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

% **Date of Decision: 10.05.2024**

+ **BAIL APPLN. 1328/2024**

SHIV KANT CHOUDHARY Petitioner

Through: Mr. Deva Nand, Adv.

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through: Mr. Manoj Pant, APP for the State along with Mr. Lalit Kumar, Mr. Sumeet Dahiya, Mr. Dhruv Negi and Mr. Nishakarsh Garg, Advocates along with ASI Hemant Kumar, P.S. Jagat Puri.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J (ORAL)

1. The present application has been filed under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') for grant of anticipatory bail in case FIR No. 129/2024, registered at Police Station Jagatpuri, Delhi for the offence punishable under Sections 420/467/471/120-B/34 of the Indian Penal Code, 1860 ('IPC').

2. Brief facts of the case are that a complaint was lodged by the complainant Sh. Manish Miglani alleging that he is the absolute owner of the property no. 59, Ram Nagar, Delhi, and his parental uncle Sh. Sanjeev Miglani had prepared forged documents of this property and



sold it out to one Sh. Shivkant Chaudhary i.e. applicant herein on 11.07.2022 through a General Power of Attorney ('GPA'). It is further alleged that the present accused had also prepared forged possession letter and handed over the possession of this property to another buyer and at present, the property is in illegal possession of the said buyer Sh. Devender Singh. The complainant also alleged that the present accused is not the bonafide purchaser of the property in question and has made wrongful gain through cheating. It is also stated that the present accused has induced the co-accused Sh. Sanjeev Kumar Miglani to sell the property in dispute despite the fact that he was not the owner of the property in question, and the property and has been inherited by the complainant through his father late Sh. Rajeev Kumar Miglani, who had inherited the same from his mother late Smt. Raj Kumari *vide* registered Will dated 15.12.2004. The complainant also alleged that the present accused Shiv Kant Choudhary and co-accused Sanjeev Kumar Miglani had executed an indemnity bond in favour of President of India on 12.07.2022 with respect to the property in dispute. However, co-accused Sanjeev Kumar Miglani had no right in the said property. It is further alleged by the complainant that the applicant herein had got the indemnity bond drafted and he had also made Sanjeev Kumar Miglani to execute different documents such as GPA dated 04.11.2022, affidavit dated 14.11.2022, agreement to sell dated 14.11.2022, cash receipt of Rs.40 lakhs, possession letter dated 14.11.2022 and Will dated 05.11.2022. It is further the case of the complainant that the witnesses of these documents were one Hanuman Prasad Mittal and Roopa Chaudhary, who is the wife of the present accused Shivkant Choudhary.



It is also alleged by the complainant that co-accused Sanjeev Kumar Miglani is an illiterate person and not a person of stable mind and was not capable of committing fraud in his individual capacity and could not have managed to have such a huge amount of money. It is alleged that the present accused has induced the co-accused Sanjeev Kumar Miglani to execute the sale deed dated 24.02.2023 in favour of Sh. Subhash against one Gandhi Nagar property.

3. Learned counsel appearing on behalf of the present accused/applicant states that as per the FIR, the role alleged against the applicant is not specific and no specific allegations have been levelled against him. It is argued that the complaint, which culminated into the present FIR, is based on false and concocted allegations, and that the forged documents were in fact prepared in respect of the property No. 59, Ram Nagar, Delhi by the complainant Sh. Sanjeev Kumar Miglani, and not by the present applicant. It is stated that the investigation has also revealed so and the Investigating Officer has stated the same in his status report. It is also argued that the applicant has also joined investigation whenever called by the Investigating Officer and has submitted the original documents to him. It is stated that custodial interrogation of the applicant is not required, and no recovery is to be made from him. It is further argued that the dispute in question is civil in nature and an FIR bearing No. 82/2024 dated 11.02.2024 under Section 420/120B of IPC has been registered by the complainant at Police Station Gandhi Nagar where also the applicant has been granted interim protection by the Court *vide* order dated 22.03.2024. Therefore, it is prayed that the applicant be granted anticipatory bail.



4. Learned APP for the State has argued that during investigation, the complainant had produced a copy of registered Will dated 15.12.2004 executed by his grandmother Smt. Raj Kumar Miglani in favour of her son Sh. Rajeev Kumar Miglani in connection with the above-mentioned property, and a notice under Section 91 of Cr.PC had been sent to the Sub Registrar to verify the said Will. It is also argued by the State that a notice under Section 41A of Cr.P.C. was sent to the applicant for joining investigation. The accused had joined investigation, however, he did not produce any documentary evidence/receipt regarding mode of payment which was given to the seller for obtaining the relevant documents to purchase the said property. It is also argued that during the course of investigation, the complainant had produced a copy of GPA dated 01.11.2022 executed by Sh. Sanjeev Kumar Miglani in favour of Shivkant Choudhary i.e. the present accused/applicant and as per the said GPA, the property in question had been sold to the applicant Shivkant Choudhary. However, no consideration amount had been mentioned in the said GPA. It is further stated that a raid was conducted, but co-accused Sanjeev Kumar was absconding, who was arrested later on.

5. This Court has heard arguments addressed by learned counsel for the accused/applicant as well as learned APP for the State, and has perused the material placed on record.

6. A perusal of the complaint in this case reveals that the documents of property in question were in fact executed by co-accused Sanjeev Kumar Miglani and the present applicant is only a witness to some of the documents. However, the allegations against the present applicant



are that he was the real conspirator and had coerced the co-accused Sanjeev Kumar Miglani to execute all the relevant documents. This Court also notes that the complainant had inherited the property in question from his father as he was the sole surviving legal heir, but was a minor at the stage of demise of his father Sh. Rajeev Kumar Miglani. The complainant being a minor and since there was no one to take care of him, he was produced by the SHO, Police Station Gandhi Nagar before Child Welfare Committee ('CWC') and the CWC *vide* its orders dated 14.06.2013 and 24.06.2013 had put him into the care of Udyan Care Home, Mayur Vihar, Delhi. The CWC had got registered an FIR No. 205/2014 at Police Station Jagatpuri against the tenant of the property in question i.e. Devender Kumar Verma and his associates and for forging documents of half of the property. The charge-sheet in that case already stands filed.

7. The certified copy of the registered Will in question in the present case i.e. 15.12.2004 of the grandmother of the complainant was obtained by the Investigating Officer from the office of Sub-Registrar concerned. It had also come to the notice of the complainant that his paternal uncle Sanjeev Kumar Miglani had executed documents in favour of the present accused Shivkant Choudhary, as mentioned above. This Court also notes, from a perusal of record, impugned order and the status report filed by the Investigating Officer that the co-accused Sanjeev Kumar Miglani had executed one indemnity bond with respect to the property in question, though he had no right to execute it and the indemnity bond dated 11.07.2022 in favour of Hon'ble President of India and other documents mentioned above in favour of Shivkant



Choudhary, with malafide intention. He had also misrepresented in those documents and in the indemnity bond that the father of the complainant Rajeev Kumar Miglani was unmarried at the time of his death and also misrepresented that he was not survived by any legal heir.

8. The complainant has also stated in the FIR that since his birth in the year 2002, till the time he was taken into the guardianship of CWC, he had stayed at Gandhi Nagar along with the father of accused Shivkant Choudhary who was the elder brother of his father. It has also come to the notice of the Court and on the basis of the documents produced before it that accused Mr. Sanjeev Kumar Miglani was present throughout the proceedings before the CWC and his presence has been marked in the order dated 14.06.2013 when the CWC had directed the tenant Mr. Devender Kumar Verma to pay rent of the property in question to the account of the complainant.

9. It is also reported by the Investigating Officer and the investigation so far revealed that the present accused is the main conspirator of the case. The present applicant despite joining investigation and service of notice under Section 91 of Cr.PC has not provided agreement to sell to the Investigating Officer. The Investigating Officer has also mentioned in his report that the present accused is the witness in the alleged indemnity bond and later on he had purchased the alleged property. The Investigating Officer has further reported that the present accused during investigation did not disclose complete and correct facts and has been misleading the Investigating Officer and the investigation. It is reported that the present accused



during investigation had lied that co-accused Sanjeev Kumar Miglani is not living with him. However, on 11.04.2024, co-accused Sanjeev Kumar Miglani was arrested from the house of the present accused Shivkant Choudhary. The present applicant had arranged his hideout in Shastri Nagar and many other places. It was also revealed during the course of investigation that the present accused is the main conspirator and has prepared fake cash receipts of Rs. 40 lakhs and could not disclose the source of money during interrogation. He had also allegedly prepared fake possession letter in his name while the property is in the name of Manish Miglani and is in possession of Devender.

10. The investigation in this case is at initial stage. Custodial interrogation of the applicant is required to ascertain the source of money of Rs. 40 lakhs and further trail of money. The accused had also not produced the original indemnity bond and other documents.

11. In the above-mentioned facts and circumstances, and considering the conduct of the applicant and the seriousness of allegations, no ground for grant of anticipatory bail is made out.

12. The present application is accordingly dismissed.

13. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

14. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 10, 2024/A