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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 26th JULY, 2024IN THE MATTER OF:+ **BAIL APPLN. 2577/2024****HARISH KUMAR**

.....Petitioner

Through: Mr. Sanjeev Kr. Baliyan, Mr. Kuldeep Singh, Ms. Archana Chaudhary and Mr. Aashish Gumbher, Advocates.

versus

THE STATE OF NCT OF DELHI THROUGH SHO PS MALVIYA NAGAR

.....Respondent

Through: Mr. Tarang Srivastava, APP for the State.
SI Arun Kumar, DIU/SD
Mr. Keshav Sehgal, Mr. Shivam Gaur, Mr. Kshitij Joshi, Mr. Aryan Kumar, Advocates for landowners.

CORAM:**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)**

1. Petitioner has approached this Court seeking bail in the event of arrest in FIR No.142/2024, dated 31.01.2024, registered at Police Station Malviya Nagar for offences under Sections 420/406 IPC.
2. The facts of the case reveal that the present FIR was registered on the complaint of one Jagdish Pabreja, wherein, he has alleged that the Petitioner herein is the proprietor of M/s Harish Estate, having its registered office at M-67 A, Malviya Nagar, Delhi. It is stated in the Complaint that the Petitioner herein executed an agreement to sell in favour of the Complainant



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in December, 2021 for selling a flat situated at third floor B1/48, Malviya Nagar, Delhi, admeasuring 223 sq. yds. for the total sale consideration of Rs.1,50,00,000/-. It is stated that the Complainant has paid Rs.7,00,000/- as advance payment to the Petitioner but the Petitioner has yet not completed the construction. It is stated that the Complainant approached the Petitioner several times to get the possession of the flat but the Petitioner avoided grant of possession to the Petitioner for the reason that the construction of the flat was not complete. On the complaint of the Complainant, the present FIR was registered.

3. Material on record discloses that the Petitioner herein filed an application for grant of bail in the event of arrest before the learned Additional Sessions Judge and the same was dismissed *vide* Order dated 03.05.2024. Material on record also discloses that the Petitioner was served notice under Section 41A Cr.P.C but instead of joining investigation, the Petitioner once again filed another application for grant of bail in the event of arrest and the said application was also dismissed, *vide* Order dated 19.06.2024.

4. Material on record indicates that the Petitioner is not joining investigation. Petitioner has now approached this Court by filing the present Petition for grant of bail in the event of arrest.

5. The present Petition came up for hearing on 24.07.2024 and a Status Report was called for. Status Report has been filed. The Status Report indicates that the Petitioner has not joined investigation. It is further stated in the Status Report that the Complainant has joined investigation and he has told the Police that the Petitioner has taken Rs.70,00,000/- from the Complainant on the pretext of giving possession of the flat but Petitioner has



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yet not finished the construction of the said flat. The Status Report further indicates that the land-owners were also called for investigation and a copy of the Collaboration Agreement dated 25.07.2020, which was produced by the Petitioner, was shown to them and they denied to have executed the said Collaboration Agreement with the Petitioner. It is stated that one of the land-owners produced a copy of the true collaboration agreement executed on 16.08.2021 between the Petitioner and one Arun Vohra, the land-owner. In the said Collaboration Agreement, it is stated that the Petitioner had collaboration rights of only third floor of the property, while the Petitioner has also entered into agreement to sell the second floor of the property as well and has also executed GPA in favour of one Sachin Kaushik on the pretext of Collaboration Agreement dated 25.07.2020. The Status Report also reveals that the land-owners have also filed a complaint against the Petitioner at Police Station Malviya Nagar and they have also filed a suit, being OMP(I)(COMM) 204/2024, against the Petitioner herein. Copies of various Agreements to Sell have also been produced by the learned APP for the State.

6. Learned Counsel for the Petitioner states that the Petitioner entered into a Collaboration Agreement with the erstwhile owners and there is a dispute between the owners of the property in question. He states that only because of the dispute between the owners of the property in question and because of the default on the part of the owners of the land, the property could not be constructed. He states that the Petitioner has already joined the investigation on 03.04.2023. He further states that the evidence against the Petitioner is primarily documentary in nature and Petitioner's custody is not required.



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7. Per contra, learned APP for the State and the learned Counsel for the land-owners vehemently oppose the present Petition. They state that the Petitioner has entered into Agreements to Sell with various buyers for several parts of the property on which the Petitioner had no right at all.

8. Heard the Counsels and perused the material on record.

9. The factors and parameters for grant of anticipatory bail have been laid down by the Apex Court in various judgments. The Apex Court in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 has laid down the following parameters:

“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;



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(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.”

10. Applying the said parameters to the facts of the present case, this Court is of the opinion that the Petitioner is not entitled to bail in the event



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of arrest as the Petitioner seems to have entered into various agreements with persons for the portions of the property in question over which the Petitioner has no right. The Petitioner has taken Rs.70,00,000/- from the Complainant in the present FIR knowing fully well that the construction of the property in question has yet not completed. At this juncture, it is pertinent to reproduce the portions of the agreements to sell entered into by the Petitioner with the Complainant herein one Surendra Nath Srivastava and the same read as under:

“ADVANCE AGREEMENT TO SELL AND PURCHASE

THIS ADVANCE AGREEMENT TO SELL IS MADE AT NEW DELHI ON THIS 4th DEC ,2021, Between M/S Harish Estate having its office at M-67 A, Malviya Nagar, New Delhi-110017, through its Proprietor Sh. Harish Kumar S/O Sh. Amir Lal, hereinafter called the First Party Seller:

AND

Mr. Jagdish Pabreja S/O Sh. Hari Chand Pabreja R/O JE-7, Gupta Colony, Kharkiv Extension, Malviya Nagar, New Delhi-I I 0017, hereinafter called the Second party/Purchaser:-

{The expression of the terms First Party and the Second Party shall mean and include themselves; their legal heirs, successors, legal representatives, administrators, executors, nominees and assignees}.

Whereas the First Party is the owner and in possession of Entire Third Floor With Terrace Right Upto Sky Limit, consisting of Four Bedrooms, One Drawing-cum-Dining Room, Four Toilet-cum-Bathroom; & One Kitchen, with two reserved car parking in stilt area, in/of property Bearing No. B- 1/48, measuring 223 sq.yds., situated at Malviya Nagar, New Delhi 110017, alongwith fittings, fixtures, separate electricity and water connection, separate overhead water tank etc., and proportionate, undivided, indivisible and



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impartible freehold ownership rights in the land underneath with rights, titles and interests, easements, privileges and appurtenances thereto, connections, structure standing there on with rights in common entrances, passage, lift, staircase and other common facilities and amenities provided therein (hereinafter referred to as "the SAID PORTION" of the said property).

*Whereas due to legal needs and requirements the First Party has agreed to sell the above said **Entire Third Floor With Terrace Right Upto Sky Limit, consisting of Four Bedrooms, One Drawing-cum-Dining Room, Four Toilet-cumBathroom & One-Kitchen, with two reserved car parking in stilt area, in/of Property Bearing No. B-1/48, measuring 223 sq.yds., situated at Malviya Nagar, New Delhi 110017, along with fittings, fixtures, separate electricity and water connection, separate overhead water tank etc.. and proportionate, undivided, indivisible and impartible freehold ownership rights in the land underneath with rights, titles and interests, easements, privileges and appurtenances there to, connections, structure standing there on with rights in common entrances, passage, lift, staircase and other common facilities and amenities provided therein (hereinafter referred to as "the SAID PORTION" of the said property), unto the Second Party for a sum of Rs. 1,50,00,000/- (Rupees One Crore Fifth Lacs Only) and the Second Party has agreed to purchase the same under the following terms and conditions: -***

NOW THIS ADVANCE AGREEMENT TO SELL IS WITNESSTH AS UNDER:

- 1. That in pursuance of this Advance Agreement to Sell and in consideration of a total sum of Rs. 1,50,00,000/-(Rupees One Crore Fifty Lacs Only), out of which the First Party has received Rs. 50,00,000/-(Rupees Fifty Lacs Only) in the following manner: from the Second Party at the time of signing this Agreement.*
- 2. That the Second Party shall pay the part balance amount of Rs. 1,00,00,000/- (Rupees One Crore Only) to the first party in the Following Manner: -*



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S.No.	Bank Name	CHEQUE NO.	Amount (Rs.)
01	CBI	303908	7,00,000/-
02	CBI	303909	6,00,000/-
03	CBI	303910	7,00,000/-
04	CBI	303911	9,00,000/-
05	CBI	303912	11,00,000/-
06	HDFC BANK LTD.	000002	6,00,000/-
07	IDFC FIRST BANK LTD.	000025	4,00,000/-
08	IDFC FIRST BANK LTD.	000028	3,80,000/-
09	IDFC FIRST BANK LTD.	000029	4,20,000/-
10	CANARA BANK	162610	7,00,000/-

The full and final payment shall pay by the second party to the first party on or before 31.01.2023, and after receiving full and final payment the first party execute all the relevant documents i.e. Sale Deed and all other relevant documents in favour of the second party or its nominees in respect of the above mentioned property in the concerned office.

3. That the First Party shall pay all unpaid Building Charges or any other dues and demands of Municipal Corporation of Delhi any other Concerned authorities, in respect of the said Property under sale, up to date of this agreement, and thereafter the same shall be paid by Second Party.

4. That the First Party has assured the Second Party that the Aforesaid property is free from all kinds of Encumbrances, such as prior sale, Mortgage, Gift, Will, Lease, Loan, Surety, Security, Injunction, Litigations, Disputes, Family. Disputes, stay order, Notification and Acquisition, Charges and lines etc, And the First Party is fully competent and has all rights to sell the said property to the Second Party and if it is proved otherwise, then the first party shall be liable and responsible to indemnify all the losses/damages, thus suffered by the Second Party, And the First has shown the original documents to the Second party and the Second party has satisfied with the same.

5. That the Second party shall pay the stamp duty,



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corporation tax, registration fee etc., in respect of the Sale Deed.

6. That the cost of the property agreed upon is final and the first party of Second party will not increase or decrease this amount under any circumstances.

7. That the First Party shall hand over all the photocopies of original documents and original title deed pertaining to the above said Property to the Second party at the time of execution of sale Deed.

WITNESSES WHEREOF, the parties have signed this Advance Agreement to Sell in the presence of the following witnesses.

ADVANCE AGREEMENT TO SELL

This Agreement is made here at New Delhi on this 08th day of February, 2022 BBETWEEN **Mr. Harish Estate, Proprietor Harish Kumar S/o Sh. Ami Lal**, Office at M-67A, Malviya Nagar, New Delhi-110017, hereinafter called the First Party of the One Part.

AND

Mr. Surendra Nath Srivastava, S/o Sh. Sachchida Nand Srivastava, And Mrs. Rita Srivastava wife of Surendra Nath Srivastava Resident of B-1/49, Third Floor, Malviya Nagar, New Delhi-110017, hereinafter called the Second Party of the Second Part.

The expression of the terms First Party and Second Party wherever they occur in the body of this agreement shall mean and include their respective heirs, executors, administrators and assignees unless and until it is repugnant to the context or meaning thereof.



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WHEREAS the First Party is the owner of Property bearing No.B-1/48, Third Floor, Malviya Nagar, New Delhi-110017 area measuring 223 Sq. Yds. (Approx..) 4BHK, 4. toilet, 1 Kitchen, with Terrace Rights, Lift and Two Common Car Parking in Stilt Parking area, along with all fittings, fixtures, connections, separate electricity meter and water meter connection and proportionate undivided, indivisible rights in the land underneath the said property, together with the rights to use/avail common entrance, staircases, passages, services and other common facilities provided in the building and easements attached thereto (hereinafter called the "SAID PROPERTY")

AND WHEREAS the First Party has agreed to sell, transfer and convey his rights, interests, liens and titles in the said property unto the Second Party for a total consideration of Rs.2,75,00,000/- (Rupees Two Crore Seventy Lakh Only)..... ”

(emphasis supplied)

11. In the abovementioned Agreement to Sell the Petitioner has shown himself as the owner of the property which was yet to be constructed. There is nothing in the agreement to show that the said property has been constructed.

12. This Court has also gone through the General Power of Attorney executed by the Petitioner herein in favour of one Sachin Kaushik. Relevant portion of the said GPA reads as under:

*“ GENERAL POWER OF ATTORNEY PERSON OF
MY TRUST*

*KNOW ALL MEN BY THESE PRESENTS THAT I,
HARISH KUMAR son of SHRI AMI LAL resident of
JD-17/10, SECOND FLOOR, KHIRKI EXTENSION,*



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*MALVIYA NAGAR, NEW DELHI-110017, do hereby appoint, nominate, constitute and authorize person of my trust **MR. SACHIN KAUSHIK** son of **SHRI P.C. SHARMA** resident of C-75, FIRST FLOOR, PANCHSHEEL VIHAR, MALVIYA NAGAR, NEW DELHI-110017, as my true legal and lawful General Attorney in respect of **ENTIRE SECOND FLOOR**, in/of Entire Freehold Property bearing No.B-1/48, area measuring 223 Sq. Yds., situated at MALVIYA NAGAR, NEW DELHI-110017, consisting of Four Bedrooms, Drawing-cum-Dining Room, Kitchen, Three Toilet- cum-bath & Mandir Room, with two reserve car parking in stilt parking area, with all rights, easements, privileges, appurtenances whatsoever belonging to or enjoyed therewith or appurtenant thereof, and/with super structure, fixtures, fittings, electrical & sanitary fittings and necessary amenities, with access rights for installation of T.V./Dish Antennas and clean/change Overhead Water Storage Tank on the terrace of the said building, along with proportionate undivided, indivisible and impartible freehold ownership rights/share in the land underneath the Said Property together with the right to use/avail common entrance, passages, staircase, lift, common services and easements attached thereto, (hereinafter called. said portion of the said Property) and I do hereby empower the said attorney to do the following acts, does and things in respect of the said property only. ”* (emphasis supplied)

13. A perusal of the abovementioned GPA and the Agreement to sell shows that the Petitioner has entered into Agreement to Sell for the same property with two different persons.

14. In the facts of the present case, this Court is of the opinion that the Petitioner's conduct does not justify grant of bail in the event of arrest as it will have an effect of impeding the investigation.



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15. Accordingly, the Petition is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JULY 26, 2024

Rahul