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

% Judgment delivered on: 09.08.2023

+ BAIL APPLN. 2472/2023 & CRL.M.A. 19637/2023

VEER SINGH

..... Petitioner

versus

STATE OF NCT

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Varun Thakur, Advocate.

For the Respondent : Mr. Yudhvir Singh Chauhan, APP for State with SI Satyapreet, PS-Jaitpur.
Mr. Udit Mendiratta & Mr. Ishan Dhamija, Advocates for complainant
Mr. Ankur Mittal, Advocate for Complainant.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is an application under Section 438 Cr.P.C., 1973 seeking anticipatory bail in case FIR No. 84/2019 dated 04.05.2021 under Sections 420/468/471 and 120 B, IPC, 1860 registered at PS-Jaitpur, Delhi.



2. The case of the complainant as per the prosecution is that the complainant had purchased a property comprising three BHK flats, on first floor, in House No. 864, area ad-measuring 150 sq. yds. without roof rights, common parking on ground floor situated in Khasra No. 298/38 in the Village Ghitorni, Tehsil Vasant Vihar, Kapashera, New Delhi from the present applicant for a total sum of Rs. 43 lakhs on the basis of agreement to sell, and general power of attorney dated 27.12.2014.

3. As per the prosecution, the applicant was not an owner of the said flat. So far as for the purpose of recovery, the complainant had filed a civil suit bearing C.S. No. 9266/2016 and by the order dated 09.12.2019, the learned Trial Court had passed a decree for a sum of Rs. 43 lakhs by the judgment dated 20.08.2019, against the applicant.

4. Though, the complainant had filed a complaint before the police on 22.07.2015, however, the same was not taken note of on the ground that the dispute was of a civil nature. The complainant, however, filed an application under Section 156 (3) Cr.P.C. before the learned MM, who further directed the registration of FIR and, thus, as a consequence the aforesaid FIR was registered.

5. Mr. Thakur, learned counsel appearing for the applicant submits that the applicant is only a driver and the case of the complainant that he has sold a property at the rate of Rs. 43 lakhs, which payment is stated to have been made in cash to the applicant, is unbelievable.

6. Learned counsel further submits that keeping in view the fact that the applicant is a mere driver, the allegation of him having received Rs. 43 lakhs in cash for such transaction, also is an improbable allegation.



7. Learned counsel further submits that, that apart, the applicant is willing to participate in the investigation as and when directed by this Court or the I.O.

8. Learned counsel further submits that the applicant has dependents to look after and has clean antecedents and has roots well entrenched in the society.

9. Learned counsel also submits that the other co-accused persons have already been enlarged on bail. That apart, learned counsel also relies upon the judgment of the Supreme Court in ***Mohammed Ibrahim and Others vs. State of Bihar and Another*** reported in (2009) 8 SCC 751 particularly to para 2 to 4, to submit that the Supreme Court was also in seisen of a civil case, which is similar in nature, which was given a colour of a criminal offence and the Supreme Court had observed that in such cases, the parties should be discouraged from filing criminal complaint and the matter should ordinarily be decided by way of civil suits.

10. On that basis, learned counsel submits that the case being identical on facts, the judgment of the Supreme Court in the aforesaid case would apply in the present case and the applicant can be enlarged on anticipatory bail.

11. *Per contra*, Mr. Yudhvair Singh Chauhan, learned APP for the State submits that the applicant has not co-operated in the investigation process at all and despite the fact that the authorities tried to serve the notices upon the applicant at his residence, the family members refused to accept the notices on the ground that the applicant does not reside there.



12. Learned APP submits that in view of the aforesaid behaviour and conduct of the applicant, and without being able to investigate the matter in respect of the role played by the applicant, the applicant ought not to be enlarged on anticipatory bail.

13. Learned APP also submits that the amounts, as alleged by the complainant to have been paid, are yet to be recovered. The applicant does not deserve any indulgence of this Court.

14. Mr. Udit Mendiratta, learned counsel appearing for the complainant also supports the submissions made by the learned APP for the State. That apart, Mr. Mendiratta, learned counsel also invites attention of this Court to the findings of the Civil Court in the judgment to submit that there has been an explicit admission by the applicant to have signed those documents, which are stated to be forged and fabricated.

15. According to Mr. Mendiratta, learned counsel, the applicant has also allegedly admitted having received the sum of Rs. 43 lakhs in the transaction.

16. On that basis, learned counsel submits that the applicant cannot now resile from the findings of the learned Civil Court and is bound by it.

17. This Court has considered the arguments of the learned counsel for the parties as also learned APP for the State. At the first instance, this Court has considered the judgment of the Supreme Court, upon which Mr. Thakur, learned counsel seeks to place his entire reliance on.

18. No doubt that the Supreme Court in the aforesaid case had taken into consideration the fact that the disputes arising therein was of a civil



nature and had proceeded to quash the FIR on charges in case before it. However, in the present case, the facts point out that as on the date of executing the said documents of sale transaction, the applicant was fully aware of the fact that he had no right of ownership of the said property and that, to the mind of this Court, prima facie, at the moment suggests that there was an intention of deception right at the inception.

19. This Court also finds support from the fact that the Civil Court has also recorded a finding that the documents have been admitted to have been signed by the applicant and also an admission of having received Rs. 43 lakhs in lieu of the said transaction.

20. The issue that the other co-accused persons have been enlarged on bail will not be relevant at this stage since this Court has to see only the role attributed against the applicant.

21. So far as the applicant is concerned, this Court is of the considered opinion that there is no good ground made out for granting anticipatory bail at least at this stage.

22. In view of the above, the present bail application along with pending application stands dismissed.

23. Nothing in this order shall be construed as an expression or opinion on the merits of the pending matter.

TUSHAR RAO GEDELA, J.

AUGUST 9, 2023/nd