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

\+ BAIL APPLN. 647/2024, CRL.M.A. 5687/2024

\+ BAIL APPLN. 648/2024, CRL.M.A. 5689/2024

SANJIV DHAWAN ..... Petitioner

Through: Mr. Vinod Dahiya, Mr. Rajat Bhatia, Mr. Yogesh Panwar and Mr. Naveen Ranga, Advocates along with Son of Petitioner.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Ms. Meenakshi Dahiya, APP for State with SI Pawan, PS: Mukherjee Nagar. Mr. Mukesh Kalia, Mr. Udit Gupta and Mr. Tarranjit Singh Sawhney, Advocates for Complainants with Complainants-in-person.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

O R D E R

% **22.02.2024**

CRL.M.A. 5688/2024 in BAIL APPLN. 647/2024

CRL.M.A. 5690/2024 in BAIL APPLN. 648/2024

Exemption allowed, subject to just exceptions.

Applications stand disposed of.

BAIL APPLN. 647/2024, CRL.M.A. 5687/2024

BAIL APPLN. 648/2024, CRL.M.A. 5689/2024

1. Two separate applications under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') have been preferred on behalf of the petitioner for grant of anticipatory bail in FIR Nos. 0096/2024 (BAIL APPLN. 647/2024) and 0092/2024 (BAIL APPLN. 648/2024), under Section 420

IPC, registered at PS: Mukherjee Nagar, Delhi.

2. Issue notice. Learned APP for the State appears on advance notice and accepts notice.

3. In brief, aforesaid separate FIRs were registered on complaints of complainants / purchasers of 2nd and 3rd floor of property No. D-15AB, Vijay Nagar, Dr. Mukherjee Nagar, North West, Delhi against the petitioner, who is the owner of the said properties. As per the case of complainants, separate agreements to sell dated 02.09.2022 in respect of 3rd floor (FIR No. 0096/2024) and 01.09.2022 in respect of 2nd floor (FIR No. 0092/2024) were executed between the respective complainants and petitioner for consideration of Rs. 85,00,000/- each. However, actual consideration between the parties was Rs. 1.30 crore each. In terms of aforesaid agreements to sell, the petitioner / owner of the property had assured that property shall be free from all sorts of encumbrances, such as sale, gift, mortgage, lien, charge, etc. The entire sale consideration of Rs. 1.30 crore each in respect of respective 2nd and 3rd floors is stated to have been paid by the complainants through Bank transaction as well as in cash. Thereafter, vacant possession of the property was also handed over by the petitioner to the complainants in December, 2022 with assurance to execute the sale deed.

However, despite payment of entire consideration amount, as referred to above, the sale deed was not executed by the petitioner in favour of complainants. Later on, it was revealed that aforesaid property was mortgaged with Aditya Birla Finance Ltd. and a payment of Rs. 6.18 crore was agreed by the petitioner to be made to the aforesaid institution for purpose of releasing the property from mortgage. Since the petitioner failed to make the payment for release of mortgage of the property, the possession of respective floors was taken away from the complainants on proceedings initiated by Financial Company. The complainants, as such, stand duped of the property as well as of consideration amount paid in terms of agreement to sell.

4. It is further the case of complainants that agreement to sell dated 21.04.2022 produced by petitioner during investigation claiming sale of respective floors for consideration of Rs.1,81,66,000/- each, is forged.

It is further clarified by learned counsel for complainants that in respect of 2^{nd} floor of the property involved in FIR No. 0092/2024, an amount of Rs. 63,00,000/- was credited in the bank account of petitioner and Rs. 67,00,000/- had been paid in cash. Further, in respect of 3^{rd} floor of the property involved in FIR No. 0096/2024, an amount of Rs. 47,00,000/- was paid by bank transaction and Rs. 83,00,000/- had been paid in cash. It is pointed out that the payment of Rs. 1.30 crore each has been acknowledged by way of endorsement on receipts by the petitioner.

5. On the other hand, learned counsel for petitioner submits that agreement to sell dated 01.09.2022, relied by the complainants reflecting consideration of Rs. 85 lacs for sale of respective 2^{nd} and 3^{rd} floor of property is forged and agreement to sell dated 21.04.2022 reflects consideration of Rs. 1,81,66,000/-. It is further submitted that in respect of 2^{nd} and 3^{rd} floor of the property, only a consideration amount of Rs. 36,00,000/- and Rs. 56,50,000/- respectively was paid in the bank account of petitioner.

6. It is also urged that Whatsapp messages shared between the parties reflect that complainants were aware regarding loan amount / NOC from

Aditya Birla Finance Ltd., which had been applied by petitioner. However, the loan amount could not be cleared due to non-receipt of entire consideration from complainants. It is further submitted that dispute between the parties is of civil nature, in respect of which civil proceedings have already been initiated by the complainants in Rohini Courts, Delhi.

7. The applications are also opposed by learned APP for State, who, on instructions, submits that original agreement to sell has not been received by IO from the petitioner, though a photocopy of the same was handed over by him claiming that original agreement to sell is with the purchasers / complainants. It is further pointed out that payment of Rs. 61,00,000/- out of Rs. 63,00,000/- in respect of 2nd floor and Rs. 46,00,000/- out of Rs. 47,00,000/- in respect of 3rd floor has been confirmed on the basis of statement of bank accounts. Also, the balance cash payments out of consideration of Rs. 1.30 crore each, as claimed by complainants, bears the endorsement of petitioner on receipts.

8. Generally, the possession of the property is not handed over by any seller to the purchaser until and unless he receives the complete or at least substantial amount of consideration from the purchaser. Complainants were admittedly in possession of the property and resided for a period of over one year in the said property, before being dispossessed by the financial company, with whom the property was mortgaged in proceedings initiated by the Company. It cannot be ignored that, as per market practice, in order to evade the stamp duty parties do resort to irregular transactions, whereby, amount is paid in cash as well through banking transactions. However, the cash receipts bearing the endorsement of petitioner cannot be overlooked and give credence to the version of complainants. In terms of agreement to sell there was an assurance that property would be free from all sorts of encumbrances, such as sale, gift, mortgage, lien, charge, etc., but, the property was never passed in favour of complainants by execution of sale deed and it was never released from mortgage.

The custodial interrogation of the petitioner is imperative to unearth the complete modus operandi adopted by petitioner. Considering the facts and circumstances of the case and gravity of offence, no grounds for anticipatory bail are made out. Applications are accordingly dismissed. Pending applications, if any, also stand disposed of.

A copy of this order be kept in connected application.

ANOOP KUMAR MENDIRATTA, J.

FEBRUARY 22, 2024/*R*