



2023:DHC:7586



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

% *Judgment reserved on : 27th September, 2023*
Judgment delivered on: 17th October, 2023

+ BAIL APPLN. 3097/2022 & CRL.M.A. 9335/2023 (Additional documents)

TRILOK CHAND CHAUDHARY

..... Petitioner

Through: Ms. Rebecca M. John, Senior Advocate with Mr. Kanwal Chaudhary and Mr. Gaurav Sharma, Advocates.

Versus

STATE

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for State.
Mr. Maninder Singh, Senior Advocate with Ms. Kavita Jha, Ms. Simran Chaudhary and Mr. Aditeya Bali, Advocates for complainant along with complainant in person.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. The present application has been filed seeking anticipatory bail in FIR No. 71/2022 under Sections 420/406/467/468/471/120B of the Indian Penal Code, 1860 (IPC) registered by the Economic Offences Wing, Mandir Marg, New Delhi.

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2. The anticipatory bail application filed by the applicant was dismissed by the Sessions Court *vide* order dated 11th October, 2022.
3. Interim protection was granted to the applicant by the Court *vide* order dated 28th February, 2023 subject to the applicant depositing a sum of Rs.2 crores with the Registrar General of this Court and the applicant joining the investigation and fully cooperating in the same.
4. The present FIR was registered on the complaint filed by one Mr. J.K. Shrivastava (hereinafter complainant) wherein the complainant had alleged that three accused persons; the applicant herein, Mr. Keshav Ram Saini and Mr. Vijay Kumar Shrivastava (brother of the complainant, who has since expired) had fraudulently tricked the complainant into parting with more than Rs.25 crores under the guise of selling a Farm House, No. 27, Central Drive, Chattarpur, Mehrauli, New Delhi (hereinafter the Farm House), under an Agreement to Sell dated 7th January, 2011, whereas the accused persons were neither the owners, nor in possession of the said Farm House.
5. Believing the fraudulent representation of the accused persons that they are the owners of the aforesaid property, the complainant entered into an Agreement to Sell dated 7th January, 2011 with the applicant, in which the co-accused Keshav Ram Saini was the confirming party. Pursuant to the said Agreement to Sell, the complainant paid a sum of Rs.21.35 crores through banking channels and approximately Rs.4 crores in cash. However, neither a sale deed was registered in favour of the complainant, nor the possession was transferred to him.
6. In the Status Report filed on behalf of the State, it has been stated that in the course of the investigation, it was confirmed that an amount of Rs.21.35 crores was transferred from the bank accounts of the complainant

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to the bank accounts of the applicant. Out of the total amount received in the account of the applicant, a sum of Rs.13.20 Crores was transferred to the account of co-accused Vijay Kumar Shrivastava, brother of the complainant.

7. The investigation further revealed that the actual owners of the said Farm House were members of the Tiwani Family, who had purchased the said Farm House in 1990 from one Harbanslal Lal Arora, who was the Power of Attorney of the original owners i.e., Gujaratis. The applicant was aware that the property had been sold to the Tiwani family. It was also confirmed that the physical possession of the said Farm House has been with the Tiwani family since 1990.

8. In the Supplementary Status Report filed on behalf of the State, it has been stated that during the investigation, the applicant admitted that he did not receive the physical possession of the property from co-accused Keshav Ram Saini and nor did he hand over the same to the complainant. During interrogation, he failed to produce the original Agreement to Sell dated 7th January, 2011 executed by him in favour of the complainant or the Agreement to Sell dated 23rd September, 2008 and General Power of Attorney executed by co-accused, Keshav Ram Saini, in his favour. As per the said agreement dated 23rd September, 2008, out of a total consideration of Rs.9.5 crores, Rs. 7.99 crore was to be paid by the applicant to Keshav Ram Saini in cash and the remaining by cheques/POs. Keshav Ram Saini has denied having received the aforesaid cash amount from the applicant.

9. It is also stated that the applicant had filed a Criminal Complaint against co-accused Vijay Kumar Shrivastava at Police Station Suraj Kund, Faridabad, Haryana *vide* FIR No. 159/2019 dated 19th March, 2019 under sections 420/406/467/468/471 of the IPC in which it was alleged that co-

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14:35:54



accused Vijay Kumar Shrivastava has cheated the applicant to the tune of Rs.17 Crores in respect of other property transactions.

10. In the Status Report filed on behalf of the State on 18th September, 2023, details of three other FIRs against the applicant have been provided which are as follows-

- (i) FIR No. 187/2021, dated 9th January, 2021 under sections 420/406/467/468/471/120B of Indian Penal Code, 1860 registered at Police Station Economic Offences Wing.
- (ii) FIR No. 155/2015, dated 18th November, 2015 under sections 420/406/120B of Indian Penal Code, 1860 registered at Police Station Economic Offences Wing, Mandir Marg, New Delhi.
- (iii) FIR No. 362/2022, dated 29th June, 2022 under sections 420/506/467/468/471/120B/34 of the Indian Penal Code, 1860 registered at Police Station Suraj Kund, Faridabad, Haryana.

11. Senior counsel appearing on behalf of the applicant submits that all the details with regard to the ownership history of the Farm House were duly disclosed in the Agreement to Sell dated 7th January, 2011 and therefore it cannot be said that the applicant cheated the complainant. It is further stated that out of the sum of Rs.21.35 crores received from the applicant through banking channels, a sum of Rs. 13.20 crore was transferred to Vijay Kumar Shrivastava, complainant's brother, to be kept in escrow and be released after execution of the sale deed in the favour of the complainant. It is further contended that the present FIR has been filed after an inordinate delay of 11 years after the aforesaid Agreement to Sell was executed, when no civil

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14:35:54



proceedings could be initiated. Reliance in this regard has been made on the judgments in *Suresh v. Mahadevappa Shivappa Danannava*, (2005) 3 SCC 670, *Hasmukhlal D. Vora & Anr. v. State of Tamil Nadu*, (2022) SCC Online SC 1732 and *Sarabjit Kaur v. The State of Punjab & Anr.*, in Criminal Appeal No. 581 of 2023 decided on 01.03.2023.

12. Per contra, it has been submitted on behalf of the State that custodial interrogation of the applicant is required as he has failed to produce original documents in respect of the Farm House as well as the proof of payments made by him to Keshav Ram Saini towards the purchase of the Farm House. Further, during the course of inquiry, the co-accused Keshav Ram Saini has denied his signature as the confirming party on the said Agreement to Sell dated 7th January, 2011.

13. In rebuttal, senior counsel appearing for the applicant submits that co-accused Keshav Ram Saini had duly admitted his signature on the Agreement to Sell dated 7th January, 2011 in the anticipatory bail application filed by him before the Trial Court. As regards the original of the Agreement to Sell dated 7th January, 2011 between the applicant and complainant, it was submitted that the original of the said Agreement was handed over to the co-accused Vijay Kumar Shrivastava.

14. Attention of the Court was also drawn to the additional documents filed on behalf of the applicant to show that payments were made by the applicant to Keshav Ram Saini as well as Gujaratis.

15. Senior counsel appearing on behalf of the complainant submits that the applicant along with other co-accused, Keshav Ram Saini and Vijay Kumar Shrivastava colluded with each other to cheat the complainant. The applicant had no authority to give money received from the complainant to

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his brother and co-accused Vijay Kumar Shrivastava. Further, the FIR filed by the applicant against Vijay Kumar Shrivastava completely contradicts the stand taken by the applicant here that the sum of Rs.13.2 crores was transferred by the applicant to Vijay Kumar Shrivastava towards escrow. It is further submitted that the applicant had fraudulently stated in the Agreement to Sell dated 7th January, 2011 that the property had no encumbrances and that the applicant was the owner of the said property.

16. On the aspect of delay, it is submitted that the delay was on account of serious medical ailments suffered by the complainant as well as his son.

17. I have heard the counsels for the parties and perused the material on record.

18. A perusal of the Agreement to Sell dated 7th January, 2011 shows that the applicant had assured the complainant that he is the owner of the Farm House and is in possession of the same. He had further assured that the Farm House was free from all kinds of encumbrances and the applicant had agreed to indemnify the complainant in the event of any defect in title. However, from the material on record, it appears that the applicant had failed to make due payments to the previous owners of the said Farm House, including co-accused Keshav Ram Saini and the Gujaratis for the purchase of the Farm House. Nothing has been filed to show the payment of Rs. 7.99 crores to Keshav Ram Saini. Thus, it appears a wrongful representation was made to the complainant that the applicant was the absolute owner of the aforesaid Farm House and in possession thereof.

19. The submission of the applicant that out of the total consideration of Rs.21.35 crores received from the complainant, a sum of Rs.13.2 crores was transferred to co-accused Vijay Kumar Srivastava, also appears to be false

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as the applicant himself had filed a criminal case against the said Vijay Kumar Srivastava at Police Station Suraj Kund, Faridabad, Haryana wherein he had alleged that Vijay Kumar Srivastava had cheated him to the tune of Rs. 17.0 crores in respect of the certain other property transactions. Vijay Kumar Srivastava was arrested pursuant to the said FIR and chargesheet was also filed in the said FIR. Besides, there were no instructions from the complainant to transfer the aforesaid amount to the account of his brother.

20. It is also pertinent to note that the three previous FIRs against the applicant relate to offences involving cheating and forgery in relation to property transactions. In FIR No. 187/2021, the applicant has been absconding and process under Section 82 of the CrPC had been initiated against him. In FIR No. 155/2015, the applicant was arrested on 22nd August, 2016 and chargesheet has already been filed. FIR No. 187/2021 has subsequently been quashed on the ground of settlement. Therefore, it appears that the applicant is a habitual offender who is involved in other cases of similar nature.

21. It is vehemently been argued on behalf of the applicant that there has been an inordinate delay in lodging of the FIR. In my considered view, mere delay in lodging the FIR by itself cannot be a ground for grant of bail to the applicant. In this regard, a reference may be made to the judgment in ***Edmund S. Lyngdoh v. State of Meghalaya***, (2016) 15 SCC 572, where the Supreme Court has held that mere delay in lodging an FIR by itself cannot raise doubts about the genuineness of the case of the prosecution. The judgments of ***Suresh*** (Supra) and ***Hasmukhlal D. Vora*** (Supra) relied upon by the applicant do not lay down the proposition that delay in filing an FIR by itself can be ground to set aside the criminal proceedings. It is only one

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14:35:54



of the factors to be considered by the court. In the present case, the complainant has given a plausible explanation for delay in registering the FIR.

22. In **Sarabjeet Kaur** (Supra), relied upon by the applicant, it was held that breach of contract would not give rise to the criminal prosecution and the parties must exhaust civil remedies. However, the said judgment provides the exception in the event of fraudulent intention to cheat. As noted above, there is sufficient material on record to show that the applicant entered into the transaction with the complainant with an intention to cheat and defraud the complainant.

23. Despite the interim protection given by this court, the applicant has not fully cooperated with the investigation agency. Further, the applicant has not provided the original of the Agreement to Sell Dated 7th January, 2011, the documents executed by Keshav Ram Saini in his favour and the details of the payments made by him to Keshav Ram Saini.

24. The Supreme Court in **Pratibha Manchanda and Anr. v. State of Haryana and Anr.** (2023) 8 SCC 181, while setting aside the order of the High Court granting anticipatory bail to the accused, made the following observations:

“29. Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance-free status. Organised criminal networks often plan and execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation or threats to force them to vacate their properties. These land scams not only result in financial losses for individuals and investors but also

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14:35:54



disrupt development projects, erode public trust, and hinder socio-economic progress.”

25. In ***P. Chidambaram v. Directorate of Enforcement***, (2019) 9 SCC 24, it has been held by the Supreme Court that in respect of economic offences anticipatory bail can be granted only in exceptional circumstances. The relevant observations of the Supreme Court in are set out below:

“83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.”

26. In the facts and circumstances of the present case, in my considered view, granting anticipatory bail to the applicant would prejudice the investigation in the present FIR. The offences against the applicant are serious in nature and a huge amount of Rs.25 crores has allegedly been cheated. Custodial investigation of the applicant is required for the purposes of recovery of the original documents as well as money alleged to be cheated.

27. Consequently, the interim protection granted to the applicant is withdrawn forthwith and the present anticipatory bail application is dismissed along with all pending applications.

28. The amount of Rs. 2 crores deposited by the applicant with this Court

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14:35:54



2023 : DHC : 7586



shall be subject to the outcome of the trial.

29. Needless to state, the observations made on the merits of the matter are purely for the purpose of adjudicating the present application and shall not be construed as an expression on the merits of the matter.

AMIT BANSAL, J.

OCTOBER 17, 2023

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