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

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Date of Decision: 12.03.2020

+ **BAIL APPLN. 640/2020**

ABHILASHA SHIVARE

..... Petitioner

Through: Mr. Kirti Uppal Sr. Advocate
along with Mr. Nitesh Singh,
Ms. Riya Gulati, Mr. Aditya
Awasthi, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr Raghuvinder Varma,
APP for State alongwith SI
Gulshan Yadav, PS EOW.

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 Smt. Abhilasha Shivhare under section 438 Cr.P.C. r/w. Section 482 CrPC in FIR No. 089/2018 u/s. 420/406/506/34 IPC, PS EOW Cell, District South-West, Delhi

2. It is submitted that petitioner is innocent and has been falsely implicated in this case. The complainant, Mr. Janardhan Singh, has alleged that he has been cheated/defrauded by the petitioner and co-accused by taking money from him on the basis of cheating/fraud.

On 21.03.2018, an FIR was filed by the Complainant falsely accusing the petitioner of various offences u/s 420, 506 and 34 IPC.

3. It is submitted that on various occasions, the applicant has received notices u/s 41(A) Cr.P.C., bearing number 3632/R/ACP/Section-1/EOW and 5763/ACP/Section-1/EOW, asking her presence at the station at the duly mentioned date and time, in order to question her to ascertain the facts and circumstances of the case in relation to the present investigation. The applicant has joined the investigation as per the instructions of the officers of EOW and has also complied with all the directions so issued in that regard.

4. It is submitted that petitioner was merely an employee in the firm of the co-accused Mr. Vikram Tokas, at the time of execution of the agreement. The accused persons are still having sufficient land in the said village and are willing to comply with the agreement, by registering the said plot in question, but it is the complainant who is reluctant to get it registered as the market value of the plot in question has gone down.

5. It is submitted that the complainant in clear contravention of the terms of agreement is seeking refund of the amount deposited by him for the purpose of securing a plot in the said village, but the request for total refund is neither acceptable nor maintainable as per the agreement. The complainant has made false allegations against the petitioner and co-accused by stating that the accused persons called the complainant and told him that they don't have any land at the mentioned location as per the agreement although they do have a land at some other location for which they need to pay some extra

money, in order to get that land allotted in their name.

6. It is submitted that petitioner has sufficient land in the said village and location, which has been verified by the Investigating Officer as per his status report before the Sessions Court, and is willing to register it in the name of the complainant for mutually agreed amount as per the agreement.

7. It is submitted that as per the law in force in Uttar Pradesh, there is a simple procedure to get an agricultural land converted into residential land, if an owner of an agricultural land wants to use his land for residential purposes and petitioner has already registered more than 100 plots in the name of different allottees in the same location and village, without any complication, before the concerned sub-registrar Ghaziabad U.P.

8. It is submitted that petitioner is a young unmarried lady of 31 years of age and if she goes to jail she would get defamed in her society and it would be a big hurdle in her marriage.

9. It is submitted that there is no apprehension of the petitioner absconding from the jurisdiction of this Court, as the petitioner is a resident of Delhi, and has to look after her aged parents. The petitioner has been and will be cooperating with the investigating agency and has already joined the investigation three times when asked for, and there is no reasonable apprehension about tampering of evidence.

10. Ld. Sr. counsel has, thus, submitted that petitioner is ready to join the investigation as and when required and has, therefore, prayed that she be released on bail in the event of her arrest.

11. The application is opposed by the Ld. APP for the State on the ground that the allegations against the petitioner are serious in nature. Custodial interrogation of the petitioner is required to look into the trail of cheated money and diversion of funds. Ld. APP has, therefore prayed for dismissal of the bail application.

12. I have considered the rival submissions. The present FIR was registered on the complaint of Sh. Janardhan Singh. He has submitted that in the year of 2012, he intended to buy a plot and came to know that M/s Dream Valley Associates was developing a project at Vill. Agrola, Near Tronica City, Loni, Distt Ghaziabad, UP. He alongwith two others visited the office of M/s Dream Valley Associates at 130, Mohammadpur, R.K. Puram, New Delhi and met Vikram Tokas and petitioner Ms. Abhilasha Shivhare. They represented that they are developing a plotted colony 'Dream Valley Project'. This project consisted of different sizes of plots including plotted area of 150 Sq. yards. Believing their representations to be true, on 24.10.2012, he booked plot bearing Plot No.398-B admeasuring 150 Sq. Yards in the said project in the joint name with his wife and paid Rs.3,000/- as booking amount. The total sale consideration of plot was Rs.7,47,000/-. The remaining sale consideration had to be paid in installment of Rs.12,450/- per month for a period of 5 years (60 months). Complainant made full payment of the said plot. Neither petitioner nor co-accused gave any plot or returned his money. He has submitted that accused persons had sent him a notice stating that all installments have been received and asked him to visit the office of company for registration of the plot.

When complainant visited the office of Dream valley Associates, Vikram Tokas told that they have no plot at Agrolla and he may take plot at some other location and that too at the cost of Rs 1 Lakh extra. He refused to accept the new condition and asked for refund but petitioner and co-accused neither refunded the amount nor gave the allotted plot.

13. During investigation, a reply from Ghaziabad Development Authority was received and its scrutiny revealed that Ghaziabad Development Authority has not sanctioned any layout plan to M/s Dream Valley Associates in Khata No. 394 Khasra No. 511, Khata No. 807 Khasra No. 504 Khatoni No. 32 Village Agrola Loni, Ghaziabad, U.P. Investigation from the office of Superintending Engineer, UP Aawas Vikas Parishad revealed that no license has been granted to M/s Dream Valley Associates for any such project.

14. During investigation, notices u/s 41A CrPC were issued against the petitioner Ms. Abhilasha Shivhare and co-accused. Petitioner Ms. Abhilasha Shivhare joined the investigation. She could not produce any approval/sanction from competent authority for developing their project.

15. On 01.10.2019, accused Vikram Tokas was arrested. Since he was suffering from ethanol related Cirrhosis and renal failure of both kidneys, he had assigned all the responsibilities of working/affairs of the firm of M/s Dream Valley Associates to his partner petitioner Ms. Abhilasha Shivhare and, therefore, she could explain diversion/ utilization of funds of buyers and also regarding non execution of Sale Deed. Co-accused Mr. Vikram Tokas was

admitted to interim bail but he expired on 04th March 2020.

16. Raid was conducted at accused Abhilasha Shivhare workplace at 130, Vill. Mohammadpur, Delhi but she was not found there. It was revealed that she along with her family members has shifted to some unknown place recently. Efforts were made to serve Notice u/s 41(A) CrPC upon the petitioner but her present whereabouts could not be ascertained.

17. Petitioner alongwith co-accused Vikram Tokas under a pre-planned conspiracy, misrepresented that they have sufficient land in village Agrolla, but they could not get Sale Deed registered in the name of the victims. Further the land is also un-approved from the competent authorities. From the reply of Ghaziabad Development Authority it is evident that Dream Valley Associates is selling plots without any approval/ sanction from GDA. Documents from ICICI Bank revealed that accused Abhilasha Shivhare opened the bank account in the name of Dream Valley Project and she is the sole signatory. She is 50% partner in M/s Dream Valley Associates Vide Partnership Deed dated 09.01.2015 executed between Vikram Tokas and Ms. Abhilasha Shivhare. Victims have named her in complaints and her active involvement in the transaction entered into with the buyer victims.

18. Perusal of the above facts, thus reveals that there are allegations against the petitioner that she has allured the gullible victims and amount of Rs 83 Lacs (approx.) has been misappropriated. She was accepting monthly installments from victims and also issuing receipts. She is not joining the

investigation. Keeping in mind the facts appearing on record and also in view of the fact that petitioner is not cooperating with investigating agency and custodial interrogation of the petitioner is required to look into the trail of cheated money and diversion of funds, no grounds for anticipatory bail are made out. The anticipatory bail application is, therefore, dismissed.

BRIJESH SETHI, J

March, 12, 2020

Amit

