



\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2832/2023, CRL.M.A. 10615/2023**

ANIL GOSAIN

.....Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. D.S. Kohli, Mr. Yash Kadyan,
Mr. Digvijay Singh Rawat and Ms.
Mannat Kohli, Advocates.

versus

THE STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Aashneet Singh, APP for State
with SI Pritosh Rathee, P.S. EOW.
Mr. Jatan Singh, Ms. Sangeeta Singh,
Ms. Vanshika Adhana, Mr. J.S.
Narukka, Mr. Ravin Rao, Mr. Tushar
Lamba, Mr. Akshit Sawal, Mr. Ayan
Sharma and Mr. Pallav Gupta, Ms.
YHashasvi Yadav and Ms. Ayushi
Yadav, Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

%

10.09.2024

1. The present petition is filed seeking setting aside of order dated 22.03.2023 passed by the Additional Sessions Judge (SC-RC)-02, Karkardooma Courts whereby the respondent Nos. 2 and 3 have been granted anticipatory bail in the proceedings arising out of FIR No. 177/2022 registered under Sections 406/420/120B IPC at P.S. Economic Offences Wing, Delhi.
2. Learned Senior Counsel for the petitioner, on instructions, submits that the impugned order is erroneous, based on extraneous considerations



and fails to take into account the seriousness of the offence. Learned Senior Counsel submits that the petitioner has been cheated out of Rs 6 Crores by the respondents who dishonestly induced him to invest the said amount in their real estate business by promising him handsome returns and in case of exit, 50% share in their commercial real estate properties in Greater Noida, U.P. When the respondents failed to deliver promised returns and the petitioner wanted to exit, they offered him their share in the investment of 19 shops & 5 flats in Sampada Livia Project of M/S PSA Impex Pvt. Ltd, which they had received in terms of the MOU signed on 07.07.2017 between respondent No.2 and one *Diwakar Sharma*, CEO of M/SPSA Impex Pvt. Ltd.

He further submits that in this regard, the respondents also introduced the petitioner to one Mr. *Raj Kumar*, Director, M/s. Rudra Buildwell Construction Pvt. Ltd. on 29.04.2019 who agreed to purchase the abovementioned 19 shops and 5 flats from the petitioner vide agreement dated 30.04.2019 for Rs 6 Crores and 13 postdated cheques were issued in this respect. This agreement was also endorsed by respondent No.3. Subsequent endorsement was made in favour of the petitioner by respondent No.2 and *Raj Kumaron* 03.05.2019 and original investment documents in another project Subkamna Lords projects were given as security by the respondent No.2.

3. Learned Senior Counsel submits that when the petitioner submitted some of the abovementioned 13 cheques worth Rs 2 Crores for encashment on 03.10.2019 same were dishonoured because payment was stopped by drawer. Petitioner had duly issued a legal notice but no further action was taken because of promises of repayment made by respondent No.2 and *Raj*



kumar. Learned Senior Counsel further submits that when *Mr. Divakar Sharma*, the CEO of M/S P.S.A. Impex was arrested for fraud and the project was handed over to SLB Welfare Association, the petitioner visited their office and came to know that the MOU dated 07.07.2017 was not reflected in their records and that no PIQ had been made in favour of respondent No.2. When the petitioner confronted them, the respondents instituted a false civil suit against the petitioner to pre-empt any legal action from his part.

4. Learned Senior Counsel further submits that the Trial Court has wrongly stated that there is no acknowledgement or receipt with respect to the transaction of Rs 6 crores which was given by the petitioner to the respondents. In this regard, learned Senior Counsel has referred to a recorded conversation as well as the agreement dated 30.04.2019 wherein he states that a specific admission on behalf of respondents with respect to the receiving Rs 6 crores from the petitioner has been recorded. It is further submitted that the Trial Court has erred in overemphasizing the delay in lodging of the complainant while ignoring the factual scenario. Lastly, it is submitted that the Trial is at a nascent stage where the custodial interrogation of the accused is imperative to unfold the truth of the alleged offence.

5. *Per Contra*, learned counsel for the private Respondents defends the impugned order and submits that the same does not suffer from any infirmity and that the Trial Court has rightly admitted the respondents to anticipatory bail. He further submits that no offence is made out against the respondents No.2 and 3 and the petitioner is maliciously trying to give what is primarily a civil dispute a criminal color.



6. Learned counsel for the private respondents contends that it is in fact the petitioner who had taken the original documents of some of their commercial properties in Sampada Livia and Subhkamna Projects by promising to sell them on a commission basis and later on, when the deal of selling it to Mr. *Rajkumar* didn't pan out, the cheques and the property documents were wrongfully withheld by the petitioner. In this regard, it is stated that the respondent No.2 has given written complaints to SHO P.S. Pandav Nagar and DCP Patparganj on 30.06.2020 and 02.05.2022 respectively, much before the present FIR came to be filed. Respondent No.2 has also filed a Civil Suit before Ld. Civil Judge, Gautam Buddha Nagar, UP for declaration against the petitioner qua the property papers of the Respondents No.2 and 3 which have been illegally retained by the petitioner. He submits that the present FIR has been filed as a counterblast to the said suit.

7. He further contends that the Petitioner is habitual litigant who has earlier filed a complaint on basis of the same facts with SHO P.S. Gautam Budh Nagar, UP in 2020 wherein respondent No.2 and 3 had joined enquiry and the Investigation officer finding no merit in the averments of the petitioner had closed the same. Not stopping there, he again filed complaint at P.S. Pandav Nagar, Delhi on 19.03.2022. Again, enquiry was conducted, wherein the respondents No.2 and 3 duly participated and finding no evidence against the respondents were not proceeded against. Concealing this fact, the petitioner filed the subject complaint with the EOW on which the present FIR was registered.

8. Learned APP for the State states that upon enquiry being conducted, it was revealed that on 07.07.2017, respondent No.2 had executed an



agreement with Mr. *Diwakar Sharma* (Co-accused), wherein, Mr. Diwakar Sharma in capacity of CEO of M/S PSA Impex Pvt. Ltd. had allotted the PIQ in favor of Ajay Khurana for Rs. 4.38 Crores. However, the said amount is not reflected in the bank accounts of M/S PSA Impex. Hence, the PIQ was never allotted to Ajay Khurana and the allotment documents became null and void. The same position has been confirmed by SLB Welfare association who confirm that neither PIQ was sold by company to Ajay Khurana nor any payment made in this regard. Learned APP also states that in the year 2020, UP-RERA got conducted an audit of the alleged project "Sampada Livia", wherein it was found that no commercial space (i.e PIQ) has been sold by the company to anyone till date. However, respondent No.2 has transferred the allotment of the subject commercial space in the name of the complainant using fabricated documents.

9. Learned APP, further states that the respondent No.2 has himself confessed in audio recordings that he is liable to pay back Rs. 6 Crores to the petitioner. Learned APP, however informs no voice samples have been taken to establish the identity of the voice in the recordings. He further states that Mr. Rajkumar was never an authorized signatory of M/S PSA Impex, which proves that the transfer of allotment of 19 commercial shops and 05 flats of M/S PSA Impex in the name of the complainant from the alleged persons was never legitimate.

10. I have heard the counsels for the parties and perused the material available on record.

11. As discernible from the record, the complaint filed by the present petitioner is dated 22.06.2022, which has been made after a significant time period of 7 years from when the money was allegedly paid i.e., in the year



2015. The fact that the petitioner had earlier filed a complaint at P.S. Gautam Budh Nagar has also not been stated in the present FIR.

12. Learned counsel for the petitioner has primarily relied on the agreement dated 30.04.2019 and a statement dated 20.08.2018 to prove the acknowledgement of the receipt of Rs 6,00,00,000/- by the accused persons from the complainant. A perusal of the agreement dated 30.04.2019 would show that the same is in relation to an arrangement vide which 13 post-dated cheques have not been issued by the private respondents but by one *Raj Kumar*, Director of M/s Rudra Buildwell Construction Pvt. Ltd, who is not a party in the present case.

13. With regards to the recorded statement dated 20.08.2018, the same does not record anything with respect to the accused acknowledging the receipt of Rs 6 Crores. from the complainant. The said document rather mentions an amount of Rs 4 crores which the complainant undertakes to pay out of a total cost of Rs 20 Crores. Moreover, with respect to the alleged voice recordings admitting liability concededly, no voice samples have been taken to establish that it was the respondent whose voice was recorded.

14. On a prima facie reading, apparently, not a single document in the form of receipts or bank records has been referred to substantiating the contention of the complainant that Rs 6 crores were handed over by him to the accused persons. It is also to be noted that while a notice qua dishonour of the afore-mentioned cheques was sent, the petitioner has not undertaken any consequent proceedings under Section 138 NI Act and has also not undertaken civil litigation of any kind against the accused. Rather, a civil suit instituted by the respondent No.2 is pending against the petitioner which was instituted prior to filing of the present FIR.



15. At this juncture, it is pertinent to observe the law with regards to the circumstances when bail can be cancelled. In Prasanta Kumar Sarkar v. Ashis Chatterjee, reported as **(2010) 14 SCC 496**, the Supreme Court observed:

‘9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail...*

16. The principles governing challenge to grant of bail were reiterated by the Supreme Court in Ajwar v. Waseem, reported as **2024 SCC OnLine SC 974**, and the same are reproduced hereinunder:

“27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court...”

17. Considering the above-noted facts in light of the principles



established in Arnesh Kumar v. State of Bihar reported as **(2014) 8 SCC 273** and Satender Kumar Antil v. CBI & Ors reported as **(2022) 10 SCC 51**, this Court finds no ground to interfere with the impugned order. Accordingly, the petition is dismissed.

18. Petition is disposed of along with pending application in the above terms.

MANOJ KUMAR OHRI, J

SEPTEMBER 10, 2024/js