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

\+ BAIL APPLN. 3749/2024

ZULFIQAR AHMED .....Applicant

Through: Mr. Raunak Sathpathy, Mohd. Rashid, Mr. Air Son Tiger and Mr. Shabahat Hussain, Advocates.

versus

THE STATE OF NCT OF DELHI .....Respondent

Through: Mr. Amol Sinha, ASC for the State with Mr. Kshitiz Garg, Mr. Ashvini Kumar, Ms. Chavi Lazarus and Ms. Sanskriti Nimbekar, Advocates.
Insp. Ranvir Singh, P.S. DIUIC and Insp. Paramjit Singh, P.S. Vigilance.
Mr. Lakshay Kumar, Advocate for Complainant alongwith Complainant in person.

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% 18.02.2025

1. This petition has been filed by the Applicant/Zulfiqar under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') seeking the following relief:

> "It, is therefore, most respectfully prayed that this Hon'ble Court may kindly be release the Applicant/accused on regular bail in the case FIR No. 42/2024 U/s: 420/448/467/468/120B IPC registered in P.S. Darya Ganj, Delhi till the final disposal of the case, in the interest of justice."

Brief facts

2. The case of the prosecution as borne out from the status report is that

the Complainant namely, Mohd. Azam Khan has entered into an agreement with the Applicant/Zulfiqar herein on 30.08.2021 with respect to sale and purchase of shop No. 2497, Ground Floor, Tiraha Behram Khan, Daryaganj, New Delhi ('Subject Property'). It is stated by the Complainant that the Applicant had assured that the Subject Property is free from all kinds of encumbrances, court litigation and he is the owner of the Subject Property. It is stated by the Complainant that the Subject Property was agreed to be purchased by him for the sum of Rs.1,25,00,000/-. It further stated by the Complainant that out of the said amount Rs. 96 lakhs[1] have been paid by the Complainant at the time of signing the agreement and remaining Rs. 29 lakhs were to be paid at the time of registration of the Subject Property in the name of the Complainant. It is stated that despite approaching the Applicant several times to perform the ATS, the Applicant has neither executed the sale deed nor the money has been returned. Thereafter, FIR was registered and investigation ensued.

2.1. It is stated that during investigation, it was revealed that the Subject Property belonged to Delhi Urban Shelter Improvement Board (DUSIB) and is thus a Government property; and this property has not been allotted to the Applicant.

2.2. It is stated that Complainant has filed an application before DUSIB against Applicant with respect to the Subject Property. It is stated that despite several notices issued by DUSIB, Applicant did not produce any document regarding ownership/allotment of the alleged property in his favour before DUSIB.

2.3. It is stated that the Complainant has alleged that the Applicant has

[1] Rs. 70 lakhs in cash and Rs. 26 lakhs worth of jewellery

committed an offence of cheating by wrongfully holding himself out to be a owner of the Subject Property and attempting to sell the same to the Complainant, thus leading to significant financial gain for himself and causing wrongful loss to the Complainant.

Arguments on behalf of the Applicant

3. Learned counsel for the Applicant states that the Applicant has surrendered on 20.08.2024 and has been in judicial custody since then. He states that investigation in the present case is complete and charge sheet also stands filed on 11.11.2024. He states that, thus, there is no requirement for the Applicant to be further incarcerated in the jail when the matter pending the trial.

3.1. He states that admittedly the dispute between the parties is allegedly qua sale of Subject property i.e. property bearing No. 2497 situated at Tiraha Behram Khan, Daryaganj, New Delhi-110002.

3.2. He states that though the Complainant has alleged that he has allegedly paid a sum of Rs. 96,00,000/- in the year 2021 to the Applicant herein, however, the source of cash of Rs. 70,00,000/- or the jewellery has not been verified till date. He states as per the Complainant the said amount was given in the form of cash at Rs. 70,00,000/- and Jewellery for worth Rs. 26,00,000/-.

3.3. He states that the Complainant had previously filed a criminal complaint in October, 2021 which was not registered as an FIR by Police Station [P.S] at Chandni Mahel and therefore, Complainant thereafter filed proceedings under Section 156(3) of Cr.P.C. on 19.10.2022 alleging that he had advanced a loan of Rs. 80,00,000/- to the Applicant herein. He states that the said application under Section 156(3) Cr.P.C. has been dismissed by the learned Metropolitan Magistrate on 07.08.2023, and the matter has been set down for preliminary evidence of the Complainant. He states, however, the complainant has failed to lead evidence in that matter. He states that those proceedings are significant for the present case since the allegation made in the said complaint was purportedly for a loan amount of Rs. 80,00,000/-. He states that there is no explanation on record as to how the alleged amount of Rs. 80,00,000/- stands increased to Rs. 96,00,000/- in the present FIR.

3.4. He states that, thereafter, the complainant filed the present criminal complaint dated 30.10.2023, which has been registered as FIR 42/2024 on 12.01.2024 at P.S. Daryaganj.

3.5. He states that the subject matter of this complaint is an alleged Agreement to Sale [“ATS”] dated 30.08.2021 for the subject property and the alleged payment of Rs. 96,00,000/-.

3.6. He states that neither the subject property is located within the territorial jurisdiction of P.S. Daryaganj nor the transaction was executed within the jurisdiction of the said police station. He states that it is the contention of the Applicant that the same purported transaction of loan which was the subject matter of the Section 156(3) Cr.P.C. proceedings at P.S. Chandni Mahal has been given the colour of an ATS in the present FIR filed at P.S. Daryaganj.

3.7. He states that the Forensic Science Laboratory (FSL) report has confirmed that the left thumb impression of the Applicant found on ATS dated 30.08.2021 has been verified. He states that, however, the Applicant herein has separately filed a Section 156(3) of Cr.P.C. complaint alleging that his thumb impressions were obtained by the Complainant on blank papers and the same is pending for consideration.

3.8. He states that, considering the nature of the allegations which are civil in nature, the FIR for the criminal proceedings is not maintainable.

3.9. He states that significantly no civil proceedings have been initiated by the Complainant either *qua* the alleged transaction of loan for Rs. 80,00,000/- or alleged transaction of ATS pertaining to the subject property for Rs. 96,00,000/.

3.10. He states that the Applicant will abide by the conditions imposed by the Court to secure his presence at Trial.

Arguments on behalf of the State

4. Learned Additional Standing Counsel [“ASC”] for the State submits that the Subject Property is owned by DUSIB.

4.1. He states that the Applicant herein has no right, title or interest qua the Subject Property and the transaction of 30.08.2021 negotiated between the Applicant and the Complainant is illegal.

4.2. He states that in fact DUSIB has already issued a sealing order for the Subject Property.

4.3. He states that during investigation, the Applicant has produced the chain of documents on which he places reliance to allege that he has right to deal with the Subject Property, however, the said chain of documents does not appear to be authentic and do not appear to have been signed by the original allottee. He states that, therefore, the Applicant’s action of dealing with a government allotted DUSIB on the basis of ingenuine documents is a serious offence.

4.4. He further states that the Subject Property lies within the jurisdiction of P.S. Daryaganj and therefore, P.S. Daryaganj has territorial jurisdiction to register the FIR.

4.5. He states that the Applicant did not cooperate in the investigation despite being served with notices under Section 41A of C.r.P.C in January and June, 2024. He states that the respondent was compelled to initiate proceedings under Section 82 Cr.P.C. against the Applicant and it was only belatedly that the Applicant surrendered on 20.08.2024 before the Judicial Magistrate [First Class.]

4.6. He states that the Applicant's brother namely Mazhar Ahmed alongwith an acquaintance namely Mohd. Kashif have extended threats to the complainant to settle and/or withdraw this FIR and in this regard a complainant has lodged on 05.09.2024 which is being examined and verified by P.S. Jama Masjid. He states that the SHO P.S. Jama Masjid after examining the said complaint has also provided his mobile number to the complainant in case of any other threats.

4.7. He, however, fairly states that no FIR has been registered either against Mazhar Ahmed or Mohd. Kashif in pursuance to the alleged threats.

4.8. He also relies upon the pendency of NI Act complaints against the Applicant herein to contend that the Applicant has criminal antecedents.

Arguments on behalf of the complainant

5. Learned counsel for the complainant states that, on 03.09.2024, Kashif Baradari and the Applicant's brother Mazhar Ahmed through Kashif Baradari's Whatsapp number shared a photograph, in which both are standing together and also sent a voice note to the complainant, asking him to withdraw the present complaint. He states, however, the said voice note has since been deleted by Kashif Baradari and, therefore, the complainant is unable to play the same before this Court.

5.1. He states that in a status report filed by P.S. Jama Masjid before the Trial Court, the status report records that Applicant's brother Mazhar Ahmed had submitted before the SHO, P.S. Jama Masjid that the voice note was sent under a mistake and he tendered his apology.

6. In response to the allegation of threat, learned counsel for the Applicant states that Applicant undertakes not to contact the Complainant and also not to reside or visit within the radius of 5 kms. from the residence of the Complainant.

Findings and Analysis

7. This Court has considered the submissions.

8. Before adverting to the facts of the present case it would be imperative to refer to the judgments of the Supreme Court and Coordinate bench of this Court on the subject matter of regular bail in cases involving economic offences.

9. In landmark decision passed by the Supreme Court in **Sanjay Chandra vs. Central Bureau of Investigation** (2012) 1 SCC 40 it was observed as under: -

> "20. The appellants are facing trial in respect of the offences under Sections 420-B, 468, 471 and 109 of the Penal Code, 1860 and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Bail has been refused first by the Special Judge, CBI, New Delhi and subsequently, by the High Court. Both the courts have listed the factors, which they think, are relevant for refusing the bail applications filed by the Applicants as seriousness of the charge; the nature of the evidence in support of the charge; the likely sentence to be imposed upon conviction; the possibility of interference with the witnesses; the objection of the prosecuting authorities and the possibility of absconding from justice.
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> 21. **In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial**

when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

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39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. **In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue**. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. **The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.**

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge- sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are

entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."

10. A co-ordinate Bench of this Court in **H.B. Chaturvedi vs. C.B.I.** at paragraph 12 passed in **BAIL APPLN. 2707/2015** this Court observed as follows:-

"12. Bail, it has been held in a catena of decisions, is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted. Furthermore, there is no justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. It cannot, therefore, be said that bail should invariably be refused in cases involving serious economic offences."

(Emphasis Supplied)

11. In **Surender Kumar Antil v. State of Maharashtra**[2] Supreme court held as under**:**

"Role of the court

93. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. **Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice**.

94. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values

[2] **(**2022) 10 SCC 51

> and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest."
>
> (Emphasis Supplied)

12. The facts of this case are highly contentious. The parties have allegedly agreed to transact for sale and purchase of an immovable property which belongs to DUSIB. The transaction of sale and purchase of a DUSIB property is impressible in law and therefore the transaction is prima facie illegal. Even otherwise the Applicant is not the allottee of the Subject Property and therefore parties could not have entered into an agreement for sale. In addition, the contention of the Complainant that he paid a sum of Rs. 96,00,000/- towards this transaction through cash and jewellery is also disputed by the Applicant and payment in cash and jewellery of such large sums would have to be proved by the prosecution. In addition, during arguments the prosecution has been unable to explain the contradiction in the claims made by the Complainant in the criminal complaint proceeding before P.S. Chandni Mahal and the criminal complaint filed before P.S. Daryaganj. The amounts in both the complaints are different and the reasons given for advancing such large amounts are also different.

13. Thus, since the investigation is complete and the Applicant is no longer required for any further interrogation, the prosecution has been unable to justify the prolonged judicial custody of the Applicant. The charges are yet to be framed and therefore the trial shall take some time.

14. The Applicant is a resident of Delhi and has family in Delhi and therefore any apprehension that he will not be available to join trial. Moreover, the Applicant has agreed to not to reside or visit the area in which the Complainant resides and this restriction can be duly incorporated in the

conditions of bail.

15. Thus, taking into account the overall facts and without commenting on the merits of the case, this Court is of the opinion that the Applicant ought to be enlarged on bail during the pendency of the trial. The Applicant is, therefore, admitted to regular bail in FIR No.42/2024 registered at P.S. Darya Ganj and is directed to be released on furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the learned Trial Court and subject to the following conditions:

i. Applicant will not leave the country without prior permission of the Court.

ii. Applicant shall provide his permanent address to the Trial Court. The Applicant shall intimate the said Court by way of an affidavit and to the IO regarding any change in residential address.

iii. Applicant shall appear before the Court as and when the matter is taken up for hearing.

iv. Applicant shall join investigation as and when called by the IO concerned.

v. Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.

vi. Applicant will report to the concerned IO of P.S Daryaganj every 2^{nd} and 4^{th}Thursday of every month, at 4:00 PM, and will not be kept waiting for more than an hour.

vii. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the Complainant, any of the prosecution witnesses, or tamper with the evidence of the case.

viii. The Applicant shall not threaten the witnesses or tamper with the evidence of the case.

16. Since charges are yet to be framed in this matter and the complainant evidence is also to be recorded, keeping in view the apprehension expressed by the Complainant, it is directed that the Applicant shall not visit or reside in the area within 5 Km radius of the residence of the complainant.

17. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of delay.

18. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

19. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

20. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

21. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 18, 2025/*MR/ms*