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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 77/2025**

ABID

.....Applicant

Through: Mr. Vijay Kumar Rai, Mr.
Sanjay Singh & Ms.
Madhubala, Advs.

versus

GOVT OF NCT DELHI AND ANRRespondents

Through: Mr. Pardeep Gahlot, APP
for the State.
SI Rahul Ranjan, PS Harsh
Vihar.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
16.04.2025

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1. The present application is filed seeking pre-arrest bail in FIR No. 611/2024 dated 11.11.2024, registered at Police Station Harsh Vihar for offences under Sections 115(2)/126(2)/303(2)/308(4)/329(4)/3(5) of the Bharatiya Nyaya Sanhita, 2023.

2. The FIR was registered pursuant to a complaint filed by the complainant alleging that the applicant had trespassed into the complainant's property and also did not allow any construction to be carried out. It is also alleged that the applicant stole the building material.

3. The learned counsel for the applicant submits that the property in question was purchased by the applicant from one person, namely, Subash Chand. He submits that it has now transpired that the erstwhile owner who had sold the property to the seller of the applicant, had also sold the property to the

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complainant and certain more people. He submits that the applicant had intervened on finding that the construction was being carried out in the said plot, however, he had not stolen any building material.

4. He further submits that the property was later found to be belonging to Government where the seller had no right to sell and the applicant was being cheated. He submits that the applicant at this stage is not claiming any right, title or interest on the said property and will take his recourse to proceeding against the seller.

5. *Per contra*, the learned Additional Public Prosecutor for the State opposes the grant of any relief to the applicant and submits that while the applicant has joined the investigation, however, the stolen property is yet to be recovered.

6. The law in regard to the grant of pre-arrest bail is well-settled. In the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694***, the Hon'ble Supreme Court dealt with the issue of pre-arrest bail, and the balance that needs to be maintained while granting the same to an accused and further laid down the factors that must be taken into consideration while dealing with pre-arrest bail and held as under:

“...112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.



v. Where the accusation ~~may~~ have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Penal Code, 1860, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail..."

7. It is undisputed that the applicant entered into an agreement to purchase the subject plot with Subhash Chand, who had apparently bought it from one Rameshwar. The status report mentions that the possession of the plot was never handed to Mr. Subhash and he had lodged an FIR against Rameshwar as well.

8. It is the case of the applicant that while he had intervened when he found out that construction was being carried out at the plot, however, he had not stolen anything and he has been cheated as the subject plot belongs to the Government and could not have been sold at all.

9. While the allegations and defences will be seen during the course of trial, however, it cannot be ignored that the applicant had entered into an agreement to purchase the subject property



and he is not pressing to claim any title over the same. *Prima facie*, at this stage, the agreement to purchase the plot lends credibility to the contentions of the applicant.

10. It is relevant to note that the Predecessor Bench, by order dated 10.01.2025, had directed the State not to take any coercive steps against the applicant on him joining and cooperating with the investigation after noting that the subject property was purchased by the applicant by an agreement of sell.

11. It is not disputed that the applicant has since joined the investigation. It is also not the case of the prosecution that he has not cooperated during the course of the investigation.

12. It is not in doubt that order for grant of pre-arrest 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 the investigation, cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

13. The purpose of custodial interrogation is to aid the investigation and is not punitive. In the opinion of this Court, no purpose would be served by subjecting the applicant to custodial interrogation.

14. No apprehension has been expressed that the applicant will evade the trial. Even otherwise, any apprehension regarding the applicant fleeing from justice, tampering with evidence or not cooperating with the investigation can be taken care of by putting appropriate conditions.

15. In view of the above, it is directed that in the event of arrest, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- 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, if required, as and when directed by the IO;
 - b. The applicant shall not leave the country without the prior permission of the learned Trial Court;
 - c. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
 - d. The applicant shall appear before the learned Trial Court as and when directed;
 - e. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/SO;
 - f. The applicant shall give his mobile number to the concerned IO/SO and shall keep his mobile phone switched on at all times.
16. The present bail application is allowed in the aforesaid terms.
17. It is clarified that the observations made in the present order are only for the purpose of considering the present application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.
18. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

APRIL 16, 2025
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