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

Reserved on : 23.08.2021

% **Pronounced on : 30.09.2021**

\+ **BAIL APPLN. 2292/2021 & CRL.M.(BAIL). 887/2021**

NITIN @ SUNIL DARAL ..... Petitioner

Through: Dr. L.S. Chaudhary, Advocate with Mr. Ajay Chaudhary and Mr. Vishesh Kumar, Advocates.

versus

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

Through: Dr. MP Singh, APP for the State with SI Anand Pratap, PS Laxmi Nagar.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. read with Section 482 Cr.P.C. seeking regular bail in case FIR No. 301/2020 under Section 420/448/406/467/468/471/34/120B IPC registered at P.S. Laxmi Nagar, District East.

2. Brief facts of the case are that the complainant Sh. Vishal Bhutani had filed a complaint against Manjeet Singh, Sunil Daral (present petitioner) and Manisha Daral W/o Sunil Daral all R/o F-193, Vijay Chowk, Laxmi Nagar, Delhi for forgery, cheating, trespassing and house breaking and other penal offences at PS Laxmi Nagar, Delhi, wherein complainant had stated that he is the owner of the property bearing No. F-193/551, Vijay Chowk, Laxmi Nagar, Delhi (measuring 350 Sq. Yds.) and he purchased the same from Smt. Shilpi Gupta W/o Ram Mohan Gupta and Sh. Ram Mohan Gupta S/o Late Shri Gian Chand Gupta vide sale deed duly registered vide Regd. No. 3125, Addl. Book No. 1, Volume No. 1049, pages 169 to 178, dated 29.06.2017 and Regd. No, 5004, Addl. Book No. 1, Volume No. 879, pages 41 to 50, dated 26.06.2017 respectively, (measuring 175 Sq, Yds.). The complainant had constructed four floors along with stilt parking at the aforesaid plot from his own resources then he entered into the agreement to sell and purchase with the alleged Smt. Manisha Daral W/o Sunil Daral (petitioner herein) R/o F-9, Vijay Chowk, Laxmi Nagar, Delhi with regard to the 3rd floor of the above said property and executed the sale deed in favour of Smt. Manish Daral for the 3rd floor of the aforesaid property vide Reg. No. 1867, Book No. 1, Vol. No. 1252, on page 16 to 26, dated 28.03.2018, Sub Registrar VIIIA and received a total sum of Rs.1,17,00,000/-. Later on, he entered into the agreement to sell and purchase with the alleged Smt. Manisha Daral

w/o Sunil Daral (present petitioner) R/o F-9, Vijay Chowk, Laxmi Nagar, Delhi with regard to the 2nd floor of the above said property and executed the sale deed of 2nd floor in favour of Smt. Manish Daral vide Reg. No. 4476, Book No. 1, Vol. No. 1353, on Page 97 to 107, dated 28.07.2018, Sub Registrar VIIIA and received a total sum of Rs.1,30,00,000/-. It was further submitted by the complainant that at the time of selling of aforesaid 2nd and 3rd Floor of the said property, some construction work was yet to be completed but the alleged persons pressurized him to execute the sale deed and further asked they would execute an another agreement in favour of the complainant for the completion of renovation work and agreed to pay a sum of Rs.1,46,00,000/-. In this regard, an indemnity & declaration was executed by accused Manisha Daral and her husband Sunil Daral (present petitioner) in favour of the complainant, wherein it was mentioned that 84 Lacs was already paid to the complainant whereas six postdated cheques against the payment of remaining Rs. 62 Lacs were issued by the accused persons. It is further submitted by the complainant that he had already sold out the upper ground floor to some other person and the 1st floor of the building was vacant and he installed his locks on the first floor.

3. He further stated that on completion of renovation work much before the due date, he handed over the possession of 2nd & 3rd Floor to the accused persons but when the said cheques were presented in bank

on their due date, the same were dishonoured by the bank due to the reason of stop payment and therefore, the complainant had sent a legal notice to the accused persons. It is further alleged by the complainant that on 03.08.2019, he received a notice from the Court of Smt. Suchi Laler, Civil Judge, Karkardooma Courts, Delhi wherein it was stated that an application was filed by alleged Sunil Daral and Manjeet Singh Daral by which they had claimed that complainant had executed an agreement to sell and purchase with them on 04.09.2017 with regard to the 1st Floor of the above said property against the agreed consideration amount i.e. Rs.1,05,00,000/- out of which a sum of Rs.94 Lacs had already been paid to the complainant whereas remaining 11 Lakhs had to be paid. It is also submitted by the complainant that the amount stated to be paid by accused persons to the complainant was with regard to the renovation work done by him at 2nd and 3rd Floor of the above said property. It is submitted by the complainant that the agreement to sell and purchase submitted by the alleged persons before the Court is forged and the alleged persons illegally entered into the premises of the complainant i.e. 1st Floor, F-193, Vijay Chowk, Laxmi Nagar, Delhi by breaking the lock.

4. On receiving the aforesaid complaint, an enquiry was conducted by the I.O. namely SI Rahul Kumar and after the completion of enquiry, the present FIR was registered at PS Laxmi Nagar, Delhi and investigation was taken up.

5. I have heard the learned counsel for the petitioner, learned APP for the State and perused the Status Report filed on behalf of the State.

6. It is submitted by the counsel for the petitioner that the dispute in question is purely of civil nature and the complainant has misused the police machinery to put pressure upon the petitioner and his family to extort money from them. It is further submitted that a civil suit has already been filed by the petitioner long back in July 2019, whereas the present FIR was registered after about one year i.e. on 03.07.2020 and there is a delay of about 1 year in lodging the present FIR. He further submitted that the complainant has already received a sum of Rs.94 Lacs from the petitioner before lodging of the present FIR and still, he has falsely mentioned that the amount received by him is Rs.84 Lacs only. He further submitted that as per the mutual agreements dated 24.07.2018, as alleged by the complainant, the total renovation amount was Rs.62 Lacs i.e. Rs.50 Lacs and Rs.12 Lacs in respect of second and third floor respectively and the amount claimed by the complainant is Rs.1.46 Crore which is more than double of the amount allegedly agreed.

7. It is also submitted by the counsel of the petitioner that it is far from reality that the complainant could have completed the entire renovation work of two floors in a single day only. It is submitted that as per the agreements, the possession of the said floors were handed

over to him only on 24.07.2018 and he claimed to have the renovation done on 25.07.2018 i.e. within a day and in fact no renovation was done by the complainant and the agreements dated 24.07.2018 were cancelled. He also submitted that co-accused has already been granted bail by the Ld. ASJ against whom also, similar allegations were leveled so, the petitioner is also entitled to bail on the ground of parity.

8. He further submitted that the petitioner is in custody for about 8 months and no recovery has been effected from him. He lastly submitted that the charge sheet has already been filed and the petitioner is no more required for the purpose of investigation and the case is based upon the documentary evidence and the custodial interrogation of the petitioner is not required.

9. On the other hand, Ld. APP for the State has vehemently opposed the bail application and submitted that the allegations are very serious in nature involving cheating and forgery. He further submitted that the independent witness namely Darshan Sharma S/o Late Banarsi Dass Sharma R/o H.No 190, Gali No. 2 Guru Ram Das Nagar, Laxmi Nagar, Delhl-92 was examined, who stated that he was not having any knowledge about the said agreement to sell & purchase which is stated to be executed between the complainant and accused persons and he submitted that the said agreement was fake after seeing his signature on it. He further submitted that during the course of investigation it came

to the knowledge that there was a written deal between the complainant and wife of present petitioner i.e. co-accused Manisa Daral in respect of renovation work of second and third floor of the said property against the full and final payment of Rupees 01 Crore and 46 Lacs and out of which Rs. 84 Lacs was paid initially and Rs. 62 Lacs had to be paid to the complainant by the accused persons but they failed to pay the same despite completion of work and taken the possession of the flat on the basis of fake documents i.e. agreement to sell.

10. He further submitted that the accused persons never produced the document in question i.e. original agreement to sale and purchase with regard to the first floor of the property and they claimed that original agreement to sale and purchase with regard to the first floor was lying in court but the same was not produced by them despite notices given to them and after arrest, they claimed that the same is not traceable as it was lying with their counsel namely K.S. Goswami, who had filed the civil case in Karkardooma Court against the complainant and the same had to be filed in the court but the counsel has died due to COVID. It is submitted that as a result, the accused persons created a forged agreement to sell to enter into the property of the complainant by showing the amount of renovation work as payment made against the agreement to sale and purchase with regard to the first floor to the complainant and cheated the money amounting to Rupees 62 Lacs of the complainant. It is further submitted by Ld. APP that the accused

may jump the bail and temper and hamper the evidence also and the accused may threaten the complainant and the present applicant has already been involved in similar type of cases and other complaints of similar nature which are still pending enquiry. Lastly, it is submitted that that the present applicant has never co-operated in investigation and didn't get recover the fake agreement to sale by which he is claiming to be the owner of the property in question.

11. In the instant case, the petitioner is in J.C. since 14.01.2021. According to the prosecution, the petitioner has allegedly grabbed the first floor of the property in question alongwith his co-accused on the basis of a forged agreement to sell dated 04.09.2017 which according to the prosecution has not seen the light of the day and even the said document has not been produced by the petitioner in the Civil Court where the Civil Suit has been filed for Specific Performance. The said agreement to sell is stated to have been signed by one Darshan Sharma as the attesting witness but according to the prosecution he has denied his signatures when the photocopy of this document was shown to him.

12. Now the petitioner is in J.C. since last more than 8 months and even if the fake agreement to sell has not been recovered by the prosecution, in that eventually the petitioner will face the consequences during the trial in the present case as well as in the Civil Suit filed by

him. The wife of the petitioner who is the co-accused in this case has already deposited Rs. 62 Lakh in the Trial Court.

13. One of the other argument which has been raised from the side of the prosecution is that the petitioner is involved in 5 other cases. In ***Prabhakar Tiwari Vs. State of UP 2020 SCC OnLine SC 75***, it has been held that pendency of other cases of similar nature by itself is no ground to refuse the bail to the accused. In the said case 5 cases of similar nature were pending against the accused and he was also declared proclaimed offender but despite that he was granted bail.

14. In the present case, the evidence is all documentary and all the documents except the original agreement to sell dated 04.09.2017 is in the possession of the IO. Non production of the original agreement to sell and its effect would be seen during the course of the trial. Therefore, in these facts and circumstances, keeping the petitioner in J.C. only for the purpose of recovering the document may not serve the ends of justice as he is in J.C. since more than last 8 months and his wife who is the co-accused in this case has already deposited Rs. 62 Lakh before the Trial Court. So, in these circumstances, the bail application is allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the trial Court. However, the prosecution is at liberty to file the application for cancellation of bail, if

he threatens the witnesses or try to tamper with the evidence. Crl.M.(Bail). 887/2021 is also disposed of accordingly.

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

RAJNISH BHATNAGAR, J

SEPTEMBER 30, 2021
Sumant