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

\+ **BAIL APPLN. 2502/2024 & CRL.M.A. 20915/2024**

MR. ASHOK KUMAR .....Applicant.

Through: Mr. Yash S. Vijay & Ms. Pooja B. Mehta, Advs.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State along with Mr. Mayank Mishra, Mr. Vedant Vashisht, Mr. Abhinav & Mr. Yash A. Jodhani, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **23.08.2024**

CRL.M.A. 20916/2024 *(for exemption)*

1. Exemptions allowed, subject to all just exceptions.

2. The application stands disposed of.

CRL.M.A. 20915/2024 (*for interim protection*) in BAIL APPLN. 2502/2024

3. The present application is filed seeking pre-arrest bail in FIR No. 1036/2023 dated 11.12.2023, for offences punishable under Sections 420/468/471 of the Indian Penal Code, 1860 (**'IPC'**), registered at Police Station Shahbad Dairy.

4. The FIR was registered on a complaint given by Sanjay Gujral, who claimed that the property bearing No. 574, Pocket 4, Sector 28, Rohini, Delhi, was purchased by him by registered agreement dated 18.12.2009 for which the conveyance deed was also executed in his favour on 08.03.2013. It is alleged that when the complainant visited some property dealers to determine the

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price of the property, he found that the property had already been sold in the market.

5. It is alleged that the accused persons prepared forged chain of documents from Bhupinder Kumar Madan and Sushma Madan to Sanjay Gujral and then sold the property to two different persons. It is alleged that someone impersonated as the complainant.

6. Two set of forged documents are claimed to have been executed by the person who impersonated as the complainant in favour of one person, namely, Pankaj Kumar, and another person, namely, P.L Punj. The purchaser Pankaj Kumar claimed that he had purchased the property from a person impersonating as the complainant Sanjay Gujral, through one Nitin Budhiraja, who also helped him in taking loan from LIC Housing Finance Limited. The sale consideration was paid to the impersonator. The amount from the account of impersonator Sanjay Gujral was disbursed in the account of Nitin Verma, Mahavir Trading Com. and in the joint account of Lalit Kumar and Manisha. Certain accused persons were arrested during the course of investigation and the chargesheet was also filed by the State.

7. It is alleged that for the purpose of claiming loan, the said purchaser Pankaj Kumar had to provide bank account number of impersonator Sanjay Gujral. The impersonator Sanjay Gujral was found to be a person named Amichand. It is alleged that the applicant had helped accused Amichand in opening the bank account in the Indian Overseas Bank and hence he was hand in glove with the accused persons.

8. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the applicant has not been named in the FIR and he

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was implicated merely on the basis of surmises more than seven months after the registration of the FIR.

9. He submits that there is no material that shows that the applicant induced the complainant in any manner or that he was actively involved in the commission of the crime. He submits that no allegations to this effect have been made by the applicant either.

10. He submits that the applicant merely knew the guarantor– Mr. Bobby who used to frequent the bank where the applicant was employed as a cashier. He submits that the applicant had thus asked Mr. Bobby to stand as guarantor for the concerned bank account.

11. He submits that the Status Report fails to detail as to how the applicant did not cooperate in the investigation.

12. He submits that no recoveries are sought from the applicant and he was not involved in the process of opening bank accounts or verifying KYC documents for the same.

13. He submits that the custodial interrogation of the applicant is sought merely because he hasn't confessed to the crime. He submits that not confessing to the crime cannot be equated to non-cooperation.

14. He submits that it is not contended that the applicant knew that accused Amichand was impersonating the Complainant or that the documents submitted by him were forged.

15. He submits that the applicant neither received any undue gain from the fraudulent sale and nor did he pay the guarantor any consideration for standing as guarantee. Further, the applicant did not verify any of the allegedly forged documents furnished by the accused Amichand while opening the bank account.

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16. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant.

17. He submits that the applicant conspired with the other accused persons and facilitated the opening of the bank account on the basis of forged and fabricated documents. He submits that a sum of ₹42 lakhs was received in the said account and the same was further disbursed.

18. He submits that while the applicant joined the investigation on 01.07.2024, 02.07.2024 and 11.07.2024, however, he did not cooperate and gave vague answers when asked about his posting in the year 2016.

19. He submits that the investigation is in the initial stage. He submits that custodial interrogation of the applicant is required to unearth the conspiracy and find out about the involvement of other bank officials.

20. I have heard the counsel and perused the record.

21. The law in regard to the grant of pre-arrest bail is well-settled. 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;*

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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…"

22. It is undisputed that the only allegation against the applicant is that he facilitated the accused Amichand in opening the bank account. The bank account was used by the accused Amichand for receiving the loan amount as part of the sale consideration from LIC Housing Finance Limited.

23. The Status Report indicates that the applicant, at the relevant time, was working with the Indian Overseas Bank. The prosecution is seeking to allege the connivance of the applicant by stating that the accused Amichand knew the applicant through

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another person namely Rajkaran and the applicant and the said Rajkaran belong to the same village, that is, Kheda Khurd.

24. It is not denied that for the purpose of opening the account, accused Amichand was introduced by the applicant to another person, namely, Bobby, who already had an account in the Indian Overseas Bank for the last two years.

25. It is claimed that Bobby, on interrogation, stated that the applicant used to know him and had requested him to stand as introducer for somebody known to him and he thus signed some account opening documents at the instance of the applicant.

26. The allegations against the applicant, even if taken at the highest, are not for executing the forged documents in regard to the subject property.

27. Even as per the Status Report, the amount which was received by the accused persons by obtaining a loan on the basis of the forged documents, has not been transferred to the benefit of the applicant.

28. It is contended on behalf of the applicant that he had helped the accused in opening the bank account, however, in the absence of any other evidence, the same cannot be presumed to have been done in conspiracy to defraud the LIC Housing Finance Limited or to execute the forged documents in regard to the subject property.

29. 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.

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

31. This Court, by order dated 19.07.2024, had protected the applicant from arrest, subject to him joining and cooperating with the investigation. It is not disputed that the applicant has joined the investigation. Not confessing to the crime alleged does not amount to non-cooperation with the investigation [Ref. ***Dwarkadas Fafat v. State of Maharashtra*** **: (2017) 9 SCC 714**].

32. The applicant is a senior citizen of 63 years of age and has since retired from the services with Indian Overseas Bank. The investigation in regard to the allegations appears to be based on the documentary evidence which is already in possession of the prosecution.

33. No apprehension has been raised that the applicant is a flight risk. Even otherwise, any apprehension regarding the applicant fleeing from justice, tampering with evidence or not cooperating with the investigation can be taken care of by putting appropriate conditions.

34. In view of the above, this Court is of the opinion that the custodial interrogation of the applicant is not required. It is directed that in the event of arrest, the applicant be released on bail on furnishing a bond of ₹20,000/- with two sureties of the like amount subject to the satisfaction of the concerned SHO, on the following conditions:

a. The applicant shall join and cooperate with the investigation as and when directed by the IO;
b. The applicant shall not leave the country without taking permission of the learned Trial Court;

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c. The applicant shall not contact the complainant / witnesses or tamper with the evidence in any manner;

d. The applicant shall give his mobile number to the concerned IO/SHO and shall keep their mobile phones switched on at all times;

e. The applicant shall provide the address of his residence to the IO/SHO and shall not change the same without informing the concerned IO/SHO.

35. In the event of there being any violation of the stipulated conditions, it would be open to the State to seek redressal by filing an application seeking cancellation of the bail.

36. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial and should not be taken, as an expression of opinion, on the merits of the case.

37. The bail application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 23, 2024

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