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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ BAIL APPLN. 1083/2022
MUKESH KHURANA

..... Applicant

Through: Ms. Rebecca John, Senior Advocate
with Mr. Vishal Gosain, Ms. Adya,
Ms Megha Bahl, Ms. Sahiba Singh
and Mr. Yash Chaturvedi, Advocates

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr. G.M. Farooqui, APP for
respondent/State with SI Yashpal
Mr. Aman Lekhi, Senior Advocate,
Mr. Mohit Mathur, Senior Advocate
with Mr. Mudit Jain, Advocates for
complainant**CORAM:**
HON'BLE MS. JUSTICE ASHA MENON**ORDER**
13.04.2022

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1. The present application has been filed under Section 438 Cr.P.C. for grant of anticipatory bail in respect of FIR No.435/2020, under Sections 420/406/34 IPC, registered at Police Station Safdarjung Enclave, Delhi.
2. The facts may be noted. The FIR has been lodged by Mr. Karan Sachar, authorized representative of M/s Vaishali Infratech (Pvt.) Ltd., on the allegations of cheating and misappropriation. The applicant, through his Company, M/s Rudra Buildwell Pvt. Ltd., is a builder and has a project, namely, 'Rudra Palace Heights', in which, the complainant/Company booked 11 flats. Large sums of money had also been paid for the flats



amounting to Rs.1,33,87,500/- towards 75% of the consideration. The applicant is the promoter and Director of M/s Rudra Buildwell Pvt. Ltd. There were others also named as accused in the FIR. Fundamentally, the complaint was that these investments were made in the year 2015. However, despite the fact that the flats were to be fully constructed and handed over in 2018, till date, no flat had been handed over to the complainant, rather the complainant came across a Charge intimation to the Registrar of Companies filed by the applicant, informing of the sale of the very same 11 flats to 11 other persons. Thus, the allegation that the applicant had cheated the complainant.

ARGUMENTS

3. Ms. Rebecca John, the learned senior counsel for the applicant, submitted that the applicant admitted the fact that there was a Builder Buyers Agreement with the complainant in respect of 11 flats and that 75% of the consideration amounting to Rs.1,33,87,500/- had been paid for them by the complainant and that only 25% remained to be paid at the time when the possession was to be given. However, it was denied that there was any duplicate sale. It was explained that it was an inadvertent mistake when the names of the 11 others were shown as having purchased the 11 flats that were allocated to the complaint. Learned senior counsel underlined the fact that no flats have been sold to the complainant nor was it sold to any other person and what had taken place was mere allocation. Therefore, she submits that the applicant was ready to resolve the dispute.

4. It was submitted that in compliance of the orders of the learned Additional Sessions Judge dated 8th November, 2021 & 5th March, 2022,



Rs.1,00,00,000/- had also been deposited in the form of three demand drafts in the Sessions Court. Today, the learned senior counsel submitted that apart from making the repayment of Rs.1,33,87,500/-, the applicant was ready to pay the penalty in terms of the Builder Buyers Agreement. In the alternative, 11 flats would be allocated in another Tower though the initial allocation was made in Tower B, since both the Towers had the same type of construction and floor area, the alternate allotment would not prejudice the complainant. The applicant was even willing to allocate the flats in a Tower that was nearing completion and to reallocate 11 flats in Tower B when they be constructed, as no construction could take place for two years on account of the Covid-19 pandemic.

5. Learned senior counsel pointed out to the details available on the RERA website alongwith the photographs and the site inspection report of the RERA that 75% of the project has been completed. In other words, the project was still alive and the interest of the complainant was still protected.

6. On the other hand, learned senior counsel for the complainant, urged that the offer made towards settlement could not detract from the fact that law had been violated and the violation had to be met with legal sanction. It was submitted that the applicant was a habitual offender, as even in the petition a long list of FIRs registered against him have been given, and the applicant has apparently used the system to his advantage by trying to settle all complaints through monetary recompense. It was further submitted, that as observed by the learned Sessions Court, this was not a simple case of delay in delivery of flats, but involved resale of flats to third party and creation of objectionable documents and diversion of money collected for the project. It was submitted that the document now sought to be relied upon



by the applicant i.e. the Board Resolution and rectification of the record before the ROC were fabricated and backdated and was in order to cover up the truth of resale.

7. It was submitted that custodial interrogation was required in the present matter and as there has been defalcation of funds, it has to be investigated as to who misappropriated the money and whether money laundering was involved. It was submitted that in the light of these facts, the applicant was not entitled to anticipatory bail.

8. The learned senior counsel for the applicant countered that court should not proceed beyond the allegations made in the FIR against the applicant and the learned Sessions Judge has made observations in para 10 of its order dated 3rd April, 2021 without having any material before it to conclude that there was resale and creation of “objectionable documents” and diversion of money. It was submitted that several FIRs have been filed against the applicant only with the motive of harassment which was why the applicant had to individually deal with the complainants, but that did not reflect on his character or conduct. No civil suit has been filed for specific performance and what was fundamentally a civil dispute could not be converted into a criminal case. It was urged that the applicant had joined investigations and the opposition of the complainant to the grant of bail was reflective of its vindictiveness. Furthermore, it was submitted that there was no document whatsoever to reflect any resale as there has been only allocation which was why the offer of fresh allocation in another Tower that would be completed by July, 2022 was made. Relief was accordingly, sought.

9. Reliance has been placed by learned senior counsel for the applicant



on (i) ***Ravindra Saxena Vs. State of Rajasthan***, (2009) 1 SCC 684, (ii) ***Rohit Jain Vs. State and ors.***, [Crl. M.C. No.3793/2007, decided on 7th November, 2008, of Delhi High Court], (iii) ***K. Nazeer Vs. K.P. Muhammed Asharaf & Ors.*** [Crl. M.C. No.8161/2017, decided on 20th May, 2019, of Kerala High Court], (iv) ***Saifullah Khalid & Ors. Vs. The State of Bihar & Ors.***, [Crl. Misc. Nos.45519 & 53326 of 2013, decided on 17th May, 2017, of Patna High Court], (v) ***Karun Madan Vs. Vinod Kumar Thapar & Ors.*** [Crl. Misc. No. M-24694 of 2001, decided on 17th November, 2011, of Punjab & Haryana High Court].

10. Reliance has been placed by learned senior counsel for the complainant on (i) ***Prerna & ors. Vs. State*** [BAIL APPLN.227/2012, decided on 29th February, 2012, of Delhi High Court] (ii) ***Sushil Suri Vs. CBI & Ors.***, (2011) 5 SCC 708, (iii) ***Sh. Mukhter Ahamed Vs. State of NCT of Delhi***, [BAIL APPLN. 720/2022, decided on 10th March, 2022, of Delhi High Court], (iv) ***Kamlesh Kumari & Ors. Vs. State of Uttar Pradesh & another***, (2015) 13 SCC 689, (v) ***Priti Saraf & Anr. Vs. State of NCT of Delhi & Anr.***, 2021 SCC OnLine SC 206, (vi) ***Bhupinder Singh Vs. Unitech Ltd.***, [Civil Appeal No.10856/2016 dated 18th December, 2019], (vii) ***P. Chidambaram Vs. Directorate of Enforcement***, (2019) 9 SCC 24, (viii) ***Ajit Singh Yadav Vs. State***, 2012 SCC OnLine Del 1837, (ix) ***Biman Chatterjee Vs. Sanchita Chatterjee & Anr.*** [Appeal (Crl.) 193/2004 decided on 10th February, 2004].

DISCUSSION

11. I have heard the submissions of Ms. Rebecca John, learned senior counsel for the applicant and Mr. Aman Lekhi, learned senior counsel for



the complainant as also Mr. G.M. Farooqui, learned Additional Public Prosecutor for the State. I have also considered the material available on the record as also cited judgments.

12. While it is no doubt true that the case arising out of contracts would have civil and criminal contours, but it is not that if no civil case was filed it would detract from the complaint made to the police nor would the opposite hold true. The facts of each case will decide the entitlement of an applicant to anticipatory bail.

13. One of the significant factors in determining this question would be the need for custodial interrogation. Without doubt, custodial interrogation is more effective to question a suspect. The cocoon of protection, afforded by a bail order insulates the suspect and he could thwart interrogation reducing it to futile rituals. But, it must be also kept in mind, that while interrogation of a suspect is one of the basic and effective methods of crime solving, the liberty of an individual also needs to be balanced out.

14. The views of the Supreme Court explained in numerous judgments have been incorporated in the amended Criminal Procedure Code, particularly with the introduction of Section 41A Cr.P.C. and amendments to Section 41 Cr.P.C. Thus, even for arresting any person in connection with an offence punishable with imprisonment of upto 7 years, the police have to first issue a notice and arrest only when there is no cooperation from the noticee/suspect. There are, of course, other conditions in which the police officer may arrest, as provided for under Section 41(1)(a) & (b) Cr.P.C.

15. In the present case, therefore, the factual matrix will predicate whether or not anticipatory bail ought to be granted. The allegations in the FIR are :



- (i) that there is extreme delay in the completion of the project. However, the RERA report relied upon by the applicant notes that the project is still continuing and 75% of the work had been completed. Photographs have also been placed on the website;
- (ii) that the complainant had discovered that their flats have been re-sold to 11 others. However, none of those persons, are before the court. The learned senior counsel for the applicant submits that their interests have been assured by the applicant and his Company and that is why they are not aggrieved, but that if a person had any issue, the applicant has been settling with them. In the Status Report, there is reference to the denial of resale by the applicant and also his claim that the sale can be effected only with the approval of the Greater Noida Authority. No documents of resale are available.
- (iii) the uploading of the rectified documents on the ROC website. It is the allegation of the complainant that it was backdated. In the Status Report, it is further mentioned that according to the Investigating Officer, the Board Resolution seems to be a day prior to the arrest of the applicant in FIR No.726/2020, registered at Police Station Phase-III, Gautam Buddha Nagar on 3rd November, 2020 and *prima facie*, it appears that the document was backdated and for this purpose, custodial interrogation was required. However, the Status Report itself reveals that the applicant has been joining the investigation and providing the documents with regard to the mortgage of all unsold flats as security against loan taken from the ECL



Finance Ltd. In any event, a backdating of information rectifying an error may not amount *prima facie* to forgery or fabrication.

- (iv) The allegations of siphoning off funds are relatable to the accusations of misappropriation and not money laundering. In any case, the investigating agencies would be entitled to continue their investigations on those lines and take appropriate action when any offence is revealed in respect of averments in para 15 of the Status Report relating to Rs.30.82 Crore allegedly siphoned off by Mukesh Khurana applicant by layering into several companies.

16. It has been held in *Shri Gurbaksh Singh Sibbia & Ors. Vs. State of Punjab*, (1980) 2 SCC 565, as well as reiterated in *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 that though the power to release on anticipatory bail is extra-ordinary in character, it would “*not justify the conclusion that the power must be exercised in exceptional cases only*”. The powers are discretionary, to be exercised in the light of the circumstances in each case. In *Siddharam Satlingappa Mhetre (supra)*, the Supreme Court, while observing that no inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail, has held as under :

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*



- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
- (iii) The possibility of the applicant to flee from justice;*
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;*
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some*



doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

17. As has been repeatedly, held by the superior courts, personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case. In the present case, applying these tests to the facts of the present case, it could be concluded that it is not one of those cases where investigations would be hampered without custodial interrogation. The powers of the police for conducting a holistic and complete investigation in the matter, including into alleged resale and backdating/uploading of documents on the ROC website, are wide, assuming that the applicant has not revealed to them the true details. Whether the uploading of information regarding the 11 flats was intentional or inadvertent can be still determined in the courts, during trial and to do so in these proceedings would be pre-judging the issue, without jurisdiction. The disposal of an anticipatory bail application does not require a trial, even a mini trial, on the allegations and defence. The fundamental question would only be whether or not the liberty of the applicant ought to be curtailed by refusal of anticipatory bail or whether the interest of justice would still be served if he is granted the benefit.

18. Admittedly the grievance commenced on account of delay in the handing over of 11 flats and a disclosure regarding the charge for 11 “sold flats”. Whether such a sale had taken place or not would be documented and available to the Investigating Officer to obtain, as the authorities and parties involved are known. Moreover, the applicant has offered reparation, which is also not unusual in cases of Builder Buyers Agreement. Of course, these offers have been rejected by the complainant.



19. Be that as it may, this Court is of the view and in the totality of the circumstances, the application ought to be allowed. Accordingly, in the event of his arrest, the applicant shall be released on bail on his furnishing a personal bond and a surety bond in the sum of Rs.1,00,000/- each, to the satisfaction of SHO, Police Station Safdarjung Enclave. Additionally, he shall be bound by the following conditions :

- (i) The applicant shall join investigation as and when required to do so by the Investigating Officer and shall cooperate with the investigating agencies and make a disclosure of complete details of the 11 persons relating to whom the resale had allegedly occurred.
- (ii) The applicant shall not leave NCR without orders of the learned Trial Court;
- (iii) The applicant shall furnish his mobile phone/landline number and residential address as well as that of his surety to the I.O./SHO concerned and both shall keep their mobile/landline phones operational at all times during this period and in the event of any change of the same, will immediately inform the same to the I.O./SHO;
- (iv) The applicant shall drop a pin location on Google Maps so that the location of the applicant is available to the Investigating Officer;
- (v) The applicant shall not directly or indirectly contact the complainant or any other witnesses and any attempt shall be deemed to be an attempt to influence them;
- (vi) The SHO is directed to accept the bail bond only after



verifying the address of the applicant.

20. The bail application stands disposed of.
21. The order be uploaded on the website forthwith.

ASHA MENON, J.

APRIL 13, 2022

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