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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 1505/2023 and CRL.M.A. 3535/2024
SHASHI PRABHA JINDAL Petitioner
Through: Mr. Rohit Mehra, Advocate.
versus

STATE Respondent
Through: Ms. Richa Dhawan, APP with IO/SI
Pardeep, PS: SubhashPlace, for State.
Mr. Shahrukh Inam, Advocate for complainant.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER
03.05.2024

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1. This application has been filed by the applicant under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.992/2022 dated 12.09.2022 registered under Sections 448/452/34 IPC at PS: Subhash Place.
2. Status report has been filed on behalf of the State. It is the case of the prosecution that present FIR was registered in compliance with the order of the Court under Section 156(3) Cr.P.C. pursuant to a complaint filed by Vikram Singh Tanwar, Authorized Representative of Assets Reconstruction Company (India) Limited (ARCIL) alleging that Bajaj Finance Limited sanctioned a loan for a sum of Rs.2,97,00,000/- in favour of BR Associate Private Limited against mortgage of property bearing No. 312-313, 3rd floor, Neta Ji Subhash Place, New Delhi. BR Associate failed to adhere to the agreed terms and conditions of the loan and the loan was declared NPA. Proceedings were initiated under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) against the accused company, which failed to make good the payment despite service of notice under Section 13(2) of the SARFAESI



Act. Accordingly, an application was filed under Section 14 of the said Act before the learned CMM and a Court Receiver was appointed to take physical possession of the mortgaged property. As per the allegations in the FIR, in compliance of the Court order, Court Receiver took physical possession of the property on 19.07.2022 and property was sealed.

3. It is further stated that on 23.07.2022, complainant received a call from the Security Supervisor of PP Tower that some persons had forcibly entered into the property after breaking open the lock put by the Receiver and present case was registered under Sections 448/452/34 IPC. During course of investigation, alleged eye witness Aditya Choudhary, who was the first informer of the alleged trespassing, was examined and in his statement, he corroborated the allegations in the complaint. Notice under Section 160 Cr.P.C. was served on the applicant to join investigation but it was only after repeated notices that she joined investigation.

4. It is stated that the anticipatory bail of the applicant was dismissed by the learned Sessions Judge on the ground that applicant forcibly entered the property by breaking the lock in defiance of the Court order and neither honoured her financial obligations nor the Court order and continues to be in illegal possession of the property, which is under the symbolic custody of the Court through the Court Receiver. During further investigation, Section 454 IPC has been added in place of Section 452 IPC.

5. Learned APP for the State, relying on the status report, urges that the allegations against the applicant are serious as she has failed to fulfil her financial obligations towards repayment of the loan and has also violated the Court's directive by breaking open the lock placed by a Court Receiver and is thus not deserving of anticipatory bail. Applicant joined investigation on



31.12.2023 and 04.02.2024, after interim protection was granted to her by this Court and was interrogated in the presence of a lady police officer. Interrogation report has been prepared. The applicant is not co-operating and is in total denial of the fact that she trespassed into the property, which is in the symbolic possession of the Court, by breaking open the lock and the seal placed on the property by the Receiver.

6. Counsel for the applicant, *per contra*, submits that applicant is a senior citizen and the only lady in the house looking after her husband, who is immobilized and almost on death bed. On account of the domestic responsibilities, applicant has sacrificed her professional life. Applicant's husband was initially running a company called Magnum Steels Limited, which had availed a secured loan from Bajaj Finance Limited and the immovable property in question was mortgaged for availing the loan. The loan was assigned to a securitisation company by the lender, who recalled the loan and filed a recovery application before the Debt Recovery Tribunal (DRT-III), Delhi being OA No. 116/2022, which is pending. During the pendency, the alleged assignee invoked the provisions of SARFAESI Act and orders were passed by the learned CMM for taking over physical possession of the secured asset and a Court Receiver was appointed.

7. Learned counsel submits that physical possession of the secured asset i.e. the mortgaged property was not taken on 12.07.2022, the date notified by the Receiver. On learning of the order, a statutory appeal was filed under the SARFAESI Act before DRT-III and vide order dated 25.07.2022, the lender was restrained from taking over the possession, copy of which has been filed along with this application. In the interregnum, however, the lender made a false complaint leading to registration of the present FIR.



Applicant has no role in the entire issue. She is not the borrower of the loan and has not trespassed into the property since the possession was never taken over. The medical condition of the applicant's husband and her own age and medical issues do not physically permit the applicant to break open the locks and forcibly trespass into the property. Applicant has clean antecedents and deep roots in the society and is willing to abide by any condition imposed by this Court for grant of bail. Applicant is willing to join further investigation as and when called by the IO. It is strenuously contended that non-cooperation cannot be alleged against the applicant on the ground that she is not confessing to the alleged offence. Reliance is placed on the order of the Supreme Court in ***Hemant Kumar v. State of Haryana, Special Leave to Appeal (Crl.) No.232/2024*** decided on 06.03.2024, wherein the Supreme Court held that for the purpose of investigation, accused cannot be called upon to confess to the commission of the offence and/or make self-incriminating statements.

8. Heard learned counsel for the applicant and learned APP for the State.

9. On 08.05.2023, this Court had granted interim protection to the applicant against coercive actions, subject to her joining the investigation, as and when directed by the IO and fully co-operating in the same. Applicant has joined investigation and there are no allegations that she has misused the liberty granted by the Court and/or tampered with evidence or threatened/intimidated any witness. It is also not the case of the State that custodial interrogation of the applicant is required. Opposition to the present application is primarily on the ground that applicant is denying the allegation of trespassing in the property in question after breaking the lock and the seal put by the Court Receiver pursuant to an order passed by the



learned CMM in proceedings under Section 14 of the SARFAESI Act. This Court is unable to subscribe to the arguments of the State that applicant is not co-operating in the investigation as she is in denial of the allegations. No doubt, the objective and purpose of investigation is to elicit the truth and recover documents, weapons of offence etc. in a given case. However, it is equally settled that process of investigation cannot be used by the investigating agency to elicit confession from the accused. No accused can be called upon to make self-incriminating statements or give or furnish self-incriminating evidence. The allegation against the applicant is of trespassing into the subject property and she cannot be denied anticipatory bail on the ground that applicant is not admitting the allegations.

10. The Supreme Court in *Santosh s/o Dwarkadas Fafat v. State of Maharashtra*, (2017) 9 SCC 714, while relying on one of its earlier decisions in *Selvi and Others v. State of Karnataka*, (2010) 7 SCC 263 held as under:-

“6. It appears, the IO was of the view that the custody of the appellant is required for recording his confessional statement in terms of what the co-accused had already stated in the statement under Section 161 of the Code of Criminal Procedure, 1973. The IO was of the opinion that the appellant was not cooperating because he kept reiterating that he had not purchased the foodgrains. The purpose of custodial interrogation is not just for the purpose of confession. The right against self-incrimination is provided for in Article 20(3) of the Constitution. It is a well-settled position in view of the Constitution Bench decision in Selvi v. State of Karnataka [(2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1] , that Article 20(3) enjoys an “exalted status”. This provision is an essential safeguard in criminal procedure and is also meant to be a vital safeguard against torture and other coercive methods used by investigating authorities. Therefore, merely because the appellant did not confess, it cannot be said that the appellant was not cooperating with the investigation. However, in case, there is no cooperation on the part of the appellant for the completion of the investigation, it will certainly be open to the respondent to seek for cancellation of bail.”



11. In *Bijender v. State of Haryana, Special Leave to Appeal (Crl.) No. 1079/2024*, decided on 06.03.2024, the Supreme Court observed that an accused, while joining investigation as a condition for remaining enlarged on bail, is not expected to make self-incriminating statements under the threat that the State shall seek withdrawal of such interim protection. Recently, the Supreme Court in *Hemant (supra)*, reiterated the said proposition of law. Certainly, this cannot be understood to mean that the accused will not render co-operation for completion of the investigation. Once granted interim protection, applicant is always expected to join investigation and co-operate therein and cannot be heard to defend any hindrance caused to an ongoing investigation. In the present case, the applicant is joining investigation and has undergone detailed interrogation, however, she cannot be expected to confess to the allegations made. It would be a matter of trial whether the applicant had forcefully broken the lock/seal placed by the Receiver and trespassed into the property in question, as alleged. At this stage, it is neither proper nor possible for this Court to come to a conclusion on this aspect, one way or the other.

12. Applicant is a senior citizen and the only member of the family, who is looking after her husband who is stated to be immobilized and is on death bed. State does not claim that the applicant is a flight risk or there are chances of her fleeing from justice.

13. Considering the totality of facts and circumstances, it is directed that in the event of arrest, applicant shall be released on bail upon her furnishing a personal bond in the sum of Rs.30,000/- with two sureties of the like amount to the satisfaction of the concerned IO and further subject to the following conditions: -



- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. She shall furnish her mobile number to the IO and keep the same active at all times and shall not change the mobile number without prior intimation to the IO and the Trial Court;
- iii. She shall appear before the Trial Court on all dates of hearing and/or for any further investigation, as and when directed by the IO;
- iv. She shall not, directly or indirectly, indulge in any illegal activity or make any inducement, threat or promise to any person associated with the case including the complainant; and
- v. She shall furnish her current residential address to the IO and intimate any change in the same to the IO and the Trial Court by way of an affidavit.

14. It is, however, made clear that the observations made in the present order will not be construed as an expression of opinion on the merits of the case. It is also made clear that this order or any observation(s) in this order will not come in the way of the lender initiating or continuing proceedings against the applicant in relation to the recovery of loan including proceedings for recovery of possession of the property, by due process of law.

15. Bail application stands disposed of in the aforesaid terms along with pending application.

JYOTI SINGH, J

MAY 3, 2024

B.S. Rohella/shivam