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

\+ BAIL APPLN. 2912/2023 & CRL.M.A. 23455/2023

M RADHA ..... Petitioner

Through: Mr. S.K. Rai, Mr. Rajeev Kumar Ranjan and Ms. Vibha, Advocates

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Ms. Shubhi Gupta, APP for State with SI Opendar Singh, PS: Vasant Kunj South.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% **15.05.2024**

1. This application has been preferred on behalf of the applicant under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.543/2022 dated 24.11.2022 registered under Sections 406/420/120B IPC at PS: Vasant Kunj South.

2. By order dated 31.08.2023, interim protection was granted to the applicant against any coercive action, subject to depositing a sum of Rs.3 lakhs within one week from the date of the order and parties were referred to Delhi High Court Mediation and Conciliation Centre for exploring the possibility of an amicable settlement.

3. Status Report has been filed on behalf of the State.

4. Case of the prosecution as forthcoming from the FIR and the Status Report is that present FIR was registered on complaint of Deepak Kumar alleging that applicant and Shamsher Khan had cheated him by selling a flat bearing No. B-252, Upper Ground Floor, Vasant Kunj Enclave, New Delhi.

Complainant alleged that the applicant approached him along with a local property dealer namely, Shamsher Khan to sell the aforesaid flat representing that the applicant was the actual owner. After some negotiations, an Agreement to Sell was executed on 05.10.2021 between the applicant and the complainant in the office of Shamsher Khan for a total sale consideration of Rs. 48 lakhs and Shamsher Khan signed as a witness on the agreement. Out of the sale consideration, complainant transferred Rs.15 lakhs in the account of the applicant and Rs.2.5 lakhs was paid in cash to Shamsher Khan. However, after receiving the payments, both started avoiding him and failed to execute the title documents. It was alleged that when the complainant visited the flat, he discovered that the real owner was Ms. Sudha Kalia, who was staying abroad and her sister Madhu Monga was the caretaker of the flat. Complainant was informed that the flat had never been sold to any party nor was it put up for sale. This led to filing of the complaint and registration of the present FIR.

5. It is stated in the status report that during the investigation, bank statements of complainant's accounts were verified and his version was corroborated. Two witnesses were examined, who also supported the version of the complainant. Investigation so far has revealed that the applicant along with her associates has taken Rs. 15 lakhs from the complainant, which amount was directly credited into her bank account and Rs.2.5 lakhs were taken by the other accused person. Applicant is a habitual offender and as many as 5 other FIRs have been registered against her under Sections 406/420/120B IPC apart from 3 complaints under Section 138 of the Negotiable Instruments Act, 1881 and 2 civil suits for recovery of money. During the investigation, notice under Section 41A Cr.P.C. was served on

the applicant but she did not turn up for investigation. She has joined investigation after the interim protection granted by this Court but is not co-operating. Applicant has only deposited Rs.50,000/- as against a sum of Rs.3 lakhs, subject to which interim protection was granted to her and has no regard for the orders of this Court. It is stated that custodial interrogation of the applicant is required for recovery of the amount and to unearth the larger scam, in which the applicant is involved and is repeatedly cheating people of their hard-earned money.

6. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in this case. The dispute, if any, relating to the property in question is a civil dispute and is being given a colour of criminal culpability by the complainant. Applicant is a genuine purchaser of the flat by means of a sale and purchase agreement from one Imran to whom applicant has paid a sum of Rs.15 lakhs as earnest money. When the applicant discovered that she was deceived by Imran, she instantly returned Rs.15 lakhs to Shamsher Khan and has also filed a complaint against the co-accused Imran for cheating and fraud. Despite the alleged involvement of Shamsher Khan, neither any investigation has been done against him nor attempts have been made to arrest him.

7. It is further urged that applicant has joined investigation as and when called for and is co-operating therein. Applicant has deep roots in the society and there is no chance of her absconding, if the pre-arrest bail is confirmed and undertakes to extend full co-operation in the investigation. Severity of the allegations cannot be a ground to deny bail as held by this Court in ***Jagdish Nautiyal v. State, 2012 SCC OnLine Del 5940.*** In ***P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24,*** the

Supreme Court has observed that by merely asserting that the offence is grave, grant of bail cannot be thwarted. Bail is a rule and denial is exception.

8. Learned APP for the State, *per contra,* strenuously opposes the bail application. It is stated that the applicant is a habitual offender and has been repeatedly cheating innocent people of their hard-earned money. Knowing fully well that applicant was not the owner of the flat in question, she fraudulently entered into an agreement to sell with the complainant and received Rs.15 lakhs in her bank account, which is an admitted position. Return of this money after the offence is committed and that too to the co-accused and not the complainant, cannot lessen the gravity of the offence. Applicant has not complied with the pre-condition of interim protection granted by the Court and chose to deposit only Rs.50,000/- out of the directed amount of Rs.3 lakhs. Custodial interrogation of the applicant is required to unearth the larger scam and recover the amounts received by the applicant as well as other documents.

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

10. As per the prosecution case, applicant entered into an agreement to sell with the complainant with respect to the flat in question and bank details of the applicant revealed that a sum of Rs.15 lakhs was received by her from the complainant. Agreement to Sell dated 05.10.2021 has been placed on record, which is duly signed by the applicant and it is stated therein that applicant is the owner and in possession of the flat in question. Sale consideration of Rs.48 lakhs is also mentioned in the Agreement. Even today, counsel for the applicant is not in denial of the fact that the agreement to sell was executed and Rs.15 lakhs were received by the applicant. The only defence is that the applicant had *bonafidely* purchased the flat from one

Imran and was not aware that her ownership was unlawful. At this stage, it cannot be overlooked that without any title document in her favour and without disclosing this crucial fact to the complainant, agreement to sell was executed. While it is a settled law that pendency of other cases may not be the only consideration to deny bail and the case before the Court ought to be adjudicated on its own merits, however, in the present case, it is crucial to note that the other FIRs are also for offences relating to cheating the other complainants. The two civil suits filed against the applicant are for recovery of money and the three complaints are under Section 138 of the NI Act for dishonour of cheques issued by her. Holistically seen, applicant has a propensity to enter into transactions with innocent persons with intent to cheat and defraud. Applicant's counsel has emphasised that the money taken from the complainant has been returned to Shamsher Khan. This defence is neither here nor there. Moreover, this cannot reduce the gravity of the crime allegedly committed. In ***Pratibha Manchanda and Another v. State of Haryana and Another, (2023) 8 SCC 181,*** the Supreme Court while setting aside the order of the High Court granting anticipatory bail to the accused made the following observations:-

> *"**29.** Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance-free status. Organised criminal networks often plan and execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation or threats to force them to vacate their properties. These land scams not only result in financial losses for individuals and investors but also disrupt development projects, erode public trust, and hinder socio-economic progress."*

11. The Supreme Court further observed that the relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to

prevent misuse of power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and interests of justice. The tight rope the Courts must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, Court must also consider gravity of the offence, impact on the society and need for a fair and free investigation.

12. Factors to be taken into account while considering grant of anticipatory bail application have been delineated by the Supreme Court in the case of ***Sumitha Pradeep v. Arun Kumar C.K. and Another, 2022 SCC OnLine SC 1529*** and are: (a) *prima facie* case against the accused; (b) nature of offence; and (c) severity of the punishment. This Court in ***Haresh Kumar Choudhary v. State (NCT of Delhi), 2023 SCC OnLine Del 1877,*** relying on the observations of the Supreme Court in ***State Rep. By The C.B.I. v. Anil Sharma, (1997) 7 SCC 187,*** dismissed the anticipatory bail application on the ground that custodial interrogation of the applicant was required. Relevant passage from the judgment of the Supreme Court in ***Anil Sharma (supra)*** is as follows:-

> *"**6.** We find force in the submission of the CBI that **custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code**. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. **Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated**. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to*

presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders".

(emphasis supplied)

13. In ***Siddharam Satlingappa Mhetre v. State of Maharashtra and Others, (2011) 1 SCC 694,*** the Supreme Court considered the principles laid down by the Constitution Bench of the Supreme Court in ***Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, (1980) 2 SCC 565*** and held as follows:-

"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 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 the 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 overimplication 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 ***P. Chidambaram (supra),*** relied upon by the applicant, the Supreme Court observed that grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and collecting useful information. Relevant observations of the Supreme Court are as follows:-

> *"**83**. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."*

15. The allegations are serious and as per the State, custodial interrogation of the applicant is required as she needs to be confronted with several documents and the money trail needs to be unearthed. Applicant is not co-operating in the investigation armed with a protection order granted by this Court and has admittedly failed to abide by the condition of grant of interim protection by not depositing the sum of Rs.3 lakhs, for which even today, learned counsel is unable to offer any plausible explanation.

16. For all the aforesaid reasons, the interim protection granted to the applicant is withdrawn forthwith and present application is dismissed. Pending application also stands disposed of.

17. Needless to state the observations made in the present order are purely for the purpose of adjudicating the present application and shall not be construed as expression of an opinion on merits of the matter.

JYOTI SINGH, J

MAY 15, 2024/kks/shivam