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

% **Date of Decision: 08.01.2020**

\+ **BAIL APPLN. 1229/2019**

RAMESH KAKAR ..... Petitioner

Through: Mr. Sunil Mittal, Ld. Advocate with Mr. Rajinder Pal Singh and Mr. Anshul Mittal, Advocates.

versus

STATE (NCT) OF DELHI ..... Respondent

Through: Mr. G.M.Farooqui, APP for State.
Mr. Vivek Sood, Sr. Advocate with Mr. D.K.Yati, Mr. Sahib Malhotra and Mr. Ajay Khurana, Advocates for Complainant.

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI

<u>J U D G M E N T</u>

<u>BRIJESH SETHI, J (*ORAL*)</u>

1. Vide this order, I shall dispose of an anticipatory bail application filed on behalf of the petitioner **Ramesh Kakar** under section 438 Cr.P.C. read with Section 482 Cr.P.C.in FIR No. 537/2018 u/s. 420/34 IPC, PS Karol Bagh.

2. Ld. Counsel for the petitioner has prayed for anticipatory bail on the ground that petitioner is innocent and has been falsely implicated. He is a senior citizen, aged about 61 years.

3. It is submitted that complainant Ajay Khurana has lodged the present FIR on the basis of false story and on fabricated documents dated 05.01.2017 i.e. Agreement to Sell prepared by him on a blank signed paper. Ld. Counsel has submitted that it is alleged against the petitioner that during the period of demonetization, the complainant had given Rs. 90,00,000/- in cash for purchase of property in question against total consideration amount of Rs. 2 Crore. It is submitted that at that time it was impossible to pay an amount of Rs. 90,00,000/-in cash. In fact, the complainant is in the business of financing money namely M/S Honey Portfolio and complainant had taken signed cheques and is misusing the same to extort money now.

4. It is further argued by Ld. Counsel for the petitioner that it is reflected from the status report that the stamp paper on which the agreement to sell has been made was purchased by the complainant Mr. Ajay Khurana. However, the stamp paper vendor who was

examined in this regard has stated that he does not keep any separate record as to who has purchased the stamp paper. Statement of one of the witness to the agreement to sell namely Sh. Satinder Pal Narula has also been recorded. The said agreement to sell was shown to him. He has clearly stated that he was a regular visitor to the company namely Honey Portfolio. One day, the complainant had called him in his office and asked him to sign on a paper stating that he was getting his car transferred and he required his reference for the same. He had signed in good faith having no knowledge of the said documents. Ld. Counsel for the petitioner has, thus, argued that in fact, there is no such agreement to sell as alleged and petitioner has been falsely implicated in the present case in order to extort money. It is further submitted that petitioner was first granted interim protection vide order dated 31.05.2019 and thereafter the matter was referred to the Mediation Centre. Later on, the interim protection was granted to the petitioner on the basis of settlement.

5. It is further submitted that there is an apprehension that police may arrest the petitioner in present FIR bearing no. 537/2018 who is

innocent and falsely implicated. He is ready to join the investigation as and when required and in these circumstances, it is prayed that he be released on anticipatory bail in the event of his arrest.

6. The anticipatory bail application is opposed by the Ld. APP for the State and Ld. Sr. Counsel for the complainant on the ground that the allegations against the petitioner are serious in nature. Custodial interrogation of the petitioner is required to recover the alleged amount. Ld. APP has, therefore, prayed for dismissal of the anticipatory bail application.

7. I have considered the rival submissions. Complainant Ajay Khurana had filed a complaint on 24.12.2018 at PS Karol Bagh alleging that petitioner Ramesh Kakar and his son Akhil Kakar persuaded him to purchase property bearing no. A-4/73, Priyarshini Apartment, Paschim Vihar, New Delhi for an amount of Rs. 2 Crores registered in the name of petitioner Ramesh Kakar. Complainant paid a sum of Rs. 90 lakhs in five instalments against receipts and an Agreement to Sell dated 05.01.2017 was executed between the complainant and petitioner Ramesh Kakar. It was also

decided that rest of the amount will be paid on or before 15.05.2017. However later on, it came to the knowledge of the complainant that the property in question does not belong to the petitioner and accordingly, the present FIR bearing no. 537/2018 was registered. During the course of investigation, it was found that the alleged property does not belong to any of the accused persons.

8. The issue of grant of interim protection raised by Ld. Counsel for the petitioner has already been decided by this court vide a detailed order dated 18.12.2019 in which it was observed that after the order dated 31.05.2019, granting interim protection, the matter was taken up on 02.08.2019 and 27.08.2019. The case was settled in Mediation Centre and it was reflected in the order dated 27.08.2019 and on the said ground, interim order was continued. The said order dated 27.08.2019 runs as under:-

> "Learned counsel for the petitioner submits that settlement has been arrived between the parties for an amount of Rs. 1,00,50,000/-, and first instalment is to be paid on 16.11.2019. Copy has been given to learned APP.
> Ld. APP for the State seeks time to verify the same.
> List on 08.01.2020.
> Interim order to continue."

9. Perusal of record, thus, reveals that the matter was amicably resolved vide settlement deed dated 24th August, 2019 arrived at between complainant and petitioner Ramesh Kakar. However, terms and conditions of the above settlement deed were not adhered to. The relevant para 5 of the settlement deed runs as under:-

> "that the first party along with his Advocate shall appear before the Hon'ble Delhi High court at the time of the hearing/s on the anticipatory bail applications of party of Second Part and his son namely Akhil Kakar, bearing Bail Application no. 1229/2019 and Bail Application no. 990/2019, pending before the Hon'ble Delhi High Court and listed for hearing on 27.08.2019 and both the parties will make joint request to Hon'ble court to extend the interim protection granted to party of Second Part and his son namely Akhil Kakar on their anticipatory bail applications for any date after 16.11.2019 i.e. date meant for First instalment of above settlement amount. On clearance/payment of first instalment of Rs. 30,00,000/-; both the parties shall pray before the hon'ble High court to grant anticipatory bail to Party to Second Part Mr. Ramesh Kakar and his son namely Akhil Kakar in connection with FIR No. 537/2018 under Section 420/34 IPC registered at PS Karol Bagh."

10. Thus, as per the settlement dated 24.08.2019, it was agreed that on clearance/payment of first instalment of Rs. 30,00,000/- both the parties shall pray to the court to grant anticipatory bail to

petitioner and his son Akhil Kakar. Since petitioner has not adhered to the terms and conditions of the settlement deed, the interim protection granted to the petitioner was withdrawn vide order dated 18.12.2019.

11. So far as contention of Ld. Counsel for the petitioner that the amount could not have been paid in cash during demonetization is concerned, the same cannot be decided at this stage of bail when the investigation is still in progress. According to Ld. APP, the complainant has receipts regarding payment of the said amount. As per status report filed by the investigating agency, custodial interrogation of the petitioner is required to recover the alleged amount. It has further come on record that petitioner and other co-accused are not the actual owner of the property in question. The contention of Ld. Counsel that statement of one of the witness to agreement to sell Sh. Satinder Pal Singh demolishes the prosecution version also cannot be accepted at this stage for the reason that agreement to sell has to be examined as a whole. Prime facie, it bears the signature of both the parties and there are no reasons to doubt the authenticity of the same at the stage of bail. Moreover, it

is also surprising that though the petitioner has challenged the genuineness of agreement to sell and has alleged it to be forged and fabricated but even at the same time he has entered into a settlement deed dated 24.8.2019 regarding the present FIR which is based upon agreement to sell. Though, the petitioner has backed out from the said settlement stating that it was signed under coercion, however, as stated earlier, at this stage, a mini trial cannot be conducted to find out whether the Agreement to sell is forged or fabricated or settlement deed was signed under coercion.

12. In view of the above discussion and keeping in mind the fact that complainant has been cheated for a huge amount and the petitioner after the settlement has backed out from the same and custodial interrogation of the petitioner is required to recover the amount, no grounds for anticipatory bail are made out. The anticipatory bail application is, therefore, dismissed and stands disposed of accordingly.

BRIJESH SETHI, J

JANUARY 8, 2020

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