$~31

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

Date of decision: 28.02.2020

\+ BAIL APPLN. 1598/2019

SANDHYA DEVI @ SANDHYA GOYAL ..... Petitioner

Through: Mr. Dinesh Kumar Gupta, Ms. Vidhi Gupta and Mr. Trivesh Sharma, Advocates.

versus

STATE ..... Respondent

Through: Mr. Amit Chadha, APP for State with ACP B. K. Singh, Inspector Tanvir Ashraf from P.S. Legal Cell (North East District)

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (ORAL)

1. The present petition is filed under Section 439 Cr.P.C. by the petitioner for grant of bail in FIR No.141/2015 registered at P.S. Sonia Vihar for the offences punishable U/s 420/471/474/120B IPC.

2. The brief facts of the present case as alleged by the complainant are that on 07.08.2012, two agreements to sell in respect of land admeasuring 26 bigha out of Khasra No.398, Village Sabhapur, were entered into between the complainant and the petitioner. One of the agreements was for 25 bigha

land on consideration of amount of Rs.5 Crores (Rs.4 crores in cash and Rs.1 crore by cheque dated 07.08.2012), and the second agreement for 1 Bigha land for which Rs.50 Lakhs were paid in cash. The complainant alleged that he paid Rs.4.5 Crores in cash and Rs. 1 Crore by cheque to Petitioner.

3. Learned counsel for the petitioner submits that the agreements do not find mention about recitals as to how the title is derived in favour of Petitioner. Agreement stipulates that in case of defect in title, complainant is entitled to recover compensation. Moreover, land was inspected prior to entering upon agreements. Subsequent to receiving information about injunction order dated 01.06.2012 of this Court passed in suit No. C.S.(O.S.) No. 1760/12, complainant stopped the payment of aforesaid cheque. Upon confronting, accused persons had agreed to refund amount. It is further alleged that on 11.03.2013, two fresh agreements to sell were executed whereby no reference of any Will or as to how the title is derived was stated. The agreements further stipulated that amount of Rs. 5.50 Crores (cash Rs. 4.5 Crores and Cheque dated 07.08.2012 of Rs. 1 Crore) stands received and in case of defect in title, complainant is entitled to recover compensation.

4. It is further alleged that on 09.10.2013 one fresh agreement to sell in respect of land admeasuring 25 Bigha was executed on the same conditions. No reference of Will or as to how the title is derived stated and complainant alleged to have paid Rs. 5 Crores on 07.08.2012 (cash Rs. 4 Crores and Cheque dated 07.08.2012 of Rs. 1 Crore). It is further alleged that on 31.10.2013, another agreement to sell for the land measuring 1 Bigha was executed on the same conditions wherein amount of Rs. 50 Lakhs was allegedly paid.

5. It is also alleged that one Mahmood Zafar Bakshi gave five cheques of Rs.50 Lakhs each totalling Rs.2.5 Crores and Promissory Note of Rs.2.50 Crores was also executed, however, receipt of Promissory Note was blank. On 04.06.2014, a complaint was made at Police Station Sonia Vihar vide DD No. 33-B dated 07.06.2014, whereby alleged that on 08.08.2014, Ashok Kumar (one of the accused) fearing arrest upon a complaint dated 04.06.2014, settled the disputes, and on 08.08.2014 had issued 5 cheques dated 08.10.2014 of Rs. 50 Lakhs each in favour of Complainant, and said Ashok Kumar under his signatures gave in writing; Promissory note & cheques (issued by Zafar Bakshi) returned to Ashok Kumar by separate receipt. However, on 07.11.2014, aforesaid cheques dated 08.10.2014 were

returned unpaid due to "insufficient funds" vide memo dated 07.11.2014. Thereafter, complaint dated 26.11.2014 was made. On 16.01.2015, Complainant filed complaint under section 156(3) r/w Sec 200 Cr.PC. before Ld. C.M.M., Shahdara, having the jurisdiction of PS Anand Vihar (Shahdara District) whereby alleged that Agreement was entered at Dayanand Vihar Market. Later on, said complaint was consigned to Record Room vide order dated 21.01.2016. FIR dated 07.03.2015 at PS Sonia Vihar was already registered upon a reminder to complaint made to EOW. However, on 16.01.2015, Complainant filed two complaints before Ld. C.M.M, North-East District, Karkardooma Courts, Delhi u/s 138 of Negotiable Instruments Act against all accused persons.

6. Learned counsel for Petitioner submits that Petitioner is not the drawer/ signatory of cheques, however, issue has been raised and same is under consideration. On the same issue, another accused, Yashpal, has already been dropped from the proceedings vide order dated 11.04.2017. Further, this Court in Crl.M.C. Nos. 2583/19 & 2584/19 vide orders dated 14.05.2019 exempted the petitioner from personal appearance, and charge/notice under section 251 Cr. P.C till date is not framed against petitioner. In February, 2015, Petitioner received notice from PS Anand

Vihar to join enquiry and Petitioner duly joined. On 07.03.2015 upon reminder dated 16.12.2014 to EOW with 14 documents enclosed, SI Narendra PS Sonia Vihar on 07.03.2015 made endorsement that prima facie an offence U/s 420/120-B/34 IPC is made out, accordingly, FIR No. 141/15 at PS Sonia Vihar was registered. In October, 2017, complainant filed one civil suit bearing C.S.(O.S) No. 642/2017 before this Court seeking recovery of money of Rs. 2.5 Crores on the basis of cheques given by Ashok Kumar and the same is pending adjudication. The Petitioner is also impleaded as party to the said suit and vide orders dated 06.05.2019 issues have been framed.

7. It is submitted that the Petitioner is a female aged about 60 years, Ex-Principal of Sandhya Senior Secondary Public School, Delhi, was arrested on 12.04.2018 and since then is in custody. On 31.05.2018, Charge-sheet in FIR No. 141/15 was forwarded, annexed with certain documents which includes Truth Lab Report obtained by I.O. in FIR No. 191/12 and statement of witnesses. Vide order dated 19.01.2019, Ld. ASJ, Karkardooma Courts, Delhi, modified the charge by dropping the offences under section 467/468 of IPC and on 30.01.2019 Ld. ACMM framed charges under section 420/474/471/120-B & 120 IPC. The matter was listed on 08.02.2019, and

thereafter, for 9 times for PE, but only on 3 dates, the statement of complainant was partly recorded. Meanwhile, statement of the complainant has been completed.

8. Learned APP appearing on behalf of State has argued that the petitioner executed three agreements of the same property claimed to be of petitioner. Based upon the Will dated 21.03.2010 made by Shyam Sunder which was registered on 29.05.2012, whereas said Shyam Sunder expired on 18.12.2011. Moreover, this court vide order dated 01.06.2012 restrained the petitioner herein from creating third party interest in CS (OS) 1760/2012, despite that she did. He further submits that had the petitioner not taken amount of Rs.5 Crores, there was no occasion for the petitioner to return Rs.2.5 Crores in favour of the complainant through 5 cheques.

9. On perusal of order dated 01.06.2012 passed in C.S. (OS) 1760/2012 pertains to dispossession from the property. There is no order that the petitioner was restrained from disposing the property. Moreover, cheques issued of Rs.2.5 Crores were by Ashok Kumar, co-accused who has already been admitted on bail. There is no cheque issued by the petitioner to that effect. Moreover, in cross-examination in C.S. (O.S) 642/2017 dated 27.02.2020, the complainant deposed before the Court that transaction

involved in the present case is not mentioned in his ITR as the deal was not completed. Further, payment was made in cash, it was not withdrawn from bank, hence, it will not reflect in bank account statements as well. It was further deposed that he does not have cheque book slips as his bank account is lying closed since 2012. He had paid Rs.4.5 crores in cash and thereafter, when he came to know that he had been cheated, he told petitioner not to put cheque for encashment. Hence, not deposited the cheque for encashment. Further deposed that he does not remember how much money was lying in his bank account on the date mentioned in the cheque. He had to take this cheque back from petitioner and pay her Rs.1 Crore in cash. He collected Rs.4.5 Crores from his relatives and friends from the period April 2012 to August 2012. He did not issue any stop payment instructions to the bank in respect of aforesaid cheque. He had not given in writing to petitioner requesting her not to present the cheque. He admitted that initially he was given five cheques by Mohd. Zafar Bakshi along with a pronote of petitioner who assured the complainant to get the cheques encashed but the same were taken back and five cheques bearing signatures of Ashok Kumar were issued on behalf of petitioner.

10. It is not in dispute that there is no pro-note on record of the

chargesheet. A query was put by this Court, in suit mentioned above, to the complainant that, "you had deposed that you had allegedly received Rs.4.5 Crores from your relatives and friends, have you received any legal notice or letter in writing from them demanding the amount or you have paid the same." In reply, complainant stated that he had not received any letter in writing from his relatives and friends from whom he had taken Rs.4.5 Crores in cash. He has not paid back the said amount. He admitted that he had not shown Rs.4.5 Crores in any of his ITRs, which he has filed, till date.

11. However, he has deposed that with respect to the land involved in the present case, he was approached at first by Ashok and Yashpal who later on introduced him to petitioner herein.

12. It is also not in dispute that there are 3 accused in the present case and accused Ashok Kumar and Yashpal have already been admitted on bail.

13. The petitioner is in judicial custody since 12.04.2018, however, without commenting on the merit of the case, I am of the view that the petitioner is entitled for bail.

14. Accordingly, petitioner shall be released on bail on her furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the Trial Court.

15. Petition is, accordingly, allowed and disposed of.

16. Order dasti under signatures of the Court Master.

17. Copy of the order be transmitted to Jail Superintendent and Trial Court concerned for necessary compliance.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 28, 2020/ssc