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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2383/2022**
BHAJAN LAL Applicant

Through: Mr. Chirag Jamwal, Adv.
through V.C.

versus

THE STATE NCT OF DELHI Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State along
with Adv. Jatin Kadam,
Adv. Kunal Popli & Adv.
Vishal Sharma.
SI Ashwani Yadav, PS
Fatehpur Beri.
Adv. Nitish Kumar Singh,
Adv. Abhishek Raj, Adv.
Amritesh Anand & Adv.
Amit Kr. Thakur for
complainant.

+ **BAIL APPLN. 845/2023**
SUDHIR KUMAR Applicant

Through: Mr. Chirag Jamwal, Adv.
through V.C.

versus

THE STATE NCT OF DELHI Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State along
with Adv. Jatin Kadam,
Adv. Kunal Popli & Adv.
Vishal Sharma.
SI Ashwani Yadav, PS
Fatehpur Beri.
Adv. Nitish Kumar Singh,
Adv. Abhishek Raj, Adv.
Amritesh Anand & Adv.
Amit Kr. Thakur for
complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

20.05.2024

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1. The present applications are filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No.296/2022 dated 18.07.2022, registered at Police Station Fatehpur Beri, for offences under Sections 420/34 of the Indian Penal Code, 1860.
2. The FIR was registered on a complaint made by the complainant, namely, Usha Mishra. It is alleged that the applicant Bhajan Lal had approached the complainant for sale of her property, being Plot No.23, land admeasuring 120 sq. yards, Kh. No. 1833, Ambedkar Nagar, New Delhi (hereafter '**subject property**') multiple times. It is alleged that the applicant Bhajan Lal took ₹3,23,000/- and ₹45,000/- from the complainant on the pretext of repairing the subject property but did not do the repair work as promised.
3. It is alleged that the applicant Bhajan Lal introduced the complainant to the applicant Sudhir Kumar (son in law of the applicant Bhajan Lal) and there was a deal between the parties that the complainant will sell the subject property to the applicant Sudhir Kumar for a consideration of ₹37,00,000/-. An agreement dated 16.06.2021 was entered between the parties that the entire payment would be done on or before 17.07.2021. It is alleged that an advance payment of ₹15,00,000/- was made through cheques and four post-dated cheques of ₹5,00,000/- were also given to the complainant. It is alleged that the four post-dated cheques of ₹5,00,000/- each were dishonoured whereafter a sum of ₹10,00,000/- was paid by the applicant Sudhir Kumar to the complainant through RTGS. Thus, only ₹25,00,000/- out of the total consideration was paid to the complainant.
4. It is alleged that the applicants had also approached the complainant's son for purchasing the adjacent Plot No.24 for a

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higher sum. Applicant Sudhir paid a sum of 1 lakh as well. They called the complainant's son to JNU Gate No.1. There, along with other unknown people, the applicants surrounded the complainant's son and took the original documents of Plot No.24 and the signatures of the complainant's son and his thumb impressions on some papers.

5. It is alleged that the applicants gained forceful possession on the subject property in August, 2021 and stole household articles of a monetary value of 10,00,000/- from there. It is alleged that the applicants sold the subject property for ₹42,00,000/- despite not having the legal authority to do so.

6. The learned counsel for the applicants submits that the applicants have been falsely implicated in the present case. He submits that the complainant has lodged the present FIR to arm twist the applicants to pay in excess of the sale consideration agreed between the complainant and applicant Sudhir Kumar.

7. He submits that the complainant has abused the process of law by lodging an FIR against the applicants and the dispute involved in the present case is of civil nature in regard to the size of the subject property.

8. He submits that it is settled law that where a matter essentially involves a dispute of civil nature, the same should not be allowed to become the subject matter of criminal proceedings as the criminal Courts cannot be expected to work as recovery agents for an individual.

9. He submits that the applicant Sudhir had not paid the entire sale consideration as 40 sq. yds. of the subject property were encroached. He submits that the entire sale consideration for both the plots has now been paid by the applicants. He submits that pursuant to the order of the learned Trial Court, a

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further sum of ₹9,00,000/- was paid to the complainant towards the Sale Consideration of the subject property .

10. He submits that the applicants have deep roots in the society and have not misused the interim protection granted to them.

11. The learned Additional Public Prosecutor ('APP') for the State opposes the bail application. He submits that the applicants are related to each other and the applicant Sudhir Kumar sold the property to one person, namely, Hardayal, for a sale consideration of ₹42,00,000/- on the basis of forged documents.

12. He submits that during investigation, it was found that the subject property measures 120 sq. yds instead of 40 sq. yds. whereby the applicants have not been able to furnish any cogent reason for not paying the entire sale amount to the complainant.

13. In the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694*, the Hon'ble Supreme Court dealt with the issue of pre-arrest bail, and the balance that needs to be maintained while granting the same to an accused and further laid down the factors that must be taken into consideration while dealing with pre-arrest bail and held as under:

"...112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*



- iv. *The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Penal Code, 1860, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail..."*

14. In the present case, it is alleged that the applicants did not pay the entire agreed Sale Consideration in respect of the subject property to the complainant. The Status Report mentions that a sum of ₹3,00,000/- is still to be paid by the applicant Sudhir to the complainant for the subject property and almost the entire amount is pending in respect to Plot No.23.

15. The applicant Sudhir Kumar has stated that the entire sale consideration for the subject property now stands paid to the complainant. In regard to Plot No.24, it is the case of the



applicants that the complainant's son had accepted the receipt of a total consideration of ₹26,50,000/- for Plot No.24. The payment receipt allegedly signed by the complainant's son is placed on record. The veracity of the documents relied upon by the applicants and the allegations in this regard would be tested during the course of the trial.

16. As per the statutory provisions, the maximum sentence for the offence punishable under Section 420/406 of the IPC is seven years. The evidence, at this stage, seems to be documentary in nature, which is already in possession of the Investigating Agency.

17. As per the allegations, the dispute appears to be non-payment of consideration for the sale of property. It is not in dispute that almost the entire amount of consideration has been received by the complainant in respect of Plot No. 23. The consideration for sale of Plot No. 24 is stated to have been received by the complainant's son.

18. It is also argued by the learned counsel for the applicant that the complainant has been at logger heads with her son. The son had also, at one stage, filed a civil suit against his mother/complainant. Reference has also been made during the arguments that one suit was also filed by the complainant in regard to the properties.

19. It is contended on behalf of the complainant that the receipt of consideration for Plot No. 24 does not mention as to how that consideration was paid, thus, it appears to be a fabricated document. The offences and allegations in regard to the execution of documents cannot be decided, at this stage, and would be a subject matter of trial. The present application seeking bail cannot be converted into proceedings in regard to

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recovery of consideration and the possession of the property.

20. This Court *vide* order dated 02.11.2022, passed in BAIL APPLN. 2383/2022, granted interim protection to the applicant Bhajan Lal. Furthermore, this Court *vide* order dated 15.01.2024, passed in BAIL APPLN. 845/2023, granted interim protection to the applicant Sudhir.

21. This Court *vide* order dated 15.01.2024, passed in BAIL APPLN. 2383/2022, noted the argument of the learned APP that the applicant Bhajan Lal had not joined the investigation. The same was disputed by the applicant Bhajan Lal, due to which this Court gave him an opportunity to file a short affidavit to this effect. In his affidavit, the applicant Bhajan Lal has stated that he had visited the police station on a number of occasions and also met five different Sub-Inspectors. He has also stated that he was made to wait for the entire day and no investigation was carried out.

22. Thereafter, by order dated 03.04.2024, another opportunity was given to the applicant Bhajan Lal to visit the police station on 09.04.2024. While the applicant contends that he visited the police station on the said date, it was argued by the learned APP before this Court on 13.05.2024 that the applicant did not join the investigation on 09.04.2024. In response, the learned counsel for the applicants stated that the applicant Bhajan Lal will again go and meet the concerned IO on the very next day, that is, 14.05.2024.

23. It is not the case of the prosecution that the applicant Sudhir Kumar misused the liberty. Insofar as the applicant Bhajan Lal is concerned, it is relevant to note that at the first instance itself, it was not denied by the learned APP that the applicant Bhajan Lal had met the Sub-Inspectors whom he had

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named in the application, one of whom is the Investigating Officer in the present case, namely, Ashwani Yadav. The applicant Bhajan Lal has explicitly undertaken in his affidavit to join the investigation as and when directed.

24. The applicants have thus clearly showed their willingness to join the investigation.

25. It is not in doubt that order for grant of bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined the investigation, cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

26. The purpose of custodial interrogation is to aid the investigation and is not punitive.

27. Any apprehension regarding the applicants fleeing from justice, tampering with evidence or not cooperating with the investigation can be taken care of by putting appropriate conditions.

28. In view of the above, this Court is of the opinion that the custodial interrogation of the applicant is not required. In view of the above, the applicants are admitted on bail on furnishing a personal bond for a sum of ₹50,000/- each with two sureties of the like amount each, subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicants shall join and cooperate with the investigation, if required, as and when directed by the IO;



- b. The applicants shall not leave the Country without the prior permission of the learned Trial Court;
- c. The applicants shall not contact the complainant / witnesses or tamper with the evidence in any manner;
- d. The applicants shall appear before the learned Trial Court on every date of hearing;
- e. The applicants shall give their mobile number to the concerned IO/SHO and shall keep their mobile phones switched on at all times.

29. The present bail applications are allowed in the aforesaid terms. It is clarified that the observations made in the present order are only for the purpose of considering the bail applications and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

30. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

MAY 20, 2024