



\$~2

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

+ **BAIL APPLN. 279/2023**

RAJ KUMAR

..... Petitioner

Through: Mr. Kartik Gupta, Mr.
Aman Deep and Mr.
Saksham Singh,
Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Utkarsh, APP for the
State

**CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN**

ORDER
24.01.2024

%

CRL.M.A. 2322/2023

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

BAIL APPLN. 279/2023

3. The present application is filed under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of pre-arrest bail in FIR No. 24/2023 registered at Police Station Keshav Puram, for offences punishable under Sections 420/467/468/471 of the Indian Penal Code, 1860 ('IPC').
4. It is alleged in the said FIR that an agreement to sell was executed in respect of the subject property, owned by the wife of the applicant, pursuant to which the complainant transferred a sum of ₹30 lakhs as consideration. It is also alleged that after
BAIL APPLN. 279/2023

Page 1 of 4



receiving the said amount, the applicant and his wife did not answer the repeated calls of the complainant and shifted to Gurgaon. This led to filing of the present FIR.

5. The learned counsel for the applicant points out that the property which is subject matter of the dispute was in the name of applicant's wife, and his wife has already been granted pre-arrest bail by the Court of learned Additional Sessions Judge, Rohini Courts, Delhi by order dated 01.02.2023.

6. He submits that it is apparent from the FIR that the dispute relates to the payment of earnest money of ₹30 lakhs by the complainant pursuant to the Agreement to Sell in relation to the subject property, and is purely commercial in nature.

7. It is not disputed that that the complainant had entered into an Agreement to Sell with the accused for purchase of the subject property for a total sum of ₹3 crores. A sum of ₹30 lakhs was paid as an earnest money.

8. Perusal of the Agreement to Sell reflects that the balance payment of ₹2.7 crores was to be made by 30.07.2022. It is alleged by the complainant that the applicant and his wife did not answer the repeated calls and shifted to Gurgaon.

9. During the course of arguments, it is also alleged that the property which was sought to be sold, was 140 sq. yds, whereas only 40 sq. yds. has been mentioned in the Agreement to Sell.

10. The learned counsel for the applicant has also referred to the legal notice sent by the complainant to contend that the property which was sought to be sold, was always 40 sq. yds. and not 140 sq. yds., as alleged. He further submits that since the complainant had failed to pay the balance consideration within the period agreed upon, the earnest money was forfeited.

11. The dispute, at this stage, appears to be the refund of the
BAIL APPLN. 279/2023

Page 2 of 4



earnest money.

12. It is a settled law that criminal proceedings cannot be abused to seek recovery of money. The police authorities cannot assume the role of a civil court for recovery of money either.

13. It is not disputed that the applicant has joined investigation on many occasions.

14. In view of the above, this Court is of the opinion that no purpose would be served by allowing the custodial interrogation of the applicant.

15. Considering the aforesaid facts, this Court feels it apposite to allow the present bail application. In the event of arrest, the applicant is directed to be released on bail on furnishing a personal bail bond for a sum of ₹25,000/- (Rupees Twenty-Five Thousand Only) with one surety of the like amount, subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicant shall join and cooperate with the investigation as and when directed by the Investigating Officer;
- b. The applicant shall not tamper with the evidence in any manner;
- c. The applicant under no circumstance shall contact the complainant;
- d. The applicant shall provide his mobile number to the Investigating Officer during the course of the day and keep his mobile phone on at all times.

16. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial.

The said observations should not be taken as an expression of
BAIL APPLN. 279/2023

Page 3 of 4



opinion on the merits of the case.

17. The present application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

JANUARY 24, 2024

vld