

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3684/2021**

Order reserved on : 18.11.2021

Date of decision : 26.11.2021

DEEPAK JOON

..... Petitioner

Through: Mr.Jaspreet Singh, Advocate
versus

THE STATE

..... Respondent

Through: Mr.Mukesh Kumar, APP for
State

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

ANU MALHOTRA, J.

1. The applicant, vide the present application seeks the grant of anticipatory bail in relation to FIR No. 519/2021 Police Station Prem Nagar under Section 406/34 of the Indian Penal Code, 1860, submitting to the effect that he has been falsely implicated in the instant case and has no role in relation to the allegations in the FIR.

2. Notice of the application was issued to the State and the status report has been submitted by the State dated 27.10.2021 under signatures of the SHO Police Station Prem Nagar. Vide order dated 7.10.2021, the applicant was directed not to be arrested subject to his not leaving the city, joining the investigation, keeping his mobile phone on at all the times, dropping a pin on the Google map to ensure

that his location is available to the Investigating Officer till the date 29.10.2021 which interim order has since been extended vide orders dated 29.10.2021 and 18.11.2021 and subsists till date.

3. Though the applicant has sought to mention the FIR to be one under Section 406/34 of the Indian Penal Code, 1860, under which it is indicated to have been registered on 29.7.2021 the status report submitted by the State indicates that Sections 420 and 120 B of the Indian Penal Code, 1860 have also been invoked.

4. The prosecution version that has been set forth through the status report is to the effect that on 27.9.2021, the complainant Jitender Kumar Jain S/o Chela Ram Jain R/o 22A/1, New Mandi MuzzafarNagar, U.P. visited PS Prem Nagar with a written complaint alleging that he wanted to purchase a plot in Prem Nagar and in lieu of the same he had made part payment of Rs.22 lacs in cash to a person named Karan and his friend Deepak Joon on 28.7.2021 (Deepak Joon being the present applicant) but that they did not give any receipt nor property papers and rather vanished with the money of the complainant as a consequence of which on the basis of the said complaint FIR 519/21 Police Station Prem Nagar under Sections 406/34 was registered and efforts were made to trace out the accused persons but all was in vain. As per the said status report on 31.7.2021 an information was received vide DD No. 19A of Crime Branch Sector 17 Dwarka that the accused persons named Nabil Ahmed, Ravinder Singh Shah @ Ravi and Jobanjit Singh had been arrested under Sections 41.1D of the Cr.P.C., 1973 and that they had disclosed their involvement in relation to the instant case and that a sum of

Rs.22 lacs had been recovered from them. The said three accused persons were formally arrested on 31.7.2021 and one day's police custody remand was granted qua all the said three accused persons.

5. As per the status report during investigation it was brought to light that all the accused persons were running a huge nexus and were cheating public by selling of expensive property and by money laundering by use of fake IDs and names.

6. It has been submitted further through the status report that one of the accused arrested pointed out in police custody to the residence of the other co-accused persons namely Inderjit @ Lucky and Surender @ Sunny stated to be the master mind behind all these frauds and who were still absconding. It has been stated further through the status report Surender Singh and Inderjeet Singh were the persons who met the complainant at the office at Chandni Chowk, Delhi and disclosed their names as Vikram and Vinayak to the complainant and the raids were conducted at their residence and hideouts in Delhi and Jalandhar, Punjab as they were evading arrest. It was further submitted through the status report that the applicant accused is actively involved in the plan of cheating as he along with co-accused Karan had taken the sum from the complainant and took the complainant to their office at Chandni Chowk from where all the accused persons had vanished along with the money of the complainant. As per the status report, the petitioner has joined investigation on 22.10.2021 at Police Station Prem Nagar and had admitted that he met the complainant along with the co-accused Karan for the purpose of selling the plot to the complainant and also admitted

that he knows two other co-accused persons who had disclosed their names as Vikram and Vinayak and were present at the office at Chandni Chowk but that he did not admit regarding the cash which all the accused persons took from the complainant and vanished.

7. The State has further submitted to the effect that according to the petitioner he was present when the complainant handed over cash to Karan and that the petitioner was also present at the Chandni Chowk Office and all the accused person vanished with the cash of the complainant.

8. The State further submits that the name of the applicant mentioned in the FIR is Dr. Deepak Joon and therefore judicial TIP of the accused is required to establish the identity of the applicant/accused and the custodial interrogation of the accused is very much required for the purpose of judicial TIP and to know the facts and circumstances of the case.

9. Inter alia, it is submitted by the State that the co-accused persons are yet to be arrested and if the applicant is granted bail he would threaten the victim and abscond and that the total sum of Rs.45 lacs in cash was recovered from the three accused persons arrested by the Crime Branch, i.e. Rs.22 lacs in the present case and Rs.23 lacs in Case FIR no. 488/21 dated 27.7.2021 under Sections 420/406 of the Indian Penal Code, 1860, Police Station Bhiwadi, Rajasthan where also the accused persons had cheated with the same *modus operandi* and that the applicant is also wanted in that case.

10. On behalf of the applicant, reliance is placed on the contents of the FIR itself submitting to the effect that there are no serious

allegations against the applicant in relation to the alleged commission of any offences and submitting also to the effect that no overt act is attributed to the applicant in relation to the commission of any offences. The contents of the translated version of the FIR put forth on the record read to the effect:

“To, the SHO, Police Station Prem Nagar, Delhi-86, Subject:- Complaint of Cheating On the name of earnest money. Sir, I Jitender Kumar Jain Son of Sh. Chela Ram Jain, Resident of 22A/1 , Bazar-A, New Mandi, Mujjafar Nagar, Uttar Pradesh-251001 requested you that I am permanent resideint of the above mentioned addressee. I was in need of a plot in the area of Prem Nagar Delhi, thus, I used to came here to search /watch the plots, however, due to non availability of good plot, I was unable to purchase the plot. I told to many peoples of Prem Nagar area that if any plot for sale then they let me know. One day, I was roaming in the area of Prem Nagar for searching plot, I find a plot, which suitable for me according to my need. Then a person came there and who introduce himself Karan and I told him that I came here for the purchase of plot and I like this plot, then he told that this plot is mine and the area of the plot is 200 sq. yards. This plot is vacant plot situated at Nithari Chowk Sukhi Nehar Road between Classic electronic and Ankit Dhaba. Karan has told me rate of the plot @ 44 thousand per square yards. When I told that rate is high, then Karan told that average rate is 50 thousand, but we told you minimum price. Karan told that if you want to purchase the said plot then you have to pay 25% as advance and the remaining payment after 6 months at the time of registry. I like that plot and I return back to home for bringing money and told to the Karan. On dated 28th July, 2021 I reached at the plot at Prem Nagar and bring 25%(22 Lakhs Rupees), where Karan was present alongwith one person, when I enquired from Karan about him then he told that he is my partner and his name is Doctor Deepak Joon. I handed over earnest money as 25% (22 lakhs Rupees) in cash to Karana and I asked him to prepare the Bayana Agreement then he told that our Gaddi is situated in

Chandni Chowk at Gali Kucha Ghasi Ram Ground Floor 304, where you can get Banyana receipt. Then we went for gaddi and there I saw that two persons are sitting there. I asked that who are they, then he asked that they are our associates and introduced themselves in which one person's name is Vinayak and other's name is Vikram. When I asked for receipt then they said that our person Santosh Sindhinia will come soon after preparing receipt. After some time, Vikram said that I will come and he went from there and thereafter Vinayak said I going outside for smoking and also told tea for you. After some time, tea seller came and return back. Thereafter, I asked to Karan and Doctor Deepak Joon that till yet receipt not received and nor Vikram and Vinayak came back, however, Doctor Deepak Joon talked on phone with one Sonu. Then I asked them for some time for receipt then they said that the receipt will come soon and after some time they left from there by saying that they will confirm about the delay in receipt, however, till evening no one is came back. I called to Karan on his mobile number 9582366567, however, his mobile phone got switched off and the same is switched off till yet. I wait some time there, when they not came back then I presume that they have cheated me. After the said incident, I enquired by myself and came to know that some criminal persons are involved in the same. 1. Abishek Bhati Resident of Roorki, 2. Sonu Resident of Hardiwar, 3, Deepak Resident of Karawal Nagar, 4. Ravinder Shah Resident of Karawal Nagar, 5. A.K Singh, 6. Umesh Patel. Thus, I requested you to kindly register my complaint and take strict legal action against them and help me to return my money. Obligated. Thanking You. Applicant Jitener Kumar Jain Son of Shri Chela Ram Jain, 22A/1, Bazar-A, New Mandi, Mujjafar Nagar, Uttar Pradesh-251 00 I, Dated 29th July, 2021.”

11. The sum of Rs.22 lacs which the complainant allegedly handed over in cash to the accused Karan allegedly in the presence of the applicant has already been recovered as per the status report dated 27.10.2021 submitted by the State on 31.7.2021 in proceedings qua

DD No. 19A Crime Branch, Sector -17 as received from the Sector-17 Dwarka from Nabil Ahmed S/o Nisar Ahmed, Ravinder Singh Shah @Ravi S/o Kundan Singh Shah and Jobanjit Singh S/o Kartar Singh who are not even named in the FIR in question. The applicant submits that on the date 28.7.2021 when he is alleged to have been present at Prem Nagar with the co-accused Karan when the complainant handed over Rs.22 lacs in cash to the co-accused Karan, the co-accused had asked him to prepare the Bayana Agreement, the applicant was in fact at Dwarka which can be verified from his mobile location and that in any event the applicant had not taken any money from the complainant and had not forged any document to cheat the complainant at any point of time.

12. The applicant further submits that the cheated amount has already been recovered from the co-accused named Nabeel Ahmed and nothing is left to be recovered from the applicant and that the applicant has to look after his two children, wife and aged parents and his arrest would cause grave impact on his reputation and the future of his children. The applicant further submits that the ingredients of the alleged commission of offences punishable under Sections 406/120B read with Section 420 of the Indian Penal Code, 1860 are not made out against him. That though the applicant is shown to be a doctor in the FIR, the petitioner has never been a doctor and is only a lab technician since 2013.

13. The applicant further submits that the offences alleged in the FIR are punishable with imprisonment of less than 7 years and he is entitled to the benefit of the judgment of the of the Hon'ble Supreme

Court in ***Arnesh Kumar V. State***; (2014) 8 SCC 273. Inter alia, reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court on the verdict ***Md. Ibrahim V. State of Bihar***; (2009) 8 SCC 751 to contend to the effect that the necessary ingredients for establishing the element of cheating under Section 420 of the Indian Penal Code, 1860 are not brought forth even remotely in as much as there has been no deception by the applicant to the complainant by making any false or misleading representation or by dishonest concealment or by any other act or omission and there has been no property delivered to the petitioner pursuant to any fraudulent or dishonest inducement by the applicant.

14. The applicant further submits that no notice under Section 91 of the Cr.P.C., 1973 was served to the petitioner by the concerned Investigating Officer at any time and that there is no other FIR registered giving the name of the petitioner and no direct involvement or connivance of the petitioner has been brought forth by the complainant nor by the Investigating Agency.

15. Reliance is also sought to be placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***All Cargo Movers (India) Pvt. Ltd. Versus. Dhanesh Badarwal Jain***; (2007) 14 SCC 776 wherein it has been laid down in para 16 to the effect:

".....Criminal Proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior Courts while exercising this power should also strive to serve the ends of justice"

16. The applicant further submits that the allegations against the applicant in the FIR are vague and that the applicant is not required for any custodial interrogation or investigation.

17. On a consideration of the submissions that have been made on behalf of either side, without any observations on the merits or demerits of the trial that may take place in relation to FIR No. 519/2021 Police Station Prem Nagar, it is essential to observe that as per the averments made in the FIR, the amount of Rs.22 lacs of which the petitioner was allegedly duped of was handed over by the complainant to the co-accused Karan on 28.7.2021.

18. The complainant has averred through the FIR that he was in the need of a plot in the area of Prem Nagar and on one day he was roaming in the area of Prem Nagar searching for a plot and on finding plot suitable to his needs, a person named Karan came there who introduced himself and when he told him that he had come there for a plot that man Karan informed the complainant that that plot belonged to him and the area of the plot was 200 sq. yards situated at Nithari Chowk, Sukhi Nahar Road, between Classical Electronics and Ankit Dhaba and Karan told that he would sell the plot to him at the rate of Rs. 44,000/- per sq.yards and that the complainant would have to pay 25% advance and the remaining payment after six months at the time of registration of the documents, and as the complainant liked the plot, came on 28.7.2021 the complainant reached the plot at Prem Nagar and had brought Rs.22 lacs i.e. 25% of the amount for the sale of the plot where Karan was present along with the applicant whom he informed to be his partner and the complainant handed over the

amount to Karan and asked him to prepare the Bayana Agreement and Karan informed that he would get the Bayana receipt at Gaddi at Chandni Chowk, Gali Kucha Ghasi Ram, Ground Floor, 304, where their Gaddi was situated.

19. Apparently, the amount of Rs.22 lacs, as adverted to hereinabove through the FIR, was handed over by the complainant to the co-accused Karan without any intervention whatsoever from the applicant, who was merely introduced by the co-accused to the complainant as being the partner of Karan.

20. The complainant is stated to have gone to the Gaddi i.e. at Chandni Chowk where he found two persons sitting who introduced themselves being Vinayak and Vikram and when they were asked for the receipt, they told that one person named Santosh Sidhania would come soon with the prepared receipt but after some time when the complainant allegedly told Karan and Dr. Deepak Joon,(the applicant herein) that the receipt had not been received but Dr. Joon was busy speaking on telephone with one Sonu and then the complainant asked them for the receipt and the persons said that they would enquire about the delay in the receipt.

21. Apparently, as rightly contended on behalf of the applicant no overt act is attributed to the applicant qua the alleged commission of offences punishable under Sections 406/120B of the Indian Penal Code, 1860 read with Section 420 of the Indian Penal Code, 1860 in as much as the complainant had handed over the money to the co-accused Karan without any intervention from the applicant, and without any inducement from the applicant.

22. Furthermore, the sum of Rs.22 lacs in relation to the instant FIR already stands recovered. As regards the submission by the State that the applicant's custodial interrogation is required to unearth the conspiracy or other persons involved as well as for conducting his judicial Test Identification Parade, as the applicant is clearly named in the FIR itself and thus the custodial interrogation of the applicant for conducting of the judicial Test Identification Parade is not required.

23. As regards the involvement of other co-accused in the matter and their apprehension, in the facts and circumstances of the instant case where apparently there is no overt act attributed to the applicant till the time the complainant handed over the money to the co-accused Karan apart from his having been present with Karan, the co-accused allegedly, and all that is attributed against the applicant is that when the receipt for the sum of Rs.22,00,000/- was not given by the persons at the Gaddi at Chandni Chowk when the complainant asked the co-accused Karan and Dr. Deepak Joon, the applicant herein, that the receipt had not come nor had the other person Vikram and Vinayak who were at that Gaddi had come back, the accused Karan and the applicant stated that the receipt would come soon and Dr. Deepak Joon, i.e., the applicant was busy speaking on the phone with one Sonu, without it even being specified as to what he was speaking about, taking into account also the aspect that the offence punishable under Section 406 of the Indian Penal Code, 1860 is punishable with imprisonment for a period of three years and Section 420 of the Indian Penal Code, 1860 is punishable with imprisonment to a term which may extend upto seven years and taking into account the factum that

the sum of which the complainant has already been duped allegedly i.e. Rs.22 lacs has already been recovered in the matter, it is apparent that no custodial interrogation of the applicant is required. In view thereof the applicant in the event of arrest is allowed to be released on bail on filing a personal bond in the sum of Rs.50,000/- with two sureties in the like amount to the satisfaction of the Trial Court with directions that :

- the applicant shall not leave the country;
- the applicant shall join the investigation as and when required;
- the applicant shall keep his mobile phone on at all times by dropping a pin on the Google map to ensure that his location is available to the Investigating Officer and;
- the applicant shall commit no offence whatsoever during the period that the applicant is on anticipatory bail in the instant case.

The petition is disposed of accordingly.

Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial in the case.

ANU MALHOTRA, J.

NOVEMBER 26, 2021/SV