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

+ **BAIL APPLN. 2465/2024**

ZULFIQAR AHMED

.....Petitioner

Through: Mr. Rajesh Tyagi, Mr. Harsh Kumar,
Mr. Hemang, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for the
State.
Md. Azam Khan, Advocate for
Complainant.
Insp. Parmjeet Singh, DIU/Central
District.
Mr. Lakshay Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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19.07.2024

CRL.M.A. 20633/2024 & CRL.M.A. 20634/2024 (Exemption)

Allowed, subject to all just exceptions.

BAIL APPLN. 2465/2024 & CRL.M.A. 20635/2024

1. The Petitioner has approached this Court for grant of anticipatory bail in FIR No. 42/2024 dated 12.01.2024 registered at Police Station Daryaganj for an offence under Section 420 IPC.
2. The Complainant is one Mohd. Azam Khan. In the complaint, it is stated that the Petitioner/accused herein entered into an agreement with the Complainant on 30.08.2021 with respect to sale and purchase of Shop No.2497, Ground Floor, Tiraha Behram Khan, Daryaganj, New Delhi. The allegation against the Petitioner is that at the time of the execution



agreement, the Petitioner assured the Complainant that the property is free from all kinds of encumbrances and court litigation etc. and he is the owner of the property. The property was agreed to be purchased for the sum of Rs.1,25,00,000/-. Out of the said amount Rs.96 lakhs have been paid in cash by the Complainant at the time of execution agreement which is attested by two independent witnesses. The allegation is that the accused was to handover the physical and vacant possession of the property on 31.10.2021. It is stated that despite approaching various times, the Petitioner has neither executed the sale deed nor the money has been returned. Investigation is going on.

3. It is stated by the learned Counsel for the Petitioner that the FIR is of the year 2021. The Petitioner has joined investigation and has been approached more than 13 times. He states that the case is only for documentary evidence. The documents are in the custody of the Police and therefore there is no requirement for any custodial interrogation.

4. The bail application has been opposed by the learned APP for the State contending that the Petitioner has not jointed the investigation. She states that proceedings under Section 82 CrPC have already been initiated against the Petitioner. Learned APP for the State also contends that the preliminary investigation reveals that the shop in question does not belong to the Petitioner herein.

5. Learned APP places reliance on a judgment of the Apex Court in Prem Shankar Prasad v. State of Bihar, 2022 (14) SCC 516, to contend that the moment proceedings under Section 82 CrPC are initiated, then bail ought not to be given to the Petitioner. She also places reliance on the judgment of the Apex Court Srikant Upadhyay v. State of Bihar, 2024 SCC OnLine SC 282, wherein it is stated that the power to grant anticipatory bail



is an extraordinary power and anticipatory bail is not the rule.

6. The facts of the case reveal that Section 82 CrPC proceedings have been initiated against the Petitioner on 08.07.2024. The Apex Court in Prem Shankar Prasad (supra) has held that once proceedings under Section 82 CrPC have been initiated, then the High Courts must not ordinarily grant anticipatory bail.

7. It is stated that Section 82 CrPC proceedings have been initiated only because the Petitioner has not joined investigation and the contentions of the Petitioner that he had approached 13 times is not correct. It is stated that the signatures of the Petitioner have to be taken and the specimen might have to be sent to the forensic science laboratory and in case the signatures match, then grant of anticipatory bail would impede the investigation.

8. Considering the fact that since the amount involved is over a crore and an amount of Rs.96 lakhs has already been given and also in view of the fact that Section 82 CrPC have already initiated against the Petitioner, this Court is not inclined to grant anticipatory bail to the Petitioner.

9. However, it is made clear that mere dismissal of anticipatory bail does not mean arrest automatically. The Police had to apply its own mind to decide as to whether the custody of the Petitioner is required or not and if it is required, at what stage.

10. With these observations, the petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 19, 2024

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