$~

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

% ***Reserved on: 23.11.2023***
Pronounced on: 01.12.2023

\+ **BAIL APPLN. 3526/2023**

VIRENDER DHAKA ..... Petitioner

Through: Mr. Abhishek Sisodia, Advocate.

versus

STATE THOUGH SHO FATEHPUR BERI ..... Respondent

Through: Mr. Manoj Pant, APP for the State with ASI Dharamvir, PS – Fatehpur Beri.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. 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. 147/2023, registered at Police Station Fatehpur Beri, Delhi for the offences punishable under Sections 420/406 of the Indian Penal Code, 1860 (*'IPC'*).

2. Briefly stated, the facts of the present case are that the complainant Jagbir Singh Pundir had lodged a complaint, thereby

stating that the complainant and accused had entered into an agreement dated 13.12.2016 whereby the accused had agreed to sell the property situated at A2/56, First Floor, Aya Nagar Phase 5, New Delhi, an area measuring 45 sq. Yards, for a total sale consideration of Rs.12,50,000/-. The complainant had made advance payment of Rs.7,30,000/- to the accused which was acknowledged by the accused, and the reaming payment of Rs.5,20,000/- was to be made after completion of the first floor. However, as alleged, the accused had shown his inability to give possession and had asked for payment of the balance payment of Rs.5,20,000/-, and accordingly, the complainant had made the full and final payment on 13.12.2016. It is alleged that the accused had also promised the complainant that he could take possession of the ground floor until the construction of first floor was completed, and he had also shown him an under construction flat in Aya Nagar. However, the accused had not handed over the possession of the flat for last 8 years, till date. It is stated that the complainant had made full and final payment at different intervals as mentioned in the agreement to sell but the accused had not even started the construction of the property. Therefore, it is alleged that the accused had induced the complainant to purchase the said property by receiving the entire payment of the plot thereby causing wrongful gain to himself and wrongful loss to the complainant. The accused had also extended threats to the complainant for implicating him in false and frivolous cases. On these allegations, the present FIR was registered, pursuant to order dated 29.03.2023 passed under Section 156(3) of Cr.P.C.

3. Learned counsel for the accused/applicant argues that the applicant has been falsely implicated in the present case, and there is unexplained delay of about six years in lodging of the complaint. It is argued that the complainant has resorted to criminal proceedings only to abuse the process of law and extort money from the applicant, and the complainant could have approached the civil court. It is further contended that ingredients of offence under Section 406/420 are not made out in the present case. It is also stated that no custodial interrogation is required in this case since all the documents and details are already with the police and no recovery is to be made from the present applicant. Thus, it is prayed that applicant be granted anticipatory bail.

4. On the other hand, learned APP for the State opposes the present bail application and submits that the accused and the complainant had entered into a notarized agreement to sell dated 13.12.2016 which was verified and found true by the investigating officer. It is argued that the applicant had initially not joined investigation despite service of notice under Section 41A of Cr.P.C. and it was only after the direction given by the learned Sessions Court that he had joined investigation but he had not cooperated with the investigating officer. It is stated that during investigation, it was also revealed that the complainant had transferred Rs. 3.80 lakhs in the bank account of accused. Thus, it is submitted that custodial interrogation of accused is required since his specimen signatures are to be obtained as he had earlier stated that he had not entered into

agreement to sell, however, the agreement to sell now stands verified by the investigating officer.

5. This Court has heard arguments addressed by learned counsel for the accused/applicant and learned APP for the State, and has perused the material placed on record.

6. In the present case, the allegations against the applicant are that he had entered into an agreement to sell dated 13.12.2016 with the complainant for the sale of first floor of property in question, and even after receiving full payment of about Rs.12,50,000/-, he had failed to either handover the possession of the flat or return the money to the complainant.

7. The applicant had joined investigation only after getting interim protection from the learned Sessions Court, however, he had failed to cooperate with the investigation. The applicant had initially denied that he had entered into any agreement to sell with the complainant and had also denied that he had signed any register or any other document. It was also his case that the he had never promised to sell the flat to the complainant as the property in question is the residential house of the applicant, which he has constructed for his personal use. However, the agreement to sell in question was verified during the course of investigation by the IO and the same was found genuine. Statement under Section 161 of Cr.P.C. was also recorded of the concerned Notary who had stated that the applicant herein and the complainant had signed in his presence on the agreement to sell, and he had also produced the relevant records i.e. the entries in his register. These records were also produced

before this Court by the investigating officer during the course of arguments. During investigation, it was also revealed that the complainant had transferred Rs.3.8 lakhs in the bank account of applicant, and the applicant had also admitted receiving the said amount, but had failed to give any explanation as to for what purpose the said amount was received by him from the complainant.

8. Therefore, it is clear from the records and the conduct of the applicant that he had misguided the IO and the Court and though he had received an amount *prima facie* as consideration for sale, he had denied having executed any agreement to sell and having signed any register. It was only during the investigation when the IO had verified the execution of agreement to sell and his signatures were found in the relevant registers and documents, that it was submitted on behalf of the accused before this Court that the applicant was ready to give back the money of Rs.3.80 lakhs, however, it was still not explained as to why was this money received and why did he want to return the same.

9. Having considered the overall facts and circumstances of the case and the conduct of the present accused/applicant, this Court is of the opinion that his custodial interrogation is required for obtaining his signatures and confronting him with the registers and documents, etc. which he had denied to have executed but have been found to be executed by him. Therefore, no ground for grant of anticipatory bail is made out.

10. Accordingly, the present bail application stands dismissed.

11. It is however clarified that the observations made hereinabove shall not be construed as expression of opinion of this Court on the merits of the case.

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 1, 2023/zp