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

Date of Decision: 01.02.2023

\+ **BAIL APPLN. 3058/2018 & CRL.M.A. 11970/2019, 36464-65/2019 & 40576/2019**

D P S RATHORE ..... Petitioner

Through: Mr. Chayan Sarkar, Mr. Shailendra Kumar and Mr. Kartikeya Durrani, Advocates

versus

THE STATE GOVT OF NCT OF DELHI ..... Respondent

Through: Mr. Manoj Pant, APP for State with SI Neeraj, P.S. Preet Vihar.
Mr. Hemant Gulati, Advocate for R-2.

(4)

\+ **BAIL APPLN. 3068/2018 & CRL.M.A. 12027/2019 & 36467-68/2019**

SHIKSHA RATHORE ..... Petitioner

Through: Mr. Chayan Sarkar, Mr. Shailendra Kumar and Mr. Kartikeya Durrani, Advocates

versus

THE STATE GOVT OF NCT OF DELHI ..... Respondent

Through: Mr. Manoj Pant, APP for State with SI Neeraj, P.S. Preet Vihar.
Mr. Hemant Gulati, Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The present bail applications under Section 438 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") have been filed by the applicants seeking anticipatory bail in FIR bearing No. 81/2018, registered at Police Station Preet Vihar, Delhi for the offences punishable under Sections 420/34 of the Indian Penal Code, 1860 ("IPC").

2. Brief facts, leading to the case at hand, are that a friendly loan of Rs. 35 lakh was granted to applicants by the complainant M/s Netsity Systems Pvt. Ltd. in November 2006 and a further loan of Rs. 15 lakh in March 2008 by way of cheques. Thereafter, when the applicants were unable to pay the same, they agreed to sell the property bearing no. B–58, Preet Vihar, Delhi to the complainant and in this regard, an agreement to sell was duly executed. Later, it was found that the said property was already sold to others and also the cheques issued earlier by applicants were also dishonored when presented. A legal notice was accordingly sent and applicants replied by stating their inability to execute the sale deed. As per the allegations, the applicants have failed to execute all the agreements and have cheated the complainant by selling the property in question to some other person, regarding which both the applicants had already made an agreement to sale with the complainant.

3. Learned counsel for accused / applicants submits that the applicants be granted anticipatory bail since the chargesheet already stands filed without arrest of the applicants. It is also stated by learned counsel on behalf of

applicants that the present case is in a nature of civil dispute between the parties and a case under Section 138 of Negotiable Instrument Act, 1881 ("NI Act") as well as a civil case is already pending between the parties. It is also stated that the financial condition of the applicants does not permit them to make payment of any money to the respondent despite such undertaking given by them repeatedly before this Court. It is, therefore, stated that no purpose will be served by sending the applicants in judicial custody.

4. Learned counsel for the applicants, however, states that as per the prosecution case itself, the respondent had clear knowledge that the property was not in possession of the applicants.

5. Learned counsel for respondent, on the other hand, states that the applicants had given an undertaking for payment of money about more than 3 years back and after having enjoyed the protection granted by this Court solely on the ground that they were ready to make the payment as they had undertaken before the Court, they cannot now take advantage of the same and state that their financial position does not permit them to make any payment. Learned counsel for respondent further states that the applicant is still in possession of the said property.

6. It is also stated by learned counsel for respondent that the FIR clearly discloses that the applicants have committed cheating by selling the property to respondent on the pretext that it was free from any encumbrances whereas it was already sold to someone else prior to be sold to him, and a bank loan had already been availed on the same as it was mortgaged with Kotak Mahindra Bank. It is also pointed out that another FIR bearing No. 238/2017 with similar allegations is pending against the applicants, registered at Police Station Preet Vihar, Delhi for the offence punishable under Section 420 of

IPC. It is, therefore, stated that the applicants cannot be allowed to take advantage of their own wrong and cannot be granted anticipatory bail.

7. It is also stated by learned APP for the State that the judgment of ***Satender Kumar Antil v. CBI & Anr., (2022) 10 SCC 51*** is not applicable to the facts of the present case since the applicants were granted interim protection when the charge-sheet had not been filed and having availed the said relief on their undertaking, now they cannot get out of this by claiming relief before this Court. It is argued that the FSL report is also against the applicants and supports the case of prosecution.

8. This Court has heard the counsels for both the sides and perused the material on record.

9. Considering the contention of learned counsel for the applicants, that since the matter is pending under Section 138 NI Act, prosecution of the applicants under Section 420 of IPC amounts to causing double jeopardy, this Court is of the opinion that this contention has no force since the case filed under Section 138 NI Act pertains to dishonor of the cheque whereas the facts of the present case are entirely different and are based on a completely distinct premise.

10. In the present case, applicants took a loan of Rs. 50 lakhs from the complainant and later, due to non-payment of the loan amount, applicant / accused Shiksha Rathore made an agreement with the complainant for sale of property owned by her bearing no. B-58, Preet Vihar, Delhi, and the applicant/accused D.P.S. Rathore stood as a witness in the said agreement. Thereafter, the complainant paid a sum of Rs. 1 crore 40 lakhs to the applicants. It is pertinent to mention that all the payments were made by cheques which got dishonored later. Nevertheless, on the request of

applicants, the time for repayment of money was extended but both the applicants failed to execute the sale deed. Also, as per the conclusive settlement agreement dated 02.06.2017, a post-dated cheque was given by the applicants to the complainant for Rs. 6.25 crores which was also dishonored. In 2017, this fact that the said property has already been sold to some other persons and is not free from encumbrances was also brought to the notice of complainant. It is alleged that the applicants breached all of their agreements and defrauded the complainant by selling the subject property to someone else despite the fact that both parties had already entered into a sale agreement with the complainant. In view thereof, it can be concluded that the present case is different from the one filed under Section 138 of NI Act.

11. As applicants are also previously involved in other cheating cases pertaining to Police Station Preet Vihar, the contention of learned counsel for applicants that since charge-sheet has been filed without arrest, now, no purpose will be served to send the applicants behind the bar is also without merit. In case this plea is accepted, it will amount to giving liberty to an accused in economic offences to first appear before the Court, give an undertaking that he will make payment of the amount due before the court of law including this Court and obtain interim protection on that ground and thereafter, after years of enjoying the interim protection, a statement will be made that he will not make the payment being unable to do so and as a matter of right, will ask to be granted bail on the ground that now charge-sheet has been filed and his custody is not required. In this regard, this Court is of the opinion that it would rather amount to giving liberty to an accused to first mislead the Courts by giving an undertaking that payment will be made & thereafter, despite such undertaking for years, as in the present case for more

than three years, accused(s), in the meanwhile will wait for the charge-sheet to be filed and enjoy the interim protection and after the charge-sheet is filed, will take a plea that now they are no more required to be sent to judicial custody. This situation will amount to travesty of justice, and taking the court and complainant for a ride.

12. The present case involves cheating of more than Six Crores by the complainant and this is not the only FIR involving such kind of offence which is pending against the petitioners, but another FIR bearing No. 238/2017 with similar allegations is pending against the petitioners, registered at Police Station Preet Vihar, Delhi for the offences punishable under Section 420 of IPC which shows the previous antecedents of the petitioners.

13. Considering the same, especially the conduct of the petitioners before this Court, details of which have been mentioned above in the preceding paras, this Court is of the opinion that the courts have also been taken for a ride by giving false undertakings that the monies of the complainant will be returned, though knowing fully that they would not be in a position to make the payment, conveniently waiting for the charge-sheet to be filed.

14. In such circumstances, considering this case to be a case of cheating, this Court is not inclined to grant anticipatory bail to petitioners. Accordingly, the present bail applications stand dismissed.

15. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 1, 2023/zp