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

% ***Decided on:11.08.2023***

\+ **BAIL APPLN. 2667/2023**

MOHD SALAUDDIN ..... Petitioner

Through: Counsel (appearance not given).

versus

STATE ..... Respondent

Through: Mr. Raghuvinder Varma, APP for the State with SI Ashish, P.S. Dabri, Delhi
Mr. R.H. Jain and Mr. Anshya Chandra, Advocates for complainant

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.(*ORAL*)

CRL.M.A. 21492/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The instant application under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking grant of anticipatory bail in case FIR bearing no.

180/2023 registered at Police Station Dabri, New Delhi for offence punishable under Sections 420/468/471/120B/34 of Indian Penal Code, 1860 ('IPC').

4. Issue notice. Mr. Raghuvinder Varma, learned APP accepts notice on behalf of the State.

5. Briefly stated, the facts of the present case are that in this case the FIR was registered on the complaint of one Anita Jain, wherein she had stated that she along with Shalu Jain was in possession of property bearing no. 33A out of Khasra No. 19/5/1, Chanakya Place, Part-1, Bock A-1-A, New Delhi. It was stated that the complainant had purchased the said property from one Basima on 30.05.2018. On 10.01.2023, concerned bank official had visited the suit property along with a receiver for taking over the physical possession of the said property, and complainant had come to know about the execution decree/order dated 02.03.2021 passed by learned Chief Metropolitan Magistrate, Dwarka, New Delhi and that Karnataka Bank had sanctioned and reimbursed a loan of Rs. 2 crores in the name of the husband of Basima i.e. the present accused/applicant Sallaudin on the said property and one other property. During investigation, it was discovered that Sallaudin had mortgaged the said property in collusion with others and had showed that his father Phool Hussain had died before 08.06.2016 whereas he had died on 20.10.2021. Thereafter, wife of the accused/applicant had sold the said property to the complainants.

6. Learned counsel for the applicant argues that there are chances of compromise in the present case and there is nothing on record to

suggest that the accused/applicant has committed the alleged offence. It is also argued that a civil litigation is pending in connection with some of the issues of this case, and no useful purpose will be served by sending the accused/applicant to the judicial custody, therefore, bail be granted to the applicant.

7. *Per Contra*, learned APP for the State submits that there are serious allegations of forgery of documents against the applicant, therefore, bail be rejected as his custodial interrogation will be required.

8. I have heard arguments advanced on behalf of both sides and have perused material available on record.

9. In the present case, the allegations against the applicant, in a nutshell are that he had mortgaged the property in dispute using forged documents to Karnataka Bank, and thereafter he had sold it to the complainants, through his wife.

10. In this Court's opinion, further investigation is required to be conducted as the accused/applicant herein had told the investigating officer that his father had died 25 years back whereas he had passed away on 20.10.2021 due to some ailment. It was on the basis of the fake death certificate of his father, that the applicant had mortgaged the property in dispute. It is noted that the alleged documents are without any witnesses. Further, as per the statement of applicant's sister he taken her to sign some documents saying that he is making a new Aadhar card, and had actually obtained her signature on the relinquishment deed. The applicant had also misinformed the IO that his mother had passed away, whereas, during investigation, it was

found that his mother is alive and living with her other son Saiful. The applicant had also lied about the legal heirs and it was revealed during investigation that the father of the present applicant had ten children out of which one son had passed away.

11. This Court also notes that the applicant had taken a loan of Rs 2 crore on the property in dispute and another property using forged documents, and had defaulted on the loan. The applicant had sold the said property to the complainant, and thereafter the Bank had taken the possession of the property mortgaged by the present accused/applicant on the basis of the forged documents, which was in the possession of the complainant.

12. While hearing an appeal against the grant of anticipatory bail in a case involving offences under Sections 406, 420, 467, 468, 471 and 120B of IPC, the Hon'ble Apex Court in ***Pratibha Manchanda v. State of Haryana*** *2023 SCC OnLine SC 785* had observed as under:

> "16. It goes without saying that the alleged offences of forging documents for transferring ownership of land worth crores of rupees are grave in nature. Hence, while it is extremely important to protect the personal liberty of a person, it is equally incumbent upon us to analyze the seriousness of the offence and determine if there is a need for custodial interrogation.
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> 19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and

> free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.
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> 28... The facts of the case speak for themselves and an element of criminality cannot be ruled out at this stage. Whether or not the alleged offences were committed by Respondent No. 2 and his co-accused in active collusion with each other can be effectively determined by a free, fair, unhampered and dispassionate investigation. In the peculiar facts and circumstances of this case, custodial interrogation of not only Respondent No. 2 but all other suspects is, therefore, imperative to unearth the truth. Joining the investigation with a protective umbrella provided by pre-arrest bail will render the exercise of eliciting the truth ineffective in such like case... ”

13. Considering the overall facts and circumstances of the case and the fact that the applicant needs to be confronted with documents as well as witnesses, and the allegations levelled against him are serious in nature of forgery and misdirecting investigation, therefore, no ground for grant of anticipatory bail is made out.

14. Accordingly, the present application stands dismissed.

15. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 11, 2023/ns