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

+ BAIL APPLN. 4522/2024

SANJEEV DHAWAN & ANR.

.....Petitioners

Through: Mr. Jatan Singh, Senior Advocate
along with Ms. Sakshi Sachdeva, Ms.
Vanshika Adhana and Mr. Tushar
Lamba, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Raghuinder Verma, APP for the
State along with SI Pawan Kumar
Mr. Udit Gupta, Advocate for
complainant

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER
07.01.2025

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1. The instant bail application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as the “BNSS”) [earlier under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter as the “Cr.P.C”)] has been filed on behalf of the applicant/petitioner seeking grant of regular bail in FIR bearing No. 96/2024 dated 29th January, 2025 registered at Police Station - Mukharjee Nagar, Delhi for the offence punishable under Section 420 of the Indian Penal Code, 1860 (hereinafter “IPC”).

2. Mr. Jatan Singh, learned senior counsel appearing on behalf of the applicant submitted that the present FIR was lodged against the petitioner on the statement give by the complainant, namely, Mr. Shivam Kanwar. It is submitted that the applicant agreed to sell the property situated at 2nd floor, Plot no. D-15AB, with a built-up area admeasuring 200 square yards,



located at Vijay Nagar, Delhi -110009 (hereinafter as the “subject property”) to the complainant. Upon the said proposal, the complainants agreed to purchase the subject property for a total sale consideration of Rs. 85,00,000/- and accordingly, an agreement of sale dated 2nd September, 2022 was prepared to execute the agreement between the complainant and the applicant.

3. It is submitted that as per the terms and conditions of the sale agreement, the said property shall be free from all sorts of encumbrances such as sale, gift, mortgage, lien, charge, burden, decree, notice, legal flaws, and legal complications in the said property and there are no defects in the ownership and title of the property.

4. It is submitted that accordingly, the complainants made the payment of the entire sale consideration to the applicant and the peaceful and vacant possession of the subject property was delivered to the complainants on 1st December, 2022, with an assurance to execute the sale documents at the earliest. It is further submitted that since then, the complainant has been residing on the subject property.

5. It is submitted that the complainant has falsely alleged that the applicant has not executed the said sale agreement in favour of the complainant despite receiving the entire sale compensation.

6. Furthermore, it is submitted that the complainant has wrongly alleged that the applicant has failed to disclose the fact that the subject property was mortgaged with Aditya Birla Finance Limited, at the time of entering into the sale agreement as well as the handing of the subject property to the complainants, thereby violating the terms and conditions of the sale agreement. It is submitted that the aforesaid allegations made by the



complainant are false and fabricated and to strengthen his arguments, the learned counsel for the applicant referred to the WhatsApp chats exchanged between the complainants and the applicant, wherein it is clear that the complainants were aware of the said mortgage even prior to the execution of the sale agreement. The said WhatsApp chats are annexed as Annexure-H to the instant application.

7. It is submitted that the applicant has no criminal antecedents and has been languishing in judicial custody since 11th March, 2024. It is submitted that as per the allegations made by the complainant, the applicant is charged with an offence punishable under Section 420 of the IPC and the maximum sentence of punishment is 7 years of imprisonment.

8. It is submitted that upon plain reading of the complaint, no offence under Section 420 of the IPC is made out against the applicant. Moreover, the instant FIR was lodged after an inordinate delay of 8 months and no explanation has been furnished for the said delay.

9. It is submitted that the applicant is residing with his mother-in-law, the address mentioned in the affidavit is that of his *parokar* i.e., applicant's son. Therefore, it is submitted that it is incorrect to assume that the applicant has furnished incorrect details of his address. Therefore, it is submitted that the applicant resides with his mother-in-law and is a permanent resident of the said address. Learned counsel for the applicant further undertakes that the applicant's mother-in-law is ready to furnish surety before the learned Trial Court assuring that the applicant resides in her residence.

10. It is further submitted that the chargesheet has already been filed in the instant case and charges have been framed against the applicant. Moreover, learned counsel for the applicant undertakes that the applicant



shall abide by any condition imposed by this Court upon the applicant while granting the regular bail and shall cooperate in the trial in the instant case.

11. In view of the foregoing submissions, it is prayed that the applicant may be released on bail.

12. *Per Contra*, Mr. Raghuinder Verma, learned APP for State vehemently opposed the instant bail application and submitted that the applicant is involved in a serious offence of cheating for an approximate amount of Rs. 4,10,00,000/-.

13. It is submitted that the applicant does not have a permanent address in Delhi and resides in a rented accommodation. It is further submitted that the affidavit is filed by the *parokar* i.e., son of the applicant, which discloses the fact that the applicant's son also resides with other family members with the applicant's mother-in-law.

14. It is further submitted that the applicant was denied bail eleven times, out of which few were rejected solely on the ground that the applicant does not have a permanent address in Delhi. Moreover, it is submitted that the applicant's brother, who is a co-accused in the instant case, is absconding and therefore, there is a great possibility of the applicant to jump the bail conditions.

15. Therefore, in view of the aforementioned submissions, it is prayed that the applicant is not entitled for the concession of bail. However, it is submitted that the applicant has no criminal antecedents and that the maximum punishment under Section 420 of the IPC is 7 years of imprisonment.

16. Mr. Udit Gupta, learned counsel appearing on behalf of the complainant vehemently opposed the instant bail application and submitted



that the fact of mortgaging the subject property was not disclosed to the applicant at the time of entering the sale agreement and handing the subject property, including at the time of receiving the entire sale consideration as per the sale agreement.

17. It is submitted that the applicant has committed a serious offence of cheating a huge amount from the complainant and that if the applicant is released on bail, then there is a high chance of the applicant influencing the witnesses and violating the terms and conditions of the bail.

18. In rejoinder, learned counsel for the applicant submitted that if the intention of the applicant is to cheat the complainant, the applicant would not have deposited the money with the concerned finance company as and when received. Moreover, it is submitted that the same information regarding the approval of the concerned finance company has been given to the complainant. It is further submitted that the applicant not being able to replay the entire loan amount does not amount to cheating under Section 420 of the IPC.

19. In reply to the said rejoinder, learned counsel for the complainant submitted that the applicant has only provided with certain approvals sought from the concerned finance company and has not disclosed the entire information at any relevant time.

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

21. This Court has perused the WhatsApp chats exchanged between the applicant and the complainant, which is annexed as Annexure – H to the instant application. It is observed that the information regarding approval sought from the concerned finance company has been duly informed to the complainant and the same is informed prior to the execution of the



agreement of sale dated 2nd September, 2022. Therefore, this Court is convinced with that the complainant has knowledge of the fact that the subject property was already mortgaged to the concerned finance company i.e., Aditya Birla Finance Limited.

22. It is further observed that the applicant has duly sought approvals from the concerned finance company before execution of the sale agreement between the complainant and the applicant.

23. This Court has also perused the chargesheet, which is appended as Annexure-B to the instant application. It is clearly mentioned in the chargesheet that the applicant has deposited an amount of Rs. 1,34,00,000/- to Aditya Birla Finance Limited. It is observed that the applicant has been repaying the loan amount as and when the sale consideration was received from the complainant, thereby not keeping it to himself.

24. Furthermore, it is also an admitted fact that there are no criminal antecedents of the applicant and that he has been languishing in jail for around 10 months. Moreover, chargesheet has already been filed and charges has been framed against the applicant in the instant case.

25. Keeping in view the contentions and the arguments advanced by the learned counsel for the parties, the clean antecedents of the applicant and the period for which he has already been in jail, this Court is inclined to allow the instant application seeking regular bail. It is accordingly directed that the applicant be released on bail on his furnishing personal bond in the sum of Rs.5,00,000/- (Rupees Five lakhs only) with two sureties of like amount to the satisfaction of the Jail Superintendent/ Trial Court subject to the conditions as follows:-

(a) The applicant shall under no circumstances leave India without



prior permission of the Court concerned;

(b) The applicant shall appear before the Court concerned as and when required;

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;

(d) The applicant shall provide his mobile number(s) and keep it operational at all times;

(e) The applicant shall commit no offence whatsoever during the period he is on bail;

(f) in case of change of residential address and/or mobile number, the same shall be intimated to the Court concerned by way of an affidavit; and

(g) The applicant shall report to the jurisdictional Police Station on every Tuesday of the week.

26. Accordingly, the instant application stands disposed of. Pending applications, if any, stands dismissed.

27. Copy of this order be sent to Jail Superintendent for compliance.

28. It is made clear that any observations touching merits of the case are purely for the purpose of deciding the question of grant of bail by this Court and shall not construed as an expression of final observation in the proceedings pending before Trial Court.

CHANDRA DHARI SINGH, J

JANUARY 7, 2025

Rk/mk

Click here to check corrigendum, if any