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

***Reserved on: 05.05.2025***
***Pronounced on: 13.05.2025***

\+ BAIL APPLN. 4755/2024

HITESH KUMAR .....Petitioner

Through: Mr. Pritish Sabharwal with Mr. Savjeet Kumar & Ms. Shweta Singh, Advs.

versus

STATE GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Tarang Srivastava, APP for State.
Insp. Neeraj Kr. PS Shahdara.
Mr. Gaurav Kakar, Adv. for complainant.

**CORAM:**
**HON'BLE MS. JUSTICE SHALINDER KAUR**

## J U D G M E N T

**SHALINDER KAUR, J**

1. By way of the present petition under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the petitioner seeks Regular Bail in FIR No.43/2019 dated 22.02.2019 for the offences punishable under Sections 420, 34 and 174A of the Indian Penal Code, 1860 (IPC) registered at Police Station Shahdara.

### PROSECUTION'S CASE

2. The complaint pertains to two immovable properties located at (i) 1/4991, 1st Floor, Village Sikdarpur, Balbir Nagar, Shahdara, Delhi, 110032 and (ii) 1/4732, Gali No. 5, Balbir Nagar Extension, Shahdara, Delhi, 110032. The complainant stated that he was introduced to the accused through a property dealer and was offered both properties for sale. It was represented that the accused were the absolute owners of the said properties and were in possession thereof.

3. As per the record, the complainant agreed to purchase the properties for ₹44,00,000/- and ₹39,50,000/- respectively. Sale deeds in respect of both properties were executed and registered on 04.08.2017 before the Sub-Registrar IV-A, Shahdara. Prior thereto, a rectification deed dated 22.05.2017 was also executed in respect of Property No. 1/4991 to correct certain discrepancies in the documentation.

4. The complainant stated that prior to approaching the Court, he had submitted a complaint to the Station House Officer, P.S. Shahdara, on 07.12.2018, followed by a representation to the Deputy Commissioner of Police on 11.12.2018 under Section 154(3) of the Code of Criminal Procedure (CrPC). As no action was allegedly taken, the complainant approached the Court under Section 156(3) of the CrPC.

5. Investigation was taken up by the police and, during the course of the inquiry, certified copies of sale deeds were obtained from the office of the Sub-Registrar. It was revealed that the title in respect of Property No. 1/4991 had initially stood in the name of Mr. Yatender

Garg and was transferred to petitioner by sale deed dated 19.03.2015. Thereafter, petitioner had executed a sale deed in favour of the complainant. In respect of Property No. 1/4732, the chain of title was traced from Ms. Usha Goel, who had acquired it in June 2012, to Mr. Anurag Sharma, and finally to the complainant through a registered sale deed.

6. During the course of investigation, it was gathered from responses to notices under Section 91 of the CrPC issued to Dena Bank and India Bulls Housing Finance Ltd. that the properties in question were already mortgaged at the time the sale deeds were executed in favour of the complainant. Specifically, Property No. 1/4991 had been mortgaged to India Bulls since April 2015, and Property No. 1/4732 had been mortgaged with Dena Bank since 2014.

7. It was further noted that a separate FIR, being FIR No. 144/2020 registered at Police Station Economic Offences Wing (EOW), was also pending against the same accused persons, alleging that they had availed loans from financial institutions by submitting forged documents of the said properties.

8. During the pendency of the investigation, Non-Bailable Warrants (NBW) were obtained against the accused, and proceedings under Section 82 of the CrPC were initiated. Both accused were declared proclaimed offenders on 02.08.2022 by the Court of the learned Metropolitan Magistrate, Shahdara.

9. The petitioner was arrested on 28.07.2023 and formally arrested in the present case on 01.08.2023.

10. Based on the evidence gathered during investigation, including sale and mortgage records, bank documents, and witness statements, a charge sheet has been filed against both accused persons.

**SUBMISSIONS OF THE PARTIES**

11. The learned counsel for the petitioner submitted that the investigation, insofar as it concerns the petitioner, stands concluded, and that a Charge Sheet has already been filed before the learned Magistrate. It is submitted that the petitioner's continued incarceration serves no useful purpose as all material evidence in the case is documentary in nature.

12. It is also contended that the present case arises from the same set of facts as FIR No. 144/2020, registered at Police Station EOW, Delhi. It is submitted that the complainant in the present matter, Mr. Dincur Bajaj, has already recorded his statement and submitted documents before the investigating agency in the said FIR. The petitioner has also been arrayed as an accused therein, and the Charge Sheet in that case has also been filed. It is, therefore, submitted that any further proceedings against the petitioner on the same facts in the present FIR would amount to double jeopardy, in violation of Article 20(2) of the Constitution.

13. Opposing the grant of bail, the learned APP for the State submitted that the allegations against the petitioner pertain to a large-scale conspiracy involving the fraudulent sale of immovable properties that were already mortgaged to various financial institutions, including India Bulls Housing Finance Ltd. and Dena

Bank. It is submitted that the petitioner, in concert with other co-accused, executed sale deeds in favour of the complainant, misrepresenting the title and ownership of the properties, despite being fully aware that the properties were encumbered.

14. The learned APP highlighted that the petitioner, along with the co-accused, was declared a Proclaimed Offender on 02.08.2022 by the learned Metropolitan Magistrate, Shahdara, pursuant to the issuance of NBW's and initiation of proceedings under Section 82 of the CrPC. It is submitted that the conduct of the accused in evading legal processes and failing to appear before the authorities despite repeated notices reflects a clear intention to subvert the process of law.

15. It is submitted that the accused is not merely a passive participant but a key operator in a fraudulent syndicate, he along with co-accused is involved in financial offences with respect to two properties, one of which he is an owner and the other is under the ownership of co-accused Anurag Sharma. The learned APP contended that the investigation has unveiled a clear chain of title manipulation and deliberate concealment of encumbrances on the properties, with the express intention of cheating the complainant. It is urged that these facts, coupled with the documentary evidence obtained from financial institutions, are *prima facie* sufficient to establish the involvement of the petitioner in the conspiracy.

16. To conclude, the learned APP submitted that keeping in view the gravity of the offence, coupled with the accused's conduct and antecedents, disentitles him from any discretionary relief at this stage.

## ANALYSIS AND CONCLUSIONS

17. Having considered the material placed on record, the rival submissions advanced at the Bar, the nature and gravity of the allegations against the petitioner, this Court may begin by observing that the FIR in question has been registered on the basis of allegations relating to the fraudulent sale of immovable properties that were already mortgaged to various financial institutions. The allegations disclose a deliberate suppression of encumbrances on the properties in question, coupled with the execution of sale deeds in favour of the complainant by the petitioner and his co-accused, despite being fully aware of the existing mortgages.

18. The material on record reveals that Property No. 1/4991, 1st Floor, Village Sikdarpur, Balbir Nagar, Shahdara, Delhi, was originally owned by Mr. Yatender Garg and was transferred to the petitioner through a sale deed dated 19.03.2015. The said property was mortgaged to India Bulls Housing Finance Ltd. since April 2015. Despite the existing encumbrance, the petitioner proceeded to execute a sale deed in favour of the complainant on 04.08.2017, misrepresenting the title as unencumbered. A similar chain of events transpired with respect to Property No. 1/4732, Gali No. 5, Balbir Nagar Extension, which had been mortgaged to Dena Bank since 2014, yet was sold to the complainant without disclosure of the mortgage.

19. The nature of the allegations, coupled with the petitioner's prior conduct of abscondence, raises serious apprehensions regarding his likelihood of evading the process of law if enlarged on bail.

20. In light of the material on record, this Court does not find it appropriate to exercise its discretion in favour of the petitioner at this stage. The apprehension of tampering with evidence and the likelihood of influencing witnesses, particularly in view of the petitioner's role in the conspiracy, cannot be discounted.

21. It is clarified that the observations made herein are solely for the purpose of deciding the present bail application and shall not influence the merits of the trial proceedings in any manner.

22. Needless to state, if there is a material change in the circumstances surrounding the case, the petitioner is at liberty to move a successive bail application.

23. Accordingly, the present application is dismissed.

**SHALINDER KAUR, J**

**MAY 13, 2025**/frk

*Click here to check corrigendum, if any*