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

% *Order pronounced on 23.05.2022*

\+ BAIL APPLN. 460/2022

ASHWANI SHARMA ..... Petitioner
Through: Mr. Satish Bajaj, Advocate.

versus

THE STATE ..... Respondent
Through: Ms.Meenakshi Chauhan, APP for State.
SI Pravin Singh, PS Shahbad Dairy.

CORAM:
HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.:

1. The applicant/petitioner has filed this petition for grant of regular bail in case FIR No. 01/2021, under Section 419/420/467/468/471/120B IPC, registered with PS Shahbad Dairy.

1.1 The applicant/petitioner has stated to be in custody since 12.08.2021. The charge-sheet has been filed in the present case. The present FIR is stated to be registered on the complaint of Smt. Veena Gupta wherein she has stated that the house in question was owned by her son and when she visited to deposit the house tax, it was revealed that somebody else has deposited the house tax on the basis of a fabricated sale deed dated 24.01.2019 in favour of one Smt. Girjesh Gupta. Smt. Veena Gupta made a complaint and on the basis of the same, FIR in question was registered. Smt. Girjesh Gupta never claimed any right on the said property on the basis of the sale deed and she never ever tried to take possession of the said property.

1.2 The applicant is the brother of Smt. Girjesh Gupta; the whereabouts of the accused person, who allegedly sold the property to Smt. Girjesh Gupta and who fabricated the signatures of Vaibhav Gupta, has not been apprehended till dated. The applicant was arrested in the present case on the allegation that some amount was transferred from the account of alleged Vaibhav Gupta to the account of the present applicant. Smt. Girjesh Gupta took a loan of Rs.80 lakhs from Tata Capital Housing Finance Limited and the said amount was transferred as consideration to the vendor Vaibhav Gupta, who did not hand over the possession of the house, so they approached Vaibhav Gupta with request either to deliver the lawful possession or to return the money and they also informed the police on 07.09.2019.

1.3 At that stage, Vaibhav Gupta transferred a sum of Rs. 70 lakhs to the applicant and the said amount was used to settle the outstanding loan of Tata Capital Housing Finance Limited and the said loan was closed on 21.12.2019. It has been submitted that there is no wrongful gain or wrongful loss to any person. The applicant never tried to claim any right to the property in question. There is no allegations of fraud and fabrication. The trial of the case is likely to take some time. The applicant was never involved in any criminal case and he is the only bread earning member of the family; he has two school going children and his wife is a chronic patient of depression; the applicant also suffers from different cardiac ailments and he had undergone a bypass surgery. In view of this, bail has been prayed.

2. Notice was issued. Status report has been called in which facts regarding the registration of FIR, as narrated above, have been reiterated. It has been submitted that a dummy bank account was opened with Bandhan Bank, Punjabi Bagh, Delhi and someone impersonated as Vaibhav Gupta,

owner of the property. The loan amount sanctioned by Tata Finance was directly credited in the bank account of the impersonator, namely, Vaibhav Gupta. The said loan amount was sanctioned on the application of Smt. Girjesh Gupta and it was proved as she had produced the title documents of the said property.

2.1 Notice was given to Smt. Girjesh Gupta and Vijay Gupta to join investigation. Mr. Vijay Gupta stated that he was also cheated by an unknown person. Till date the purchasers have neither possessed the property nor they have visited the same. During enquiry, it was found that impersonates Vaibhav Gupta agreed to sell the property to Smt. Girjesh Gupta and Vijay Kumar for Rs.1.17 crores. Sum of Rs.70 lakhs was transferred to the bank account of impersonates Vaibhav Gupta, being loan amount and Rs.47 lakhs was transferred through RTGS from account of Sh. Vijay Kumar. The impersonated Vaibhav Gupta transferred Rs.70,25,000/- in the account of present petitioner through cheque on 28.01.2019. Rs. 47 lakhs was transferred in the joint account of accused Ashwani Sharma and Rajesh Gulati through cheques. Thereafter accused Ashwani Sharma transferred Rs. 38 lakhs in the account of M/s Aggarwal Sweets (proprietor Vijay Gupta) on 30.01.2019 and Rs. 20 lakhs were transferred from the joint account of Ashwani Sharma and Rajesh Gulati to M/s Aggarwal Sweets owned by Vijay Gupta on 01.02.2019.

2.2 The present accused was arrested on 12.08.2021. He is the real brother of Smt. Girjesh Gupta. The bail has been opposed on the ground that impersonates Vaibhav Gupta has not been identified; a conspiracy has been hatched by Smt. Girjesh Gupta, Vijay Gupta and the present applicant. The associate of the present accused, namely, Vijay Gupta prepared fake IDs on the rented accommodation. Accused had used lots of documents in forgery and impersonation and accused Rajesh Gulati is yet to be arrested.

3. I have heard arguments in the present case. The property in question is still in the possession of the complainant's son; amount of loan taken from Tata Capital Housing Finance Limited has already been paid back and the charge-sheet stands filed. As far as the allegations of cheating, fabrication of documents and impersonation are concerned, the law will take its own course and the said facts can be proved during trial. The trial will take a long time to conclude and no useful purpose will be served by keeping the present petitioner in jail, who is otherwise not required for any other purpose.

3.1 In view of this, let the present petitioner be released on bail on his execution of personal bond in the sum of Rs.50,000/- with surety of the like amount to the satisfaction of the trial Court, subject to the following conditions:-

(i) He shall share his mobile number to the IO and will keep the location on at all times;

(ii) he shall not indulge in any crime during the period of bail;

(iii) he shall not leave the country without permission of the trial Court;

(iv) he shall attend the proceedings of the trial Court on each and every date;

(v) he shall not try to contact or influence or threaten the complainant and witnesses in the present case.

4. The petition is disposed of accordingly.

TALWANT SINGH, J

MAY 23, 2022/*mr* *Click here to check corrigendum, if any*