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

+ **BAIL APPLN. 4275/2023**

ANIL KUMAR

..... Applicant

Through: Mr. Mohan Kumar, Adv.
(through VC)

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with Mr.
Jatin Kadam, Mr. Kunal
Popli and Mr. Vishal
Sharma, Advs. with SI
Manisha, PS Punjabi
Bagh.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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20.05.2024

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 (**CrPC**), seeking pre-arrest bail in FIR No. 328/2023 dated 11.07.2023, registered at Police Station Punjabi Bagh, for offence under Section 420 of the Indian Penal Code, 1860 (**IPC**).
2. The FIR was registered on a complaint made the complainant, namely, Jatin Garg, alleging that the applicant had entered into an Agreement to Sell 17.05.2017, with him and thereafter the applicant did not complete the sale and executed the necessary sale documents in favour of the complainant despite the money being paid by the complainant.
3. It is stated that the complainant had entered into agreement to sell for 1/10th share in agriculture land admeasuring 74 Bigha



04 Biswas, out of khasra No. 17//11/14/2(2-08), 17(4-16), 18(4-16), 23(4-16), 32//9/1(5-05), 9/2(0-14), 11(2-10), 12(4-16), 19(4-16), 22/1(3-04), 78//14/1(0-04), 14/2(6-10), 15(4-16), 16(4-16), 17(4-13), 18(6-10), 107//9(4-16 and 10/1(3-18) situated at village Dichaon Kalan, Najafgarh, New Delhi hereafter (**'the property'**) with the applicant for total sale consideration of ₹1,51,49,167/-.

4. It is alleged that the complainant paid a sum ₹36,00,000/- as part payment against the alleged agreement to sell. The complainant had paid a sum of ₹25,00,000/- by way of three cheques and ₹11,00,000/- in cash to the applicant.

5. It is alleged that as per the terms of the agreement to sell the applicant was to obtain a No Objection Certificate from the concerned department. It is alleged that the as per clause 6 of the said agreement, the property was stated to be free from all kinds of family dispute, but after execution of the said agreement to sell, the complainant came to know from some reliable sources that there is already a family dispute in regards to the property.

6. It is alleged that the applicant cheated the complainant since he had the knowledge that the property is in dispute.

7. It is also alleged that the applicant after obtaining the No Objection Certificate for some part of the property did not execute the sale deed in favour of the complainant, despite constant reminders.

8. The learned Counsel for the applicant submits that the applicant has falsely been implicated in the present case. He submits that the present dispute is purely civil in nature and has been given colour of criminal proceeding in order to illegally extract money out of the applicant.

9. He submits that the agreement to sell was executed in the year 2017, and when the limitation for filing a civil suit was over



the complainant filed the present complaint.

10. He submits that the applicant had no intention to cheat the complainant. The terms of the agreement to sell could not be adhered due to which the applicant on several occasions asked the complainant to get the property transferred in his name, equivalent to the amount already paid.

11. He submits that that the complainant in terms of the Bayana Agreement clause-7, was entitled to get a proper sale deed executed, by filing a suit for specific performance, but the same has not been done by the complainant. He further submits that the amount paid by the complainant is liable to be forfeited.

12. He submits that the applicant after the interim protection granted by this Court by order dated 19.12.2023 has joined the investigation.

13. The learned Additional Public Prosecutor for the State has opposed the grant of present bail application. He submits that the applicant despite having the knowledge that the property was in dispute since the year 2011, still entered into an agreement to sell with respect to the property with the complainant in the year 2017.

14. He submits that the applicant made a false promise with *malafide* intention to the complainant to sell the agricultural land and has even received the consideration with respect to the same.

15. He submits, on instructions, from the investigation officer that the applicant is not been cooperating with the investigation.

16. I have heard learned counsel for the parties.

17. It is not in dispute that the complainant had entered into an agreement to sell in the year 2017, whereas the FIR was only registered in the year 2023. There is a considerable delay in the registration of the present FIR.



18. From the very nature of the offence and the allegations made, the entire incriminating material seems to be documentary in nature and is already in possession of the investigating agency. Therefore, it cannot be alleged that the applicant will influence the witnesses and tamper with the evidence if released on bail or is required for custodial interrogation.

19. It is clear that the complainant did not take any action since the year 2017, after executing the agreement to sell, till the year 2023, and did not avail any of his civil remedies. Whether the applicant was not in a position to sell the land at the time of entering into an Agreement to Sell would be seen after the trial.

20. 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 investigation, cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

21. The apprehension, of applicant fleeing from justice and tampering with the evidence, can be taken care of by putting appropriate conditions.

22. 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 personal bond of ₹25,000/- 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 contact the complainant /



witnesses or tamper with the evidence in any manner;

- c. The applicant shall not leave the Country without the permission of the learned Trial Court;
- d. The applicant shall give his mobile numbers to the concerned IO/SHO and shall keep their mobile phones switched on at all times.

23. 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.

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

AMIT MAHAJAN, J

MAY 20, 2024