

(2023) 08 DEL CK 0184

In the Delhi High Court

Case No : Bail Application No. 2719, 2720 Of 2023

Babita Arya

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 17-08-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438, 482

Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471

Citation : (2023) 08 DEL CK 0184

Hon'ble Judges : Swarana Kanta Sharma, J

Bench : Single Bench

Advocate : Saquib Arbab, Manoj Pant, Swati Ghildiyal

Final Decision : Dismissed

Judgement

Swarana Kanta Sharma, J

CRL.M.A. 21968-69/2023 in BAIL APPLN. 2719/2023

CRL.M.A. 21970-71/2023 in BAIL APPLN. 2720/2023

1. Allowed, subject to all just exceptions.

2. Applications stand disposed of.

BAIL APPLN. 2719/2023 & BAIL APPLN. 2720/2023

3. The instant applications under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') have been filed on behalf of applicants seeking grant of anticipatory bail in case FIR bearing no. 106/2018, registered at Police Station Dabri (Dwarka), South West Delhi for the offences punishable under Sections 420/467/468/471/120B of the Indian Penal Code, 1860 ('IPC').

4. Issue notice. Mr. Manoj Pant, learned APP accepts notice on behalf of the State.

5. Briefly stated, the facts of the present case are that FIR was registered on the

complaint of complainant alleging that he had purchased property bearing Flat no. 101, First Floor, K-14, Khasra no. 82/83, Nanda Block, Mahavir Enclave, New Delhi from accused Babita Arya through registered sale deed for a sum of Rs.20 lacs, however, he was compelled to pay an amount of Rs.33 lacs. The complainant had been forced to take a loan of Rs.17 lacs from Central Bank of India and rest of the amount was paid in cash against cash receipt signed by accused Mahavir Arya. Later on, complainant had come to know that the said property had been sold by Babita Arya to one Sunil Gupta and Gian Chand Aggarwal vide sale deed dated 13.08.2014.

6. During investigation, it was revealed that Sunil Gupta and Gian Chand Aggarwal had already filed complaint against the present accused persons with respect to the property in question and another case regarding the same property in question for cheating and forgery is pending against the present accused persons vide FIR no. 500/2017 under Sections 420/467/468/471/120B IPC.

7. Learned counsel for the applicant states that though he had undertaken to deposit a further sum of Rs.10 lacs before this Court and had been granted interim protection on that ground alone, he is not willing to make the payment any more. He admits that he had withdrawn the anticipatory bail application on the last date of hearing as the applicants did not want to deposit the money as per assurance given in the Court in the year 2019 and thereafter. He states that in view of the judgment of the Hon'ble Supreme Court in Ramesh Kumar Vs. The State of NCT of Delhi 2023 SCC OnLine SC 766, this Court cannot impose any condition for depositing any amount and therefore now without depositing any money, he is entitled to grant of anticipatory bail. He states that the new circumstance in his favour, after withdrawing the anticipatory bail application on 04.07.2023, is the judgment in case of Ramesh Kumar (supra) and therefore, anticipatory bail be granted to the accused persons.

8. Per contra, learned APP for the State argues that the applicants had themselves submitted before the Court that without prejudice to their rights, a sum of Rs.10 lacs will be deposited before the learned Trial Court on 16.01.2019. In this regard, about Rs.9 lacs already stand deposited before the learned Trial Court in favour of the complainant. It is stated that on 14.05.2019, the applicants had joined investigation only on one occasion on the direction of this Court's order dated 08.05.2019. It is stated by learned APP for the State that the applicant Babita Arya had admitted that she had sold the property in question to the complainant as well as to one Gian Chand Aggarwal and Sunil Gupta. It is stated that the applicants have not joined investigation and Mahavir Arya and Babita Arya are blaming each other for the alleged offence.

9. This Court has heard arguments advanced on behalf of both sides and has gone through the case file. This Court has also gone through the previous ordersheets of the learned Trial Court as well as this Court.

10. This Court notes that the facts of the present case are entirely different from the facts of the case cited before this Court i.e. Ramesh Kumar (supra). In the present case, it is not a simple case of a deal between a builder and a prospective buyer having gone wrong but it is a case where the allegations against the applicants are that both of them had induced the complainant to part with his hard earned money and taking loan at the instance of the applicants herein for buying a flat. The FIR mentions in detail as to how he was cheated of his money and was repeatedly asked to pay more money as prices of property had risen. When he had expressed his inability to arrange money, the accused persons had even arranged loan for him. Moreover, the seriousness of the offence of cheating became graver since the accused persons had sold the same property in question for which they had taken money from the complainant and from two other persons regarding which an FIR no.500/2017, Police Station Dabri already stands registered against them under Section 420/467/468/471/120B of IPC. Therefore, the facts of the present case are entirely different from the facts of the case cited before this Court and relied upon by the accused persons. The applicants have thus cheated two more persons i.e. Sunil Gupta and Gian Chand Aggarwal as well as the present complainant by selling the property in question to both of them regarding which, now, two separate FIRs have been registered against them, which shows their modus-operandi to cheat people.

11. As far as the contention regarding the accused having been granted interim protection till date is concerned, this Court takes note of the fact that the matter was neither taken up nor decided on its merit but it was the applicants who had themselves volunteered to deposit the money in the Court for settlement due to which they were previously granted interim protection.

12. Therefore, in the given facts and circumstances of the case, this Court is not inclined to grant anticipatory bail to the accused persons/applicants.

13. Accordingly, the present bail application stands dismissed.

14. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

15. The judgment be uploaded on the website forthwith.