

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 27.01.2023

+ **BAIL APPLN. 3357/2022**

SUJEET BHATI

..... Applicant

versus

THE STATE

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Atul Sharma & Mr. Gagan Kumar
Singhal, Advocates

For the Respondent : Ms. Richa Dhawan, APP for the State with
SI Ravi Poonia, PS Dayalpur.
Mr. Salim Malik, Advocate for the
Complainant with complainant in person

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HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed by the applicant under Section 438 of the Code of Criminal Procedure, 1973 (**CrPC**) praying inter alia for grant of pre-arrest bail in FIR No.365/2022 dated 17.06.2022, registered at Police Station Dayalpur, New Delhi, under Section 420/467/468/471/506/120B Indian Penal Code, 1860(**IPC**).

2. The FIR was registered on a complaint made by Mohd. Wasim. It was alleged that the complainant was defrauded by the applicant and other co-accused persons. One 'Bhuvan / Bhuvan Chand' entered into

an agreement with the complainant to sell the property bearing House No. C-10/442, Gali no. 10, Brijpuri, New Delhi for a sum of ₹95 lakhs.

3. It is alleged that the said Bhuvan Chand and his associates including the applicant showed him the original documents of the said property and stated that Bhuvan Chand is the owner of the same. The complainant, on being induced by the accused persons, executed a Bayana agreement dated 08.11.2021 and paid a sum of ₹40 lakhs as advance. He agreed to pay the balance sum of ₹55 lakhs on 08.12.2021 at the time of execution of the documents of the property.

4. It is further alleged that thereafter on 15.11.2021, a further sum of ₹5 lakhs was paid to the Bhuvan Chand who handed over the possession of one floor of the said property. The complainant claims to have kept some of his belongings in the said floor. On 08.12.2021, the complainant along with the balance amount reached the agreed place for the purpose of execution of the documents where Bhuvan Chand was not found and on being called, he informed the complainant that a bogus transaction had been entered into.

5. The complainant thereafter reached Bhuvan Chand's house but the house was found locked from outside. On being called, it is alleged that the accused Bhuvan Chand also threatened the complainant. It was also found that the property was in the name of Bhuvan Chand's mother who had never transferred it in his name.

6. Initially, none of the accused persons joined investigation. The accused 'Bhuvan Chand', however, is stated to have been arrested on 31.07.2022.

7. The police, thereafter, filed a chargesheet. It was mentioned that the accused Bhuwan Chand along with his accomplices conspired to prepare forged papers of the property belonging to his own mother, induced the complainant and cheated him of ₹45 lakhs.

8. It was also mentioned that the accused / applicant has not joined the investigation against whom the NBWs have been issued by the Court and further investigation in that regard is pending.

9. The application filed by the applicant under Section 438 of the CrPC was dismissed by the learned Additional Sessions Judge by order dated 08.09.2022.

10. Learned counsel for the applicant submits that as per the allegation, his role is only that he was present at the time when the complainant allegedly handed over money to the main accused, namely, Bhuwan Chand and that the applicant has signed the alleged *Bayana* Agreement as witness. Further, it is also alleged that the applicant has retained a sum of Rs. 19 lakhs out of Rs 40 lakhs.

11. He further submits that all the allegations levelled against the applicant are subsequent to the disclosure statement made by accused Bhuwan Chand and there is no material against the applicant for being charged with the offences mentioned in the FIR.

12. Learned APP for the State opposes the present application and submits that the charges are serious in nature. She submits that all the co-accused persons have committed the offence of cheating by forging the documents of the property. The property belonging to Smt. Kalawati, who also is the mother of the accused - Bhuwan Chand, was sought to be sold by forging the documents of the property. The

applicant has been directly named by the complainant and other public witnesses. Further, the applicant had shown the forged documents of the property to the complainant and had also received the cheated amount. The video footage obtained during the investigation clearly shows the applicant counting the money being handed over by the complainant.

13. She further submits that the applicant had not been cooperating with the investigation and the proceedings under Section 82 of CrPC have already been initiated.

Reasoning

14. In the present case, the accused persons are not only found to have committed the offence of cheating but also committed the offence of forgery. The applicant, at this stage, cannot be said to be only an accomplice. The allegations and the investigation carried out till this stage points out towards the active role of the applicant in the commission of the offence.

15. The applicant has not cooperated at all in the investigation, which led to the issuance of non-bailable warrants by the concerned Trial Court. The proceedings under Section 82 of CrPC have already been initiated.

16. *Prima facie*, it appears that the forged documents were in fact prepared. The property, which is found to be belonging to the mother of 'Bhuvan Chand', was sought to be sold as if belonging to the accused 'Bhuvan Chand'. The applicant has not denied that he stood as a witness in the alleged agreement to sell by way of which the property was sought to be sold to the complainant. The screenshot of the video

footage clearly shows the applicant counting the money being given by the complainant.

17. Arrest is a part of procedure of the investigation to secure not only the presence of the accused but also to complete investigation. The grant of pre-arrest bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such extra ordinary power.

18. Pre-arrest bail is to be granted only when the court is convinced that circumstances exist to resort to that extraordinary remedy and cannot be a matter of routine. Custodial interrogation is a recognized mode of investigation which is not only permitted but is held to be more effective.

19. Interrogation of an accused, while in custody, is qualitatively different from that undertaken while the accused is enjoying protection under an order of a Court against his arrest. This is a well-recognized position in law. It is the right of the investigating agency to conduct a proper and fair investigation. The Hon'ble Apex Court, in the case of ***CBI vs Anil Sharma [1997 7 SCC 187]***, held that investigating a person appearing before the Investigating Officer under the protection of the Court order under 438 of the CrPC is qualitatively different from the custodial interrogation which would lead to better collection of evidence, thereby ensuring a proper investigation. Custodial interrogation is more elicitation – oriented than questioning an individual/suspect ensconced with a protection of Court Order.

20. Even though the accused Bhuvan Chandis in custody, the forged documents as well as the cheated amount is yet to be recovered. The

offence cannot be held to be of minor nature. The applicant has been named by not only the complainant but also other public witnesses to be actively involved with the accused 'Bhuvan Chand'. It cannot be said that the custodial interrogation of the Applicant is not required at this stage.

21. The order of bail in anticipation of arrest cannot be granted for it to be used as a shield. In the facts of the present case, it cannot be said, at this stage, that the allegations made against the applicant are frivolous or have been made to falsely implicate the applicant.

22. Keeping in mind the nature of allegations, and the fact that the applicant has not joined and cooperated in investigation which has also led to initiation of proceedings under Section 82 of CrPC, this Court feels that it is not a fit case for exercise of discretion under Section 438 of CrPC.

23. The application is, therefore, dismissed.

24. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the present bail application and should not influence the outcome of the trial.

25. *Dasti under signature(s) of the Court Master.*

AMIT MAHAJAN, J

JANUARY 27, 2023

KDK/ "SS"