and his wife after receiving Rs.50,00,000/- from the applicant handed over the original key of flat to the applicant and further assured to execute the sale deed of the said flat in the name of applicant as per the terms and conditions of this agreement. The complainant and his wife therefore committed serious offence and failed to execute sale deed in favour of applicant and started making unwanted issues to receive further balance payment of Rs.60,00,000/- from the applicant. The deal of flat was lastly not finalized and the complainant and his wife grabbed the hard earned money of Rs.45,00,000/- belonging to the applicant. Learned counsel for the applicant contended that the complainant further issued a post-dated cheque amounting to Rs.45,00,000/- in favour of applicant to return the amount of flat deal but the same was returned unpaid. Learned counsel for the applicant submitted that the complainant also committed fraud with the applicant at the time of deal of flat one post-dated security cheque amounting to Rs.20,00,000/- which was also taken from the applicant and the same was misused by filing the criminal case against the applicant without any bonafide reason. Learned counsel for the applicant further argued that the complainant misused the cheques and succeeded in their ill motive and got registered the present FIR against the applicant on the basis of false information and documentation produced before police authorities. On these grounds, he prayed that bail may be granted to the applicant.

Learned APP for the State argued that the complainant Shyam Sundar came into contact of the applicant in early 2016 and represented himself as construction and real estate businessman. He also introduced another alleged persons namely Arun Yadav who represented himself as an IAS Officer in NDMC and D.K.Thakur who represented himself as Dy.S.P., CBI. Learned APP further stated that the applicant along with his associates approached him in the last week of April, 2016 and asked for financial assistance of sum of Rs.40,00,000/- for completing some some distress sale and left original sale deed of his property at Darjeeling along with post-dated cheques of Rs.20,00,000/- each vide cheques Nos.040025 and 19952. He further argued that the complainant also gave keys of his flat No.58, NRI Colony, New Delhi for repair work. He presented the cheques in the bank for encashment but both the cheques got dishonoured. Learned APP further argued that the applicant sent demand notice in the name of the complainant’s wife that he had signed agreement to

> sale of flat No.58, LGF, NRI Complex, New Delhi for Rs.1,10,00,000/- and have received an advance of Rs.50,00,000/-. He further argued that the applicant along with his associates committed cheating and impersonated themselves as high officials duped the complainant. Learned APP argued that notice under Section 41-A of the Cr.P.C. was issued against the applicant but he has not joined the investigation and delaying the investigation. He further also argued that the investigation is at the nascent stage. On these grounds, the learned APP sought dismissal of bail application of applicant.
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> I concur with submissions of Ld. Additional PP for State. Considering the totality of facts, nature of allegations against the applicant and gravity of offence allegedly committed by applicant, I am not inclined to grant bail to the applicant. Accordingly, the bail application of applicant/accused Shyam Sunder is dismissed. "

4. Learned counsel for the petitioner addressed his arguments almost on similar grounds as raised before the Sessions Court and also submitted that a perusal of the FIR reveals that no case of fraud is made out against the petitioner, in any manner, under Section 420 of the IPC as well as no offence of criminal breach of trust has been made out against the petitioner under Section 406 of the IPC.

5. Learned counsel for the petitioner further submitted that the filing of the FIR is only an abuse of the process of law and the said FIR is liable to be quashed since no fraud has been played by the petitioner. Even otherwise, the FIR does not disclose any criminal offence committed by the petitioner in any manner. The case is of civil nature and only a civil remedy, if any, can be availed.

6. It is also stated by the learned counsel for the petitioner that no document has been recovered from the petitioner and the petitioner shall make himself available for interrogation by police official as and when required.

7. The State has filed the status report dated 30.9.2019 before this Court which reads as under:

> "The present case has been registered on the complaint of Sh. Jogendra Singh Bagga S/o Late Sardar Saheb Lal Singh R/o J-21, Ground Floor, Saket, New Delhi. Complainant stated that the alleged Shaym Sundar came into his contact in early in early 2016 and represented himself as a construction and real estate businessperson. He also introduced another alleged person, namely, Arun Yadav who represented himself as an IAS Officer in NDMC and D.K.Thakur who represented himself as Deputy S.P., CBI. Complainant further stated that alleged Shyam Sundar along with his associates approached him in the last week of April, 2016 and asked for financial assistance of a sum of Rs.40,00,000/- for completing some distress sale and left original sale deed of his property at Darjeeling along with post-dated cheques of Rs.20,00,000/- each vide cheques Nos.040025 and 19952. Complainant also gave keys of his flat No.58, LGF, NRI Colony, New Delhi for repair work. He presented the cheques in the bank for encashment but both the cheques were dishonoured. Further, the alleged Shyam Sundar sent demand notice in the name of the complainant's wife that he had signed agreement to sell of flat No.58, LGF, NRI Complex, New Delhi for Rs.1,10,00,000/- and have received an advance of Rs.50,00,000/-. Alleged person Shyam Sundar along with his associates committed cheating and impersonated themselves as high officials and duped the complainant.

During the course of investigation, notice under Section 41-A Cr.P.C. was issued against Shyam Sunder, s/o Shri Pyare Lal, H.No.1523/13, Govind Puri, New Delhi but he has not joined the investigation till date. He was contacted telephonically to appear and join the investigation but he is delaying on one pretext or another and later on, he switched off his phone. A police team was sent to Darjeeling, West Bengal but he was not present at his given address.

During the course of investigation, the complainant was shown the photocopy of Agreement to Sell dated 29.4.2016 executed between accused Shyam Sundar and complainant Jogendra Singh Bagga in Lucknow regarding plot Khasra No.584 in District Bijnaur, Lucknow, U.P. from the bail application of petitioner. The complainant stated that no such agreement was ever signed by him. He had gone to Lucknow with the accused Shyam Sundar and his two associates for a meeting with the Chief Minister of Uttar Pradesh Shri Akhilesh Yadav for appointing him as a Chairman of some Corporation. The complainant was also shown the Advance Receipt-cum-Agreement to sell dated 6.8.2016 executed in Delhi between Mrs. Manjeet Kaur wife of complainant and accused Shyam Sundar for the property 58, LGF, NRI Complex, Mandakini, New Delhi. The complainant stated that his wife never entered into any such agreement. The complainant further stated that on 6.8.2016 he along with his wife and one friend was in Kolkata, West Bengal. They had left for Kolkata on 4.8.2016 and returned on 8.8.2016. The complainant provided the boarding passes dated 4.8.2016, prepaid taxi receipt dated 4.8.2016 from Kolkata, entry slip dated 5.8.2016 of Calcutta High Court, and hotel bill regarding their stay in Kolkata from 4.8.2016 to 8.8.2016. All these documents are seized through seizure memo. The complainant further stated that he had given above-mentioned premises to the accused Shyam Sundar for

> renovation and the accused stolen some cheque books and other documents by breaking open the cupboards. The complainant further stated that all these are forged documents. The complainant further stated that the original are not available and signatures of complainant and his wife are superimposed from the stolen documents.
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> The investigation is in the nascent stage, many documents are to be recovered from the accused. In view of the above facts, circumstances, and nature of offence, the bail application moved by the above applicant is strongly opposed and the same may kindly be dismissed in the interest of justice. However, the order of this Hon'ble Court will be abide by the undersigned."

8. Learned APP for the State argued that the investigation is stated to be at the initial stage and many documents are yet to be recovered from the accused.

9. There is no doubt that the anticipatory bail may be granted when there is material on record to show that prosecution was inherently doubtful or where there is material on record to show that there is a possibility of false implication. However, when the element of criminality is involved and the custodial interrogation is required to determine the modus operandi, recovery of documents as well as to unfold the other aspects and facts during the investigation, the applicant is not entitled for anticipatory bail.

10. It is also well-settled law that while considering the question of grant of anticipatory bail, the Court *prima facie* has to look into the nature and gravity of the alleged offence and the role of the accused. The Court is also bound down and must look into, while exercising its

power to grant bail, the antecedents of the applicant and also the possibility of the applicant fleeing from justice, apart from other factors and parameters in view of the facts of each and every case.

11. In view of the aforesaid facts and taking into consideration the allegations that Shyam Sundar along with other associates has committed cheating and impersonated themselves as higher officials and duped the complainant as well as the fact that during the course of investigation, notice under Section 41-A of the Cr.P.C. was issued to the petitioner, however, the petitioner did not join the investigation and also the fact that the investigation is at the initial stage and the custodial interrogation of the petitioner is required in this case to determine the modus operandi as well as for the recovery of the documents as stated hereinabove, this Court is not inclined to grant anticipatory bail to the petitioner.

12. I am also of the considered opinion that apart from the custodial interrogation, taking into consideration the nature and the gravity of the accusations, stage of the investigation and the alleged role of the petitioner in the offence, there is no merit in the anticipatory bail application of the petitioner and the same is accordingly dismissed.

13. It is clarified that whatever is discussed hereinabove is only a *prima facie* view of this Court, at this stage, and the same shall not tantamount to any expression or opinion on the merits of the case.

CHANDER SHEKHAR, J

OCTOBER 17, 2019/rk