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

\+ BAIL APPLN. 2589/2024&CRL.M.(BAIL) 1220/2024

PRADEEP .....Petitioner

Through: Mr. R.P. Tomar, Adv.

versus

THE STATE GOVT. OF N.C.T. OF DELHI .....Respondent

Through: Ms. Richa Dhawan, APP for the State.
SI Nitin Kumar, P.S. Farsh Bazar.
Mr. Shahid Ali, Mr. Sameer & Mr. Mohd. Salman, Advs. for complainant alongwith complainant in person.

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\+ BAIL APPLN. 2599/2024&CRL.M.A. 21596/2024

SMT. RENU .....Petitioner

Through: Mr. R.P. Tomar, Adv.

versus

THE STATE GOVT. OF N.C.T. OF DELHI .....Respondent

Through: Ms. Richa Dhawan, APP for the State.
SI Nitin Kumar, P.S. Farsh Bazar.
Mr. Shahid Ali, Mr. Sameer & Mr. Mohd. Salman, Advs. for complainant alongwith complainant in person.

**CORAM:**
**HON'BLE MR. JUSTICE AMIT SHARMA**

**O R D E R**

% **21.01.2025**

1. This hearing has been done through hybrid mode.

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2. The present applications under Section 438 read with Section 528 of the Bharatiya Nagarika Suraksha Sanhita, 2023, have been filed seeking anticipatory bail in case FIR No. 367/2023, under Sections 420/506/34 of the Indian Penal Code, 1860, (for short, 'IPC'), registered at PS Farsh Bazar.

3. The case of the prosecution, as per the status report dated 13.08.2024 authored by Inspector Amul Tyagi, SHO, Farsh Bazar, is as follows: -

> "1. That the FIR No. 367/23 U/S 420/506/34 IPC was registered in PS Farsh Bazar on 20.08.23 on the complaint of Sh. Sanjeev Kumar Mishra S/O Sh. B.L Mishra RIO H.No. 129, Gali No.3, West Kanti Nagar, Shahdara, Delhi.
> 2. That in the complaint, Complainant stated that he made an agreement to purchase a property H.No. 500/20A Bikam Singh Colony Vishwas Nagar Shahdara Delhi in Rs. 55,11,0001- with Smt. Renu W/O Sh. Pradeep R/O 184A, Tilak Ram Colony, Loni Ghaziabad, U.P on 07 July 2021. The said property is on the name of Smt. Renu W/O Pradeep. At the time of agreement accused Renu and her husband Pradeep told complainant that they had taken a loan of 35 Lacs on the said property from Save Housing Finance Limited. Both the accused persons assured the complainant Sh. Sanjeev Kumar Mishra that they would deposit the loan amount and took No Objection Certificate from the Save Housing Finance Limited and after that, they would transfer the sale deed of the said property in favor of complainant. For the settle of loan amount, both the accused persons took Rs. 40 Lacs from the complainant through online and case mode.
> 3. That the complainant gave Rs. 40 Lacs to accused Rcnu and Pradeep through online mode (19 Lacs) and cash (21 Lacs). All the entries of transaction are mentioned in the agreement and signed by accused person and witnesses. After giving Rs. 40 Lacs to the accused persons for settle the loan, possession of 1st floor of the said property was given to the complainant by accused persons but, besides taking Rs. 40 Lacs from the complainant to settle the loan, accused persons didn't deposited the amount in the loan authority and didn't settle the loan. Hence, the officials of loan authority sealed the said property and disposed the complainant.
> 4. That after dispossession, the accused persons settle the loan with the loan authority and taken the possession of the said property. Further, when complainant asked the accused persons for registry of

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the said property on the name of complainant, both the accused persons refused for registry. Then complainant asked the accused persons to return his amount but both the accused persons threat the complainant and said that they would neither give his money baek nor do registry on the name of complainant.

5. That during the course of investigation, notice U/S 41 A Cr.P.C was served twice to both of the accused persons but, none of the accused persons join the investigation in above-mentioned case and accused persons filed anticipatory bail application in the Hon'ble court of Sh. Arvind Bansal LD ASJ Karkardooma Courts Delhi and admitted that they received Rs. 26 Laes form complainant through online mode. After hearing the arguments, the Hon'ble court dismissed the said bail applications vide its order dated- 10.07.2024.

6. That further, both the accused persons filed anticipatory bail application in the Hon'ble Delhi High Court and vide order dated- 25.07.24, conditional bail in the present case was granted to both the accused persons by the Hon 'ble Delhi High Court with the condition that both the accused persons would join the investigation.

7. That on 05.08.24 both thc accused persons namely Renu and Pradeep came at PS Farsh Bazar and joined the investigation. Both thc accused person was interrogated and during interrogation they stated that they took Rs. 24 Lacs from the complainant through cheque and no cash amount was given by the complainant to the accused persons. Further accused persons stated that in November 2022 they returned Rs. 20 Lacs to the complainant through cash mode.

8. That during the arguments of anticipatory bail before the Hon'ble Court of Sh. Arvind Bansal LD ASJ KK Courts, accused persons stated that they took Rs. 26 Lacs through online mode from the complainant, during the course of interrogation both the accused persons stated that they took Rs. 24 Lacs from the complainant through Cheque but, infect as per statement of account of complainant and accused Renu only Rs. 19 Lacs were given by the complainant to the accused persons through cheque. Accused persons claimed that they returned Rs. 20 Lacs to the complainant through cash mode but they have no proof in this regard and all the witness of agreement also stated that complainant gave Rs. 40 Lacs to the accused persons."

4. Learned counsel for the applicants has submitted that the latter have falsely been implicated in the present case inasmuch as the transaction involved in the present case is civil in nature and the FIR in the present case

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has been registered as a counterblast to the civil suit proceedings initiated against the complainant at the instance of applicant, Renu, in order pressurize them to settle their civil disputes with him. Attention of this Court has been drawn towards an order dated 06.03.2023 passed by learned Civil Judge-02, Shahdara, in Civil Suit No. 1489/22 seeking permanent and mandatory injunction, which was initiated at the instance of the applicant, Renu, in respect of the subject property, wherein the complainant (defendant No. 1 in the said suit) had undertaken not to enter and dispossess applicant, Renu, (plaintiff) from the subject premises and it is submitted that on the basis of the said statement a compromise decree was drawn in terms of the Order XXIII Rule 3 of the CPC. Learned counsel for the applicants have sought further time to explore the possibility of settlement of the dispute with the complainant.

5. He has further submitted that the applicants were granted interim protection during the pendency of the present applications and in pursuance of the same, they had joined the investigation and had not misused the liberty granted to them.

6. *Per contra*, learned APP for the State, assisted by learned counsel for the complainant, has submitted that the allegations made in the present case are serious in nature as the applicants had not only taken the money from him fraudulently but also got him dispossessed from the subject property by not clearing the loan. It was further submitted that subsequently, the applicants have cleared the loan with complainant’s money and are not executing the sale deed despite the fact that he was ready and willing to perform his part of the contractual obligations.

7. Heard learned counsel for the parties and perused the record.

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8. Learned counsel for the applicants have repeatedly sought time to settle the dispute with the complainant, however, they have made no sincere efforts towards the same. Hence, the present applications were heard on merits.

9. It is a matter of record that an agreement to sell was entered into between the applicant, Renu, and the complainant in the present case on 07.07.2021. The applicants admit the fact that money was transferred to them in pursuance of the said agreement to sell, however, they have tried to create dispute with respect to the exact sum of money. In contrast to this, the investigation so far shows that a sum of 40 Lakhs was received by them. Receipts which are part of the agreement to sell are signed by the applicant, Pradeep, and has been witnessed by two other persons whose statements have been recorded during investigation. It is also the case of the prosecution that after taking the said money the complainant was put in possession of the first floor of the subject property. The applicants instead of clearing the loan defaulted and the complainant was dispossessed from the subject property by the applicants' creditors. It is only after the said dispossession, the money transferred by the complainant was utilised to clear the loan and possession of the subject property was taken by the applicants. Thereafter, the applicant, Renu, filed a suit for permanent and mandatory injunction against the complainant clearly showing the real intention of not transferring the property in name of the complainant.

10. On a pointed query from this Court, learned counsel for the applicants could not explain the source of those funds which were used to clear the loan.

11. In these circumstances, it is *prima facie* clear that the applicants had no intention to transfer the subject property to the complainant and dishonestly

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induced him to transfer the sum which was used by the applicants to clear the loan and take possession of the subject property.

12. In view of the aforesaid, no ground is made out for allowing the present applications and the same are dismissed and disposed of accordingly.

13. Pending applications, if any, also stand disposed of accordingly.

14. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein are only for the purpose of the present applications.

15. Order be uploaded on the website of this Court *forthwith*.

**AMIT SHARMA, J**

**JANUARY 21, 2025/nk**

*Click here to check corrigendum, if any*

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