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

+ **BAIL APPLN. 2414/2023**

DHANKESH YADAV

..... Petitioner

Through: Mr. Shantanu Kumar, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Sahni, APP for State and SI
Vikram Lamba, PS Safdarjung
Enclave.

Mr. Vaibhav Dabas, Adv. for
complainant.

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Date of Decision: 24.07.2023.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 19119/2023

Exemption allowed subject to just exceptions.

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1. The present application has been filed seeking grant of anticipatory bail in case FIR No. 122/2023 under Sections 420/406/120B IPC registered at PS Safdarjung Enclave.
2. Learned counsel for the petitioner submits that he is the co-owner of

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property bearing House No. G-34, Green Park, New Delhi along with co-accused Ajit.

3. Learned counsel for the petitioner submits that without informing the petitioner, Ajit seems to have entered into an understanding with the complainant party and supplied the bank details of the petitioner to the complainant party.
4. Learned counsel for the petitioner also submits that he received an amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) in his bank account through RTGS and a sum of Rs.50,00,000/- (Rupees Fifty Lakh only) by way of cheque, both, from Mr. Ashok Kumar Sondhi.
5. Learned counsel for the petitioner further submits that the alleged agreement to sell purported to have been executed by the petitioner and co-accused Ajit bears his forged signatures if any.
6. Learned counsel for the petitioner submits that out of Rs. 60,00,000/-, he has returned Rs. 20,00,000/- however, the cheque for the remaining payment of Rs.40,00,000/- got dishonored on account of insufficiency of funds. Learned counsel for the petitioner submits that for the same; the complainant has already filed a complainant under Section 138 of NI Act. Learned counsel for the petitioner submits that it is a civil transaction which has been colored as a criminal case and therefore, the petitioner may be admitted to bail. Learned counsel for the petitioner



submits that even as per the FIR, the only intention of the complainant party is to share the profit earned out of transaction with M/s. Rubel Florist Pvt. Ltd. It has also been submitted that there was a considerable delay in the registration of the FIR.

7. Learned APP for the State has vehemently opposed the grant of bail and has invited the attention of the court to the reply filed before the Learned Trial court by the IO. Learned APP for the State submits that the same reply may be taken into consideration.
8. Learned APP further submits that in fact one Mr. Shamshad had approached the complainant party namely, Mr. Ashok Kumar Sondhi and Mr. Ramesh Kumar Goyal for the sale of property bearing No. G-34, Green Park, New Delhi measuring 200 Sq.Yds. and introduced them with the present petitioner and co-accused Ajit.
9. It was represented to the complainant party that the petitioner and co-accused Ajit are the owners of the property. The complainant party was shown the documents of the property in furtherance of the claim. Hence, the complainant party agreed to purchase the property on 05.08.2022 and entered into an agreement to sell with the petitioner and co-accused Ajit in respect of the aforementioned property for a total consideration of amount of Rs. 8,50,00,000/- and paid an advance amount of Rs. 20,00,000/-.



10. It has further been submitted that on 30.10.2022, the complainant party further paid Rs. 1,79,00,000/- to the petitioner and co-accused Ajit out of which Rs. 1,00,00,000/- through two cheques of Rs. 50,00,000/- each and Rs.79,00,000/- in cash. However, on 09.09.2022 the complainant party came to know that property had already been sold on 29.08.2022 to M/s. Rubel Florist Pvt. Ltd.,
11. Learned APP for the state further submits that another FIR bearing No. 83/2023 under Sections 420/467/468/471/120B IPC registered at PS Mayapuri, New Delhi was registered against the present petitioner and other accused persons regarding the sale of the same property that is G-34, Green Park, New Delhi.
12. Learned counsel for the complainant submits the *mala fide* intention of the petitioner is clear from the fact that the property had been sold to M/s. Rubel Florist Pvt. Ltd., for 29.08.2022 and they received a sum Rs. 1,79,00,000/- from the complainant party on 31.08.2022.
13. It has also been submitted that the anticipatory bail application has been rejected thrice by the learned Trial Court.
14. Learned counsel for the petitioner has not disputed that the property has been sold to M/s. Rubel Florist Pvt. Ltd., on 29.08.2022 however, his case is that he was never in knowledge of the agreement to sell, if any, executed with the complainant party.



15. It is a settled position of law that the basic rule of criminal jurisprudence is bail not jail. The Supreme Court and this Court, in a number of cases, have propounded that the courts must enforce this principle in practice. It is also settled law that denial of bail amounts to deprivations of personal liberty. However, what must be borne in mind is that power under section 438 of CrPC is an exceptional power and should be exercised only very scarcely and in exceptional cases. The consideration governing exercise of discretion for granting anticipatory bail are materially different from those of an application for bail. The parameters for grant of anticipatory bail are very well settled. It is an exceptional power which must be exercised by the Court only in the cases where there is a possibility of misuse or abuse of process of the Court. Anticipatory bail is not to be granted as a matter of rule and should be granted only when a special case is made out and the Court is convinced that the person would not misuse his liberty. Thus, the power of anticipatory bail being of extraordinary nature should be exercised only in exceptional cases.
16. Hon'ble Supreme Court in *Siddharam Satlingappa Mhetre vs. State of Maharashtra*, (2011) 1 SCC 694 has enumerated the following factors and parameters to be considered while dealing with anticipatory bail:



- a. Nature & gravity of accusation and the exact role of the accused must be properly comprehended before the arrest is made*
- b. 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*
- c. The possibility of the applicant to flee from justice*
- d. The possibility of the accused's likelihood to repeat similar or other offences*
- e. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him/ her*
- f. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a large number of people*
- g. 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.*
- h. While considering the prayer for grant of anticipatory bail a balance has to be struck between two facts, 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.*
- i. The court is to consider reasonable apprehension of tampering of witness or apprehension of threat to the complainant.*



j. 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 cause of events, the accused is entitled to an order of bail.

17. In the present case, there seems to be a pattern regarding multiple agreements to sell being executed with respect to the same property by the petitioner and co-accused persons. I consider that this matter requires thorough investigation. During the course of submissions, it has also been submitted that the petitioner is absconding and the NBWs that have been issued could not be executed as he is not available at the given address. Learned APP submits that the IO is going to move an application for issuance of process under Section 82 Cr.P.C.
18. I consider that in the present case discretion of anticipatory bail cannot be exercised. Hence, the present anticipatory bail application is dismissed.

DINESH KUMAR SHARMA, J

JULY 24, 2023/AR