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

% ***Date of Decision : 19.03.2024***

\+ **BAIL APPLN. 970/2024**

MOHD. SALEEM JAFAR ..... Petitioner

Through: Mr. M. Hasibuddin and Ms. S. Nisha Khan, Advocates (appeared through VC)

versus

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

Through: Mr. Manoj Pant, APP for the State

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. *(ORAL)*

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. 03/2023, registered at Police Station, New Friends Colony, Delhi for the offences punishable under Sections 420/34 of the Indian Penal Code, 1860 ('IPC').

2. Issue notice. Mr. Manoj Pant, learned APP accepts notice on behalf of State.

3. Facts of the case are that a complaint dated 02.03.2021 was received at P.S. Sarita Vihar, New Delhi from one Mahnaz Hashmi against Mohd. Saleem Jafar (the present applicant), Waseem Jafar, Jyoti Rawat and M/s Adarsh Accommodations Pvt. Ltd. As per status report filed before the learned Trial Court, it was disclosed by the complainant during enquiry at P.S. Sarita Vihar that all the documents, relevant in the present case, were initially signed at the office of Mohd. Saleem Jafar in New Friends Colony, New Delhi. Accordingly, the complaint was transferred to P.S. New Friends Colony on 26.10.2021. The complainant alleged in her complaint that in January, 2015, she had received a phone call from a lady who had shared some investment plans in a real estate company namely Adarsh Builder. The complainant had initially refused to invest any amount, however, another person namely Mohd. Saleem Jafar had called her again and again and had introduced himself as a real estate king. Eventually, the complainant and her husband had visited the office of Mohd. Saleem Jafar where he had shown several projects in Noida, Delhi and Faridabad, however, the complainant's husband had refused to invest any amount. Thereafter, Mohd. Saleem Jafar had visited the complainant's house to induce her to invest in his company. He had also shown documents of two shops U-6 and U-1 0 at Phase -II, Sector 80, Noida, Uttar Pradesh and had allured the complainant and her husband to book these shops, for which he had demanded Rs. 45 lacs from them. Thereafter, the complainant's husband had transferred Rs. 42 lacs into the bank account of Mohd. Saleem Jafar and had also given

Rs. 3 lacs in cash. However, it is alleged that the possession of the shops has not been provided to the complainant till date. After three years, complainant and her husband had visited the office of accused and met Ms. Jyoti Rawat, who had shown them the original documents of property C-560, Part I, Khasra No.760, Adarsh Paradise, Sarita Vihar, Part II, New Delhi and had offered two flats for Rs.98,12,500/ to adjust their amount of Rs. 45 lacs received in the year 2015. It is further alleged that the accused had demanded the remaining amount towards payment of two flats in cash. Complainant and her husband had then managed to arrange Rs. 35 lacs in cash, which had been paid to Mohd. Saleem Jafar at his office. However, the possession of these flats has also not been handed over to them till date. The present FIR was registered pursuant to the direction of learned Metropolitan Magistrate, Saket Courts, vide order dated 16.12.2022, in Ct. Case No. 1152 of 2021

4. Learned counsel appearing on behalf of the present accused/applicant argues that the applicant has been falsely implicated in the present case and he had also joined investigation earlier. It is further submitted that complainant's husband had approached the applicant in 2015 for investing in shops situated in Noida, U.P. and for the same, an agreement was entered into between the parties and due to unavoidable circumstances, the project in which the shops were booked has yet not been completed due to objections by Noida Authority. It is argued that a case of civil nature has been converted into a criminal offence by the complainant, and the complainant has already filed a

civil suit for recovery against the accused. It is also submitted that the present applicant has also filed a writ petition for quashing of FIR and he had shown his intention before this Court to settle the matter with the complainant but her counsel had refused to accede to his request. Therefore, it is prayed that present application for pre-arrest bail be allowed.

5. Learned APP for the State, on the other hand, argues that the allegations against the applicant are serious in nature and he had cheated the complainant by taking money from her on pretext of making investment in real estate, however, he has not handed over possession of any flat to her till date. It is further stated that it was during investigation that the present applicant had received Rs. 42 lacs in his bank account from the complainant. It is also argued that applicant has not joined investigation despite service of several notices under Section 41A of Cr.P.C., as result of which, Non-Bailable Warrants were issued against him on 01.03.2024 and the proceedings under Section 82 of Cr.P.C. have also been initiated against him. It is argued that the custodial interrogation of the applicant is necessary to recover the documents of the alleged properties in question as well as for recovery of money that he had allegedly received from the complainant. It is therefore prayed that the present bail application be dismissed.

6. This Court has heard arguments addressed on behalf of both the parties, and has gone through the case file.

7. In the present case, during the investigation, notice under Section

91 of Cr.P.C. was served to the manager of ICICI Bank for the verification of bank statement of the complainant. The verification revealed that a total sum of Rs 42 lacs was transferred to the bank account of the present applicant. Notice issued under Section 91 of Cr.P.C. to the Sub-registrar Mehrauli Tehsil Building Kalkaji Das Marg, New Delhi regarding the land ownership of flat No. C-560, Part I, Khasra No 760, Adarsh Paradise, Sarita Vihar Part II, New Delhi, revealed that despite best efforts to check the online record (DORIS) of the property Khasra No. 760 residential society Sarita Vihar Part II, no such record was displayed in online module in relation to the property in question.

8. Thereafter, the present accused did not join the investigation despite service of notice under Section 41 of Cr.P.C. on 25.04.2023, 03.06.2023 and 04.06.2023. The notices were pasted outside his home. In this regard, DO entry *vide* No 51A dated 03.06.2023 and DD No. 70A dated 05.06.2023 was registered in CCTNS at this police station. Thereafter, on 01.02.2024, Non-Bailable Warrants were issued returnable on 01.03.2024 from the learned Trial Court. Multiple raids were conducted to arrest the accused but he could not be traced. Thereafter, on 01.03.2024, process under Section 82 of Cr.P.C. has been initiated against the present accused returnable on 02.05.2023, and the investigation of the case is in progress.

9. Thus, it is clear from the record that a sum of Rs. 42 lacs was transferred to the bank account of the present accused from the complainant which he could not account for. The Sub-registrar has also

reported that the alleged property which was sold to the complainant qua which Rs. 42 lakhs taken by the present accused did not exist in the records of the Sub-registrar Office. As it appears from the records, the accused is deliberately avoiding investigation and is evading the process of law.

10. Considering the overall facts and circumstances of the case and the conduct of the accused, no ground for anticipatory bail is made out.

11. Accordingly, the present application stands dismissed.

12. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

13. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 19, 2024/zp