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

% ***Date of decision: 22nd August, 2024***

\+ **BAIL APPLN. 1714/2024**

SURENDER BENIWAL .....Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate with Ms. M. Begum, Mr. Shailendra Singh, Mr. Ishaan Jain & Mr. Harsh Chaudhary, Advocates.

versus

STATE OF NCT OF DELHI THROUGH SHO PS NIHAL VIHAR .....Respondent

Through: Ms. Richa Dhawan, APP for State.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

1. The present Petition under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 *(hereinafter referred to as* "Cr.P.C., 1973"*)* has been filed on behalf of the petitioner seeking regular bail in FIR No. 408/2023 registered under Sections 406/419/420/120B/34 of the Indian Penal Code, 1860 *(hereinafter referred to as* "IPC, 1860"*)* Police Station Nihal Vihar, Delhi.

2. It is submitted in the present petition that the investigations in the present case already stand completed and the Chargesheet has also been filed in the Court.

3. It is submitted that the petitioner was arrested on 01.02.2024, since

when he is in custody. The Regular Bail Application filed on behalf of the petitioner before the learned District and Sessions Judge, Tis Hazari, West, Delhi had been dismissed *vide* Order dated 22.04.2024.

4. Thereafter, the petitioner had also preferred a regular bail before this Court, however, the same was withdrawn on 18.03.2024 as one of the co-accused had been granted regular bail by the learned District and Sessions Judge *vide* Order 16.04.2024.

5. According to the prosecution, the complainant-Jai Kishan Sharma had mortgaged the Property bearing No. E-15A, 16, 17 for taking a loan of Rs. 3,00,00,000/- from Tata Capital Financial Services. However, because of financial difficulty, the complainant-Jai Kishan Sharma was unable to pay the EMIs and an amount of Rs. 2,25,00,000/- is still outstanding.

6. In January 2021, the co-accused, namely, Tannu and Aviral Rastogi had a meeting of almost four hours with the complainant-Jai Kishan Sharma, where they assured to take him out of the financial crisis. The meeting was thus, arranged between the complainant-Jai Kishan Sharma and the petitioner, wherein it was agreed that the petitioner shall purchase the Property bearing No. H-1, Karambhumi Kunwar Singh Nagar, Nangloi, Delhi *(hereinafter referred to as the* "subject property"*)* owned by the complainant-Jai Kishan Sharma. The co-accused, namely, Tannu and Aviral were also handed over ten cheques by the complainant-Jai Kishan Sharma from his own savings bank account along with the original documents of the subject property.

7. The registered Sale Deed dated 07.07.2021 was executed in favour of Rajesh Beniwal, brother of the petitioner by the complainant-Jai Kishan Sharma without taking any sale consideration amount with the assurance

that within two days, the complainant-Jai Kishan Sharma would get the sale amount. However, the sale consideration amount of Rs. 70,00,000/- as mentioned in the Sale Deed, was never paid.

8. Shri Rajesh Beniwal, brother of the petitioner, is the *bona fide* purchaser of the subject property by virtue of the Sale Deed dated 07.07.2021. Some tenants were occupying the subject property at the time of execution of the Sale Deed. The complainant-Jai Kishan Sharma sought some time to hand over the complete possession. It was mutually agreed that till such time the complete possession is not handed over, the Cheque bearing No. 451151 dated 05.07.2021 drawn on IDBI Bank, Pitampura, Delhi for an amount of Rs. 30,00,000/- shall not be encashed by the complainant-Jai Kishan Sharma.

9. It is submitted that on 22.07.2021, the possession of the subject property was handed over and the complainant-Jai Kishan Sharma requested the petitioner that the cheque of Rs. 30,00,000/- be taken back and instead a payment of amount of Rs. 30,00,000/- be made in his favour through RTGS in his account and the same was done by the petitioner. Thereafter, the complainant-Jai Kishan Sharma returned the said cheque.

10. It further submitted that despite having received the entire sale consideration in the month of August 2021, the complainant-Jai Kishan Sharma and his associates criminally trespassed into the subject property with the *mala fide* intention. Accordingly, the brother, Rajesh Beniwal of the accused/petitioner, lodged a complaint with the SHO, Police Station Nihal Vihar, Delhi and accordingly an FIR No. 213/2013 was registered under Section 448 of IPC, 1860 against the complainant-Jai Kishan Sharma on 04.02.2023, who is the complainant in the present case.

11. Shri Rajesh Beniwal, brother of the petitioner herein, also filed a Suit No. CIV/DJ/605/2021 for Possession of the subject property under Section 6 of the Specific Relief Act before the learned District Judge, Tis Hazari, Delhi *vide* which is pending adjudication. However, the interim injunction has been granted on 27.03.2023, whereby the complainant-Jai Kishan Sharma has been restrained from creating any third-party rights or parting possession of the subject property till the final disposal of the said Suit.

12. It is submitted that in the month of September, 2021, the complainant-Jai Kishan Sharma filed the Suit No. CIV/DJ/577/2021 for Declaration, Cancellation of Sale Deed dated 07.07.2021, Compensation/Damages, Permanent and Mandatory Injunction against the petitioner and his brother, Tannu, Aviral Rastogi and ICICI Bank.

13. It is further submitted that the petitioner has cooperated with the Police in investigations and has been available. Moreover, as per the statement of the Investigating Officer, the custodial interrogation is not required.

14. On 29.11.2022, the statement of the petitioner was recorded by the Investigating Officer. Thereafter, a Notice under Section 41A of Cr.P.C., 1973 dated 11.01.2024 was served upon the petitioner. The petitioner was undergoing treatment and was unable to attend the Police Station, for which intimation was given to the Investigating Officer along with the medical prescription. The petitioner also sent his Statement in Writing dated 27.01.2024 through his brother, Rajesh Beniwal by hand as well as through Speed Post which was acknowledged by the Investigating Officer.

15. It is also submitted that on 01.02.2024, the petitioner along with his brother Rajesh Beniwal, voluntarily visited the Police Station with prior

intimation to the Investigating Officer for further investigations. However, despite complying with the Notice under Section 41A of Cr.P.C., 1973 and cooperating in the investigations, the petitioner was arrested on the very same day in gross abuse of the power of arrest.

16. The petitioner then filed his Application for Bail before the learned Metropolitan Magistrate on 05.02.2024, but the same was dismissed by observing that there was a likelihood of the petitioner tampering with the evidence or threatening the witnesses. Moreover, the co-accused Aviral Rastogi and Tannu, were yet to be traced out.

17. It is claimed that the facts narrated in the complaint are not believable as the complainant-Jai Kishan Sharma himself is a seasoned Advocate and would not execute the Sale Deed without actually receiving any payment. It is also not believable that the complainant-Jai Kishan Sharma would hand over the blank cheques to anyone. Also, no such facts were mentioned by the complainant-Jai Kishan Sharma in his Letter dated 16.08.2021 and Letter dated 18.08.2021 sent to the Manager, ICICI Bank Ltd., Nangloi Branch, Delhi-110041.

18. Furthermore, in the Order dated 22.04.2024, the learned Sessions Court has observed that the investigation *qua* the forged Bayana Receipt is still pending, while the Investigating Officer in the Chargesheet had stated that the investigations *qua* the petitioner are complete. It is further submitted that FSL would take time to verify the authenticity of the documents.

19. The petitioner is entitled to default bail under Section 167(2) of Cr.P.C., 1973.

20. The petitioner has further stated that there is FIR No. 92/2003 under Sections 420/448/467/468/471/120B of IPC, 1860 at Police Station Nangloi,

Delhi and another FIR No. 374/2011 under Sections 467/468/471/382/506/120B of IPC, 1860 at Police Station Hari Nagar, Delhi were registered against the complainant-Jai Kishan Sharma.

21. It is submitted that the subject property has been legally purchased by the petitioner and has the Sale Deed for the same. The petitioner had taken the loan for the purchase of the subject property, for which the instalments are still being paid to the Bank by the petitioner. The possession of the subject property has already been taken by the complainant.

22. It is further asserted that the petitioner and his brother have clean antecedent. The arrest of the petitioner is in clear violation of the judgment of the Apex Court in the case of *Satender Kumar Antil vs. CBI*, (2022) 10 SCC 51.

23. It is also submitted that the alleged transaction pertains to the year 2021, but the petitioner had been arrested only in January 2024,

24. The petitioner claims that he is neither beneficiary of the alleged cheques nor has he committed any offence. The alleged Agreement to Sell dated 16.03.2021 and other documents do not bear signatures of the brother of the petitioner. The alleged Agreement to Sell was never submitted to Ambit Finance as alleged; but the loan was sanctioned by the Ambit Finance essentially on the basis of the goodwill of M/s Sunrise Light House (borrower) and the Sale Deed dated 07.07.2021 in respect of the subject property was the only document to secure the loan.

25. It is claimed that, in fact, the petitioner and his brother have been cheated by the complainant-Jai Kishan Sharma by being induced to purchase the subject property after receiving the entire sale consideration and thereafter, he has committed the trespass in collusion with his associates and

taken the possession of the same.

26. It is submitted that there is no likelihood of his absconding of the petitioner and tampering with the evidence or extending threats to the witnesses. Therefore, the petitioner has sought regular bail.

27. **The Status Report has been** filed on behalf of the State, wherein it is submitted that during the investigations, the complainant-Jai Kishan Sharma's Statement under Section 161 of Cr.P.C., 1973 was recorded, wherein he has stated that Aviral Rastogi and Tannu took his registered mobile number by alluring him that some OTP would be generated while registration of PM Udai Yojna. Aviral Rastogi and Tannu also allegedly took some blank cheques duly signed by the complainant-Jai Kishan Sharma for the purpose of Loan allotment process and when he came to know about that cheat, he made a complaint to the competent authorities to stop the cheque encashment.

28. It is submitted that there are civil matters pending between the parties in regard to the possession of the subject property. The co-accused persons have already availed the loan against the subject property from Ambit Finance Pvt. Ltd., Moti Nagar, Delhi.

29. It is also submitted that co-accused-Jitender Sain @ Jony sought time to join the investigations, but he failed to do so. The Non-Bailable Warrants had been obtained against him, which returned as unexecuted. The process under Section 82 of Cr.P.C., 1973 had been obtained against him. However, Jitender Sain @ Jony had been arrested on 09.01.2024 and is in the judicial custody. Co-accused-Jitender Sain @ Jony disclosed his involvement in the present case and also that the alleged transaction was done with the knowledge of the petitioner. He also provided the account number of

Sikender Beniwal, cousin of the petitioner, in which the alleged transaction of Rs. 30,00,000/- was done. The Statement under Section 161 of Cr.P.C., 1973 of Accountant Rajmani had also been recorded, wherein he stated that the alleged transaction was done after confirmation from the petitioner herein.

30. It is asserted that the Notice under Section 41A of Cr.P.C., 1973 was served on the petitioner and his brother, Rajesh Beniwal on 11.01.2024, in response to which, the petitioner sent the medical records and did not join the investigations. Consequently, the petitioner was arrested on 01.02.2024.

31. It is further stated in the Status Report that the co-accused, Tannu and Aviral Rastogi have the main role in conspiracy. They used cheques of the complainant-Jai Kishan Sharma to withdraw the payments from his account.

32. Hence, it is submitted that considering that facts and circumstances wherein an alleged amount of Rs. 75,00,000/- had been credited in the account of the complainant-Jai Kishan Sharma from the account of Rajesh Beniwal and Rs. 70,00,000- had been deducted from the account of the complainant-Jai Kishan Sharma without his knowledge by the co-accused person in conspiracy with the present petition.

33. Therefore, it is submitted that the petitioner may not be granted bail as there is likelihood of his jumping the bail or influencing the witnesses or tampering with the evidence.

34. **Submissions heard.**

35. Essentially, there were some property transactions/loans which took place between the complainant-Jai Kishan Sharma and the petitioner and eventually, the cross FIRs have been got registered. Moreover, the cross Civil Suits have also been filed by both the parties.

36. The petitioner is in judicially custody from 01.02.2024 and also the Chargesheet has already been filed against him in the present FIR and no further investigations have to be carried out *qua* the petitioner.

37. Considering the nature of the transactions and the role assigned to the petitioner in the present case as well as the facts narrated above, the present petition is allowed and the petitioner is admitted to regular bail in FIR No. 408/2023 registered under Sections 406/419/420/120B/34 of IPC, 1860 at Police Station Nihal Vihar, Delhi, upon his furnishing a personal bond in the sum of Rs. 40,000/- and one surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions: -

a) Petitioner shall not leave Delhi/NCR without prior permission of the Court;

b) Petitioner shall appear before the Court as and when the matter is taken up for hearing;

c) Petitioner shall provide his mobile number and also the mobile number of their wife/surety to the IO concerned, both of which shall be kept in working condition at all times and they shall not change the mobile numbers without prior intimation to the Investigating Officer concerned;

d) Petitioner shall inform the IO and the Jail Superintendent the address where he shall be available in Delhi;

e) Petitioner shall remain 100 meters away from the complainant;

f) Petitioner shall not leave the country without prior permission of the learned Trial Court and shall surrender their passport, if any, before the learned Trial Court;

g) Petitioner shall not try to contact, threaten or influence any of the witnesses of this case; and

h) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

38. The Registry is further directed to communicate this Order to the learned Trial Court and as well as to the concerned Jail Superintendent.

39. Accordingly, the present petition is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 22, 2024
S.Sharma