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

\+ **BAIL APPLN. 3130/2023**

SUMIT ..... Applicant

Through: Adv. Nagendra Kasana, Adv. Sapna Chaudhary, Adv. Rajesh R. Rathod & Adv. Aditya Sharma.

versus

STATE & ANR. & ANR. ..... Respondents

Through: Mr. Pradeep Gahalot, APP for the State
SI Deepak Sahu, PS Pul Prahald Pur.
Adv. Raunaq Dalal, Adv. Deepak Karan Dalal along with complainant.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **11.03.2024**

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking pre-arrest bail in FIR No. 146/2023 dated 16.05.2023 for offences under Sections 420/406/120B of the Indian Penal Code, 1860 ('**IPC**'), registered at Police Station Pul Prahlad Pur.

2. The FIR was registered on a complaint given by Ms. Rachana Singh, who was married to the brother of the applicant. The brother of the applicant expired on 31.01.2022. It is alleged that the applicant along with his family members, in conspiracy with each other, illegally sold three plots, one JCB Machine, and one Swift car which belonged to the complainant, without her consent. It is further alleged that the properties were sold by

forging the complainant's signatures. The complainant also alleged that her father-in-law, namely, Tejvir Singh had sold the said three plots and the present applicant had sold the JCB Machine and Swift car without informing her.

3. The learned counsel for the applicant submits that the properties and the JCB machine, as alleged by the complainant to be belonging to her, were actually purchased by her father-in-law namely, Tejvir Singh. He submits that the parties were in respectable relations with each other and the father-in-law being the elder member in the family had got the properties in his daughter-in-law's/complainant's name. The said three plots were sold in the month of March, 2021 and the complainant was aware of the said sale and had duly signed the receipts.

4. The learned counsel submits that the relationship between the parties turned soar after the death of the applicant's brother on 31.01.2022. He submits that the intentions of the complainant turned *mala fide* and she also lodged a complaint under the Protection of Women from Domestic Violence Act, 2005 against the applicant and other family members. The present complaint, thereafter, was filed belatedly in the year 2023, whereas the complainant was always aware of the sale of the properties in March, 2021. He further submits that the Swift Car was in the name of the deceased brother, and was even though sold prior to his death, but the documents were transferred after the death of his brother. In regard to the JCB Machine, it is pointed out that the same has already been returned to the complainant.

5. He submits that the applicant, pursuant to the interim relief granted by this Cout had joined the investigation and cooperated with the same in every manner as and when directed. He further submits that since the properties were admittedly in the name of

the complainant, the applicant has also deposited a sum of ₹30 lakhs with the Registrar General of this Court in order to show his *bona fide*.

6. On instructions, he further submits that even though the said plots were purchased by the father of the applicant and he is the rightful owner of the same, however, in order to avoid the controversy, the amount received from the sale of the said plots, that is, ₹23 lakhs can be released in favour of the complainant reserving the liberty to the applicant to raise the claim for recovery of the said amount by filing an appropriate proceeding. He submits that even though the car was also sold by the brother of the applicant, however, since the rightful claim over any amount received from the sale would be that of the wife of the brother being Class-I legal heir, he has no objection if the sum of ₹2.7 lakhs received from the sale of the said Car is also released in favour of the complainant.

7. He further submits that even otherwise the allegation in regard to the sale of the plots was made against the applicant's father Tejvir Singh, and he has already been admitted on regular bail by the order dated 04.08.2023 passed by the learned Metropolitan Magistrate, Saket Courts, New Delhi.

8. The learned counsel for the complainant and the learned Additional Public Prosecutor for the State object to the grant of any relief to the applicant. They submit that the complainant after the demise of her husband has been ill-treated by the family members. The complainant has been dispossessed from the matrimonial home which has led to the filing of a separate complaint under the Protection of Women from Domestic Violence Act, 2005 before the learned Family Court, Palwal. They further submit that the complainant has not signed any

receipt and her signatures were forged by the complainant and other family members.

9. In the present case, the offence of cheating and dishonestly inducing delivery of property and criminal breach of trust have been alleged. The allegations are solely based on the statement made by the complainant and cannot be stated at this stage, to be corroborated with any material of unimpeachable nature.

10. The alleged incident of the sale of the plots or the sale of the car took place in the month of March, 2021 and November, 2021, respectively.

11. At this stage, it cannot be said that the complainant was not aware of transactions. Even though it is claimed that the signatures on the receipts in regard to the sale of the plots were forged, the same would be a matter of trial. The FIR in relation to the alleged offence was registered on 16.05.2023, that is, more than one and a half year after the alleged incident.

12. As noted above, the allegation in relation to the sale of the plot was made against the father of the applicant who has already been admitted on bail by an order dated 04.08.2023 passed by the learned Metropolitan Magistrate, Saket Courts, New Delhi.

13. The allegation against the present applicant is in regard to sale of a Swift car. It was contended that the car was sold by the brother himself in the month of November, 2021 but the documents for the transfer of the car could be processed after his death on 30.04.2022. The allegation is that the car was sold after forging the signatures of the deceased. The same could only be tested during the course of the trial.

14. As noted above, the applicant has deposited a sum of ₹30,00,000/- before the Registrar General of this Court in order to show his *bona fide*. He also has no objection if the amount

which has been received by the sale of the car can be released in favour of the complainant.

15. The applicant was granted interim relief by this Court by an order dated 18.09.2023. It is not the case of the prosecution that the applicant has not cooperated with the investigation or has tried to influence the witnesses.

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. It is not disputed that the applicant has joined the investigation. There are no chances of the applicant fleeing from justice or tampering with evidence. The apprehension, even otherwise, can be taken care of by putting appropriate conditions. It is trite law that where the court is of the considered view that the accused has joined the investigation and is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided since, a great ignominy, humiliation and disgrace is attached to arrest. [**Ref: *Bhadresh Bipinbhai Sheth v. State of Gujarat* : (2016) 1 SCC 152**].

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

19. In view of the above, it is directed that the applicant, in the event of arrest, be released on bail on furnishing a bail bond for a sum of ₹50,000/- with one surety of the like amount to the satisfaction of the concerned SHO, subject to the following conditions:

(i) The applicant shall join and cooperate with the investigation as and when directed by the IO;

(ii) The applicant shall not leave the boundaries of the National Capital Region of Delhi without informing the IO/SHO concerned;

(iii) The applicant shall not contact the complainant/witnesses or tamper with the evidence in any manner;

(iv) The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

20. It is clarified that the observations made in the present case are only for the purpose of considering the bail application 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.

21. In view of the statement made by the learned counsel for the applicant, as noted in Para 6 of this order, a sum of ₹25.7 lakhs is directed to be released in favour of the complainant. The rest of the amount is directed to be released in favour of the applicant. The rights of the applicant or of Mr. Tejvir Singh in regard to the claim for recovery of any amount from the complainant is reserved. The direction to release the sum of ₹25.7 lacs in favour of the complainant would not be construed as an expression of opinion on the merits of the case, if any, of the applicant and Mr. Tejvir Singh.

22. The present application is allowed in the aforesaid terms.

23. It is clarified that the observations made in the present case are only for the purpose of considering the bail application 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.

AMIT MAHAJAN, J

MARCH 11, 2024/*"SK"*