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

Reserved on : 10.02.2020
%   ***Pronounced on :13.03.2020***

\+   **BAIL APPLN. 260/2020**

SMT. PRIYANKA TIWARI ..... Petitioner

Through: Mr. Prag Chawla and Mr. S.S. Chillar, Advocates.

versus

STATE ..... Respondent

Through: Ms. Rajni Gupta, APP for the State.

Complainant in person.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

O R D E R

1. This is an application filed under Section 438 Cr.P.C on behalf of the petitioner for grant of anticipatory bail in case FIR No. 0176/2018 dated 22.06.2018 under Sections 420/34 IPC registered at Police Station Dwarka, Delhi.

2. Briefly stated, the present FIR was registered on the basis of the complaint of Hariom Tandon (Complainant) in which he alleged that petitioner was appointed as clerk-cum-accountant in the year 2013-2014 in his office and worked till September

2017. He further alleged that after winning the trust of the complainant while working with him, petitioner alongwith her mother Pushpa Tiwari, brother Abhishek Tiwari and Sandeep Kumar induced him to invest in three properties i.e. Plot No. C-227A, Patel Garden, Kakrola, New Delhi, admeasuring 53 Sq. yards for a sum of Rs. 15,75,000/-, Plot No. 419/A-1, Manak Shah Garden Extension, Patel Garden, Kakrola, New Delhi for a sum of Rs. 23,00,000/- and Plot No. 16/9, Shivani Enclave, Old Palam Road, Kakrola, New Delhi for a sum of Rs. 72,00,000/-.

3. It is further alleged by the complainant that the petitioner and her associates had told him that all the properties are in the name of Sea Ways Travel Agency. Complainant made all the payments through cheques in favour of Sea Ways Travel Agency and same has been credited in the account of Sea Ways Travel Agency. Complainant has alleged that petitioner had handed over property documents viz General Power of Attorney, Agreement to Sell, Possession Letter, Affidavit, WILL etc. in respect of Plot No. C-227 A, Patel Garden, Kakrola, New Delhi and Plot No. 419/A-1, Manak Shah Garden Extension, Patel Garden, Kakrola, New Delhi and when complainant asked the petitioner to execute the documents in respect of third property i.e. Plot No. 16/9, Shivani Enclave, Old Palam Road, Kakrola, New Delhi in favour of complainant, the accused persons threatened him of dire consequences.

4. During investigation complainant stated that the property documents were not executed in his presence and petitioner gave him the documents in his office at Naraina in the month of October 2017 and complainant signed all the documents. He further stated that he had not taken physical possession of the above said properties though he signed the possession letter as the petitioner told him that there were some tenants in the above said properties. Complainant further stated that he never met Sandeep Kmar who sold him the properties on behalf of Director of Sea Ways Travel Agency. It is alleged that when in the month of January 2018, when complainant asked the petitioner for handing over the possession of the above said properties, the petitioner started avoiding him and then the complainant realized that he had been cheated by the petitioner.

5. I have heard the Ld. counsel for the petitioner, Ld. APP for the State and perused the status report filed by the state.

6. It is argued by the Ld. counsel for the petitioner that the petitioner was employed by the complainant at a monthly salary of Rs. 8000/- which was increased to Rs. 15,000/-. He further urged that the petitioner used to work under the instructions of the complainant and the complainant used to transfer funds from other illegal sources into the account of the petitioner and her friends and family members. He further argued that since the

petitioner was in the employment of the complainant, she had no choice to check or cross check or to question these transfers and data entries. He further argued that in a civil suit the complainant had admitted that the properties have been purchased by him after due verifications of the documents of the property and its physical verifications.

7. It is submitted by the Ld. APP for the state that the petitioner is the master mind of the case, she has cheated the complainant to the tune of Rs. 1,10,75,000/-. She further submitted that the allegations against the petitioner are grave and serious in nature. She further stated that the investigation revealed that the account holders of Sea Travel Agency is none other than petitioner and Diwakar Tiwari. She further argued that on the perusal of the withdrawal documents, it has been found that the petitioner has withdrawn an amount of Rs.99.84 Lakhs through 32 cheques between the months of May 2017 to November 2017.

8. She further argued that on physical verification of the properties i.e. Plot No. C-227A, Patel Garden, Kakrola, New Delhi it has been found that this plot belongs to Shiv Kumar Yadav who carried out the construction and built 4 flats over the said plot and upper ground floor and one room at the basement were purchased by the petitioner and the same were subsequently

sold by her to others. It is further stated by the Ld. APP that petitioner also purchased plot No. 419/A-1, Manak Shah Garden Extension, Patel Garden, Kakrola, New Delhi from Shiv Kumar Yadav and after constructing three flats she sold out the same.

9. It is further argued by the Ld. APP that except the present case one more criminal case vide FIR No. 207/2018, dated 25.05.2018 U/s 420/406/506/120B IPC, PS Vikaspuri, New Delhi was registered by the complainant against 08 accused persons including the petitioner. She further argued that the complainant has also filed various civil suits in District Courts, Dwarka, New Delhi against the petitioner.

10. It is further argued by the Ld. APP that on 23.12.2019, Notary Public Radhey Shyam was examined and he stated that he had never notarized the sale purchase documents executed between the parties related to Plot No. C-227A, Patel Garden, Kakrola, New Delhi and Plot No. 419/A-1, Manak Shah Garden Extension, Patel Garden, Kakrola, New Delhi. She further argued that on the basis of the statement of Notary Public, Sections 467, 468, 471 IPC were also added in this case.

11. It is further submitted by the Ld. APP that the petitioner was having two franchise of BAFEL Academy Pvt. Ltd for 03 years with effect from 2016 to 2019 at House No. 1, 1st Floor, Road No. 51, Opp. Mc Donald's Central Market, Punjabi Bagh,

New Delhi and at F-26/15, 2nd Floor, Sector 7 Rohini, New Delhi. She further submitted that the income and expenditures of the above said franchisees are being verified from the Bafel Academy Pvt. Ltd.

12. It is further submitted by the Ld. APP for the State that the petitioner is having various bank accounts in IDBI bank, YES bank and Axis Bank and on perusal of statement of account of the petitioner of A/c No. 915020009579070 in Axis Bank, it has been noticed that in the end of the month large amounts of Rs. 50,50,000/-, 92,00,000/-, 1,41,00,000/-, 1,60,00,000/- and 98,00,000/- were withdrawn and on the very next day same amount was deposited in the said account.

13. In the instant case, the allegations against the petitioner are grave and serious in nature. The investigation has revealed that property documents in regard to Plot No. C-227A, Patel Garden, Kakrola, New Delhi and Plot No. 419/A-1, Manak Shah Garden Extension, Patel Garden, Kakrola, New Delhi have been forged and fabricated. As per the prosecution the recovery of the cheated amount is yet to be effected, the petitioner is not joining the investigation and proceedings U/s 82 Cr.P.C have already been initiated against her. In ***Lavesh Vs. State (NCT of Delhi)***, (2012) 8 SCC 730, it has been held as follows :

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and

investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

In these circumstances, no ground for bail is made out the bail application is, therefore, dismissed.

14. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

MARCH 13, 2020

Sumant