NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No.1122 of 2020

Khushiram Kundnani S/o Late Rochamal Kundnani Aged About 46 Years Director, R. S. Dreamland Pvt. Ltd. R/o N/36, Sector-1, Street In Front Of Rajdhani Provision ATM Chowk, Avanti Vihar, Raipur Tahsil And District Raipur Chhattisgarh **---- Applicant**

Versus

1. Girdhari Lal Panjwani S/o Late Lakshman Das Panjwani Aged About 57 Years R/o Street No. 07, Sindhi Colony, Lalbagh, Rajnandgaon, District Rajnandgaon Chhattisgarh

2. State Of Chhattisgarh Through District Magistrate, District Raipur Chhattisgarh **---- Respondents**

For Applicant	:	Mr. Arvind Shrivastava, Advocate.
For Respondent/State	:	Mrs. Hamida Siddiqui, Dy. A.G.
For Objector	:	Mr. Manoj Paranjpe, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV Order

26/02/2021

Heard.

1. The applicant is apprehending his arrest in connection with Criminal (complaint) Case No.7774/2019 registered at Police Station – Azad Chowk Raipur District Raipur (C.G.) for alleged commission of offence under Section 409, 420 & 120-B of IPC.

2. The case of the prosecution is that the complainant booked two flats No.B-609 and B-610 in April-May, 2015 in his residential Complex of the applicant and sale agreement was executed on 09.04.2015 and 15.05.2015 after payment of advance of Rs.2,00,000/- (Rs.1,00,000/- for each flat), facility of finance was made available for the two flats. For flat No.B-609 loan was arranged from Canara Bank and Flat No.B-610, loan was arranged from Axis Bank under tripartite agreement between the complainant, accused and the Bank. The flats were mortgaged with the Bank by the complainant and Rs. 12,31,840/- from Canara Bank and Rs.12,39,800/- from Axis Bank were

released by way of loan and transferred in the account of the accused. It is alleged that in this manner, a total amount of Rs.32,29,600/- which included payment of cash and loan from Bank were paid to the accused. Even though the project was to be completed by 2016 as per the agreement but the same was not completed. Though complainants kept on meeting the accused but only false assurance was given and without getting flat No.B-610 released from mortgage and without informing the complainant, it was fraudulently sold in favour of one Smt. Prerna Vipul Kumar vide sale deed dated 15.07.2016. It was all without consent and even knowledge of the complainant. A notice was given on 10.03.2018 for getting the sale deed registered without knowing that one of the flats was already sold in the year 2016. The police did not take any cognizance of the written complaint. Therefore, finally the complainant filed a criminal complaint before the Magistrate, cognizance was taken and offences were registered against the applicant of his fraudulent act of selling one flat in respect of which not only an agreement was in existence between the accused and the complainant but huge amount had already been paid by the complainant to the accused.

3. Learned counsel for the applicant would argue that it is only a case of disputed transaction and does not involve any criminal overt act on the part of the applicant. He would argue that though the complainant had booked two flats and amounts were also paid to the accused, later on, due to unavoidable circumstances, project got delayed and the complainant expressed desire to walk out of the agreement and demanded repayment, therefore, the applicant repaid amount to the complainant through his brother-in-law Kishore Virani, who was working with the applicant in his business. However, Kishore Virani despite having received huge amount of more than Rs.24,00,000/- which he was holding in trust for being given to the complainant, did not pay that amount to the complainant. Upon receipt of notice dated 10.03.2018 of the complainant the applicant came to know that Kishore Virani has not paid the balance amount of refund which is more than Rs.24,00,000/-, therefore, he lodged a criminal case against Kishore Virani in the Police Station where offences has been registered, criminal case is pending and in that case, in the case diary statement, the complainant of the present case has clearly stated that Kishore Virani has not returned the amount to him though he was paid that amount by the applicant. It is next submitted that treating agreement as cancelled due to refund of the amount, the applicant bonafide sold one of the flats to another person and later on, he has also satisfied the loan amount of

Rs.12,42,250/- to the Axis Bank and No Dues Certificate Annexure A/12 has been issued in his favour. The Magistrate while taking cognizance did not wait for receipt of report from the concerned Police Station where the complainant had initially lodged a report but upon enquiry no case was registered otherwise there was no case for registering offence and proceeding against the applicant.

4. On the other hand, learned counsel for the complainant argued that present is a case of cheating. He would submit that even though huge amount was paid for purchase of two flats by the complainant which was admittedly received by the applicant, the applicant avoided to execute sale deed in favour of complainant stating that project is not complete and in the meantime, in clandestine manner, without informing the complainant he sold one of the flats to third person. It is argued that there is no document on the basis of which applicant can say that the agreement stood cancelled and payment already made to accused by way of cash, RTGS transfer and loan was refunded to the complainant. It is further submitted that had it been so, the written agreement in respect of the two flats would have been cancelled also. It is also submitted that attempt to clear the loan amount of Rs.12,42,250/- has been done subsequently only to save from criminal action.

5. From the submission made by learned counsel for the parties and the material on record, it is an admitted position that the applicant received more than Rs.32,29,600/- towards intended sale of two flats in favour of the complainant in the year 2015. Those two agreements are in writing. However, the complainant has come out with the case that without informing him and without his knowledge, in clandestine manner, one of the flats has been sold out to third party in the year 2016 itself. The applicant has come out with the case that he had paid substantial amount of more than Rs.24,00,000/- to Kishore Virani, brother-in-law of the complainant and vouchers to this effect have been produced before the Court and handwriting expert report is also there that the vouchers contained signature of Kishore Virani. These vouchers collectively filed Annexure A/8. These vouchers show various payments made to Kishore Virani for being paid to different person which also includes the name of the complainant-Girdhari Lal Panjwani. The applicant has also placed on record the report of the handwriting expert which was obtained during investigation and the criminal case lodged by the applicant against Kishore Virani, filed as Annexure A/9, which prima facie shows that the

documents/vouchers and handwriting expert is of Kishore Virani. It is also relevant to note that on 21.10.2018, an FIR was also lodged in the Police Station by the applicant against Kishore Virani alleging that a total amount of Rs.32,25,000/- was paid to Kishore Virani from time to time for being repaid to the complainant-Girdhari Lal Panjwani in view of cancellation of the agreement. In that case during Investigation, a statement under Section 161 Cr.P.C. of the complainant was recorded which supports the case of the applicant though later on, when complainant was examined in the Court, he has not supported the case of the applicant regarding applicant having paid huge amount to Kishore Virani for being repaid to the complainant. The concerned criminal case is still pending.

6. It appears that the applicant without getting any document of cancellation of the agreement and without release of the one of the flats from mortgage, proceeded to sell it to third party without any notice and information to the complainant but later on, he has paid the loan amount of Rs.12,42,250/- to the Axis Bank to obtain No Dues Certificate which has been issued in his favour and one of the flats was sold by the applicant to third person. Though there are certain discrepancies with regard to the return and refund of the amount and various disputed transaction between the applicant and the complainant in the absence of there being any document to show that the agreement in respect of the flat was cancelled and that the complainant had given his consent for sale of flat to third party which was otherwise mortgaged with the bank as against loan liability of the complainant and the entire case of the applicant is based only on so-called refund of amount to Kishore Virani, it is not a fit case where anticipatory bail should be granted to the applicant because there are neither any documentary proof of the applicant's case of he having paid amount to the complainant nor document of cancellation of agreement nor repayment of loan liability under information to the complainant nor any other written communication between the applicant and the complainant regarding cancellation of agreement. The application for grant of anticipatory bail is therefore rejected.

Sd/-

(Manindra Mohan Shrivastava)

J U D G E

Rekha