(VIA VIDEO-CONFERENCING)

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

Reserved on : 07.09.2021

% **Pronounced on : 05.10.2021**

\+ **BAIL APPLN. 1135/2021**

VINAY KUMAR JAISWAL

…....Petitioner

Through: Mr. Vedant Singh, Adv. with Mr. Vinay Kumar Dubey and Mr.Vishisht Singh, Advocates.

Versus

NCT OF DELHI

..... Respondent

Through: Ms. Rajni Gupta, APP for the State with SI Arjun Singh, P.S. Vivek Vihar.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No. 326/2019, under Section 420/468/471/120B/34 IPC registered at P.S. Vivek Vihar, Delhi.

2. Briefly stated, the present case was registered on the direction of Ld. CMM/KKD, Delhi pursuant to the enquiry conducted U/S 156(3) Cr.PC. on the complaint of Sukhpal S/o Sh. Kare R/o 12/620, GF, Friends Society Sec-12, Vasundhra, Gaziabad, UP.

3. Complainant Sukhpal Singh alleged that accused persons namely R D Verma and Mukesh Kr. Gupta contacted him and told that they want to purchase his property i.e. 12/620, Ground Floor, Friends Society, Sec-12, Vashundhra Ghaziabad, UP. After negotiations the deal was finalized and on 03/08/2017 both the said accused paid Rs. 5 lacs to the complainant as an advance and prepared a sale agreement for a total consideration of Rs. 67 lacs. Later Mukesh Gupta informed the complainant that loan has been sanctioned from ICICI bank in the name of his relative namely Venkat Narsimha Rao.

4. On 20.03.2018, complainant with his son visited tehsil complex situated at Ghaziabad U.P. and executed Sale Deed in favour of Mr. Venkat Narsimha Rao. One person who introduced himself as the employee of ICICI Bank handed over a Demand Draft of Rs. 66 lacs to the complainant. All original previous title deeds were handed over by complainant to Mr. R.D. Verma. But the registry could not be done on that day. Accused RD Verma assured the complainant that an employee of Sub-Registrar office Ghaziabad, UP would come at his home to get the formalities done. On the next day ie. on 21.03.2018, aforesaid Mr.R.D. Verma, Mr. Abhishek and their one accomplice

(stated to be a staff of office of Sub-registrar of properties) had come to complainant house. The said accomplice had completed the formalities and as everything was apparently confirmed to be genuine execution of sale deed, hence complainant handed over the key of the subject property to Mr. R.D. Verma.

5. It is alleged by the complainant that in the evening he confirmed from accused R.D. Verma about status of registry of subject property, Mr. R.D. Verma confirmed that sale deed is duly executed and hence, complainant deposited the bank draft of Rs. 66.00 Lakh in his account on 22.03.2018 which was duly cleared in the bank account of the complainant. Thereafter complainant demanded a copy of registered sale deed for his record from accused Mr. R.D. Verma but he avoided the same on one pretext or the other.

6. Later, it came to the knowledge of the complainant that his LPG subsidy is being credited in account no 026810400122535 with IDBI Vivek Vihar branch Delhi instead of his account with State Bank of India, branch at Vasundhara, Gaziabad, UP. Later on enquiry with the staff of IDBI Bank, Vivek Vihar branch he came to know that one bank account number 026810400122535 was opened in December 2017 with IDBI Bank, Vivek Vihar, whereas complainant never visited the said branch nor have anything to do in any manner with the said branch of IDBI Bank. Later it also came to knowledge of the complainant on 15.07.2018 that there were three different and separate sale deed(s) of

subject property which were executed by someone in the name of complainant in favour of three different persons.

7. During course of investigation, the certified copies of Registry of property in question i.e. 12/620, GF, Friends Society Sec-12, Vasundhra, Ghaziabad, UP was extracted from the Sub-Registrar office. On perusal of the same three following registries of the property in question was found to be done:

Date	Seller	Buyer	Name of Registrar	Amount of Loan
09.02.2018	Sukhpal Singh	Vinay Kr. Jaiswal S/o Kishori Lal R/o C-1/325, First Floor, Palam Vihar, Gurgaon, Haryana	Vijay Singh, Sub-Registrar, Sadar-IV, Ghaziabad, UP	Rs.49,60,000/- from PNB Housing Finance
06.03.2018	Sukhpal Singh	Vinay Kr. Jaiswal S/o Kishori Lal R/o C-1/325, First Floor, Palam Vihar, Gurgaon, Haryana	Pradeep Kr. Asthana, Sub-Registrar, Sadar-IV, Gzb, UP	Rs.48,16,182/- from Capital First Home Finance
17.04.2018	Sukhpal Singh	Vishnu Kumar S/o Rajdev Prajapati R/o C-95, DDA Flats, Kutub Enclave Ph-I, SJS Marg. Hauj Khas, Delhi	Vijay Singh, Sub-Registrar, Sadar-IV, Ghaziabad, UP	44,68,000/- from DHFL

8. Petitioner Vinay Kr. Jaiswal was interrogated in this regard. During interrogation, he admitted that he was in need of money for his

personal use. Therefore, he in connivance with RD Verma, Mukesh Kumar, Abhishek Kumar, Bittu Sharma took loan from PNB Housing Finance and Capital First home Loan on a single property and registered the above property twice in the office of Sub-Registrar Ghaziabad UP and he also received Rs. 4.5 lacs from the loan amount. Petitioner Vinay Kumar Jaiswal purchased the property in question twice and also took loan from two different finance companies for purchasing the same. He also admitted that he also took his share from the siphoned off money. During course of investigation of the bank statement bearing A/C No. 5468175225 Citi Bank belonged to petitioner, in which salary of the petitioner was being credited was also extracted and on perusal of the same it came on record that the accused Abhishek Kumar transferred amount from his account to pay the EMIs of the loan taken by the petitioner. The petitioner also used that amount to pay the EMIs of home loan to PNB Housing Finance and Capital First Housing Finance Ltd.

9. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, perused the Status Report filed by the State and the records of this case.

10. It is submitted by the Ld. counsel for the petitioner that the petitioner has been falsely implicated in this case and he has nothing to do with the alleged offence. It is further submitted by the Ld. counsel for the petitioner that the petitioner is the victim in the instant case and

he is the person who is making payments towards bank EMIs in order to maintain his credit score which shows that the petitioner had bonafide intentions. It is further submitted by the Ld. counsel for the petitioner that the petitioner has joined the investigation and is not required for any custodial interrogation. It is further submitted by the counsel for the petitioner that the main ingredient of Section 420 IPC is mens rea which is missing in this case.

11. It is further submitted by the Ld. counsel for the petitioner that it has been held by the superior courts that bail is the rule and jail is exception. He further submitted that the petitioner belongs to a respectable family and is working in MNC. He further submitted that two property dealers namely RD Verma and Abhishek Singh had approached the petitioner in respect of property in question and based upon their assurances the petitioner/applicant had purchased the same. Thus the sale deed dated 09/02/2018 was executed. It is further submitted by the Ld. counsel for the petitioner that the same property dealers again approached the petitioner stating that the first floor of the same property was available for sale and finding the good investment prospects, the petitioner decided to purchase the first floor of the property also vide another sale deed dated 06.03.2018 but the petitioner was surprised to find that the forgery has been committed upon him by the said property dealers when he came to know about the registration of the present FIR. It is further submitted by the Ld. counsel for the

petitioner that there are no specific allegations in the FIR against the petitioner.

12. On the other hand, it is submitted by the Ld. APP for the State that the petitioner in connivance with co-accused RD Verma, Mukesh Kumar, Abhishek Kumr and Bitto Sharma took loan from PNB Housing Finance and Capital First Home Loan on a single property and got the same registered twice before the Sub-Registrar Ghaziabad UP and received a portion of loan amount. It is further submitted by the Ld. APP that on inquiry it has been revealed from Sub-Registrar Office Ghaziabad that three registries of the same property of different dates i.e. 09-02-2018, 06-03-2018 and 17-04-2018 have been effected out of which two are in the name of the petitioner. It is further submitted by the Ld. APP that the petitioner cheated not only the complainant but also got opened forged bank account in IDBI Bank, Vivek Vihar in the name of the complainant and in this manner, the loan money from different banks was siphoned off from the forged account of the complainant.

13. As far as the contention of the Ld. counsel for the petitioner that the name of the petitioner is not in the FIR and no role has been assigned to him in the FIR. It may be noted that the FIR is not an encyclopedia and the FIR only sets the criminal law into motion and after the registration of the FIR, the investigation is undertaken and

after the investigation the details of the offences and the offenders surfaces.

14. In the instant case, the complainant is the owner of the property in question and as he desired to sell the same, according to the complainant he was duped by one RD Verma and Mukesh Gupta who approached the complainant to purchase the property in question for a sum of Rs. 67,00,000/- and the said property was vacated and handed over by the complainant. The deal could not be finalized for more than four months as the accused persons did not come forward to finalize the deal. When it came to the knowledge of the complainant that the subsidy of his LPG has been stopped, he found out that a forged bank account in his name was opened in IDBI Bank.

15. In the instant case, the loan from PNB Housing Finance and CFHL has been obtained on a single property and the said property was registered twice in the name of the petitioner. One of the contentions of the counsel for the petitioner is that the petitioner has been cheated by the other accused persons and he is the victim of their criminal act. He has also argued that the petitioner is making payment of EMIs towards the loan amount but the investigation has revealed that co-accused Abhishek Kumar used to transfer the amount from his account to the account of the petitioner to pay the EMIs of the loan taken by the petitioner. So, it cannot be said that the petitioner has no role to play in this case. EMIs are being paid by the petitioner after receiving the

amount from co-accused Abhishek Kumar. The petitioner has purchased the property in question twice and also took loan twice for purchasing the same and in this process huge amount has been siphoned of fraudulently in connivance with the co-accused persons.

16. Custodial interrogation of the petitioner is required for the purposes of recovery of the forged documents prepared in his name on the basis of which loan has been obtained and also in order to unearth the nexus between the petitioner, bank officials and any other official from the office of the SDM, Ghaziabad. The application lacks merits and the same is, therefore, dismissed.

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

RAJNISH BHATNAGAR, J

OCTOBER 05, 2021

Sumant