

(2005) 08 DEL CK 0087**Delhi High Court****Case No:** Bail App. 1491 of 2004

Ajay Narain

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 25, 2005**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 415, 420

Hon'ble Judges: Pradeep Nandrajog, J**Bench:** Single Bench**Advocate:** Sandeep Sethi and K.B. Andley and M.L. Yadav and Pawan Bindra, for the Appellant; M.N. Dudeja, for the Respondent**Judgement**

Pradeep Nandrajog, J.

Petitioner seeks anticipatory bail in FIR No. 130/2004 attracting Section 420 IPC. Since 2.8.2004, petitioner has remained under interim protection. I may note that it is not the case of the State that the petitioner has not been joining in the investigation as and when required.

2. FIR is pursuant to a complaint lodged by Ms. Arti Singh and her husband Kanwar Raj Singh alleging forgery and cheating by the petitioner, Shri Vikram Seth and Man Mohan Kapoor. As per the complaint, Arti Singh was a tenant on the second floor of house No. 110, Jor Bagh, New Delhi. She got married to Kanwar Raj Singh in December 1991. On 9.12.1996, petitioner agreed to sell the first and second floor of House No. 110, Jor bagh, New Delhi. Price settled was Rs.40 lacs for the first floor and Rs.20 lacs for the second floor. As per the complaint, sale price was paid. Petitioner executed a General Power of Attorney, an agreement to sell i.e. the usual documents which are being executed in Delhi to convey title. As per the complaint, complainants learnt that notwithstanding recital in the agreement to sell that the property was free from all encumbrances, complainants learnt that the property was mortgaged with the Central Bank of India. As per the complainants, the petitioner forced certain documents and in particular two letters purportedly written

by the complainants. Letters which were alleged to have been created by the petitioner were intending to show that sum of Rs.60 lacs received by the petitioner from the complainants was by way of loan and Rs. 45 lacs were returned.

3. Complainants and the petitioner are involved in a civil litigation. Complainants have filed a suit for specific performance. Petitioner has filed a suit for declaration and mandatory injunction.

4. Two writings relied upon by the petitioner as being those of the complainants were referred to CFSL. The CFSL opinion is that the same do not bear the signatures of the complainants.

5. In the civil litigation between the parties, vide order dated 26.7.1999 passed in Suit No. 1336/98, a learned Single Judge has *prima facie* opined in favor of the complainants. Appeal against the said order being FA(OS) 248/99 has been dismissed.

6. Shri K.B. Andley, Senior Advocate appearing for the petitioner urged that the dispute is essentially a civil dispute between the parties. It was accordingly urged that the petitioner should be admitted to anticipatory bail.

7. Merely because a civil claim is maintainable in a given set of facts would not mean that a criminal action would not lie. See 2000 (III) AD SC 629, Lalmuni Devi v. State of Bihar and Ors. 2004 (IV) AD DHC 315, Narender Dev Relan v. State and Ors. 2000 (II) AD SC 13, M/s Medchi Chemicals and Pharma Pvt.Ltd. v. Biological E.Ltd. and Ors.

8. A perusal of the complaint shows commission of a cognizable offence. As per the complaint, property was already mortgaged with the bank and in spite thereof, petitioner gave an assurance that it was free from all encumbrances. Further, CFSL report, *prima facie* shows that the petitioner has forged the signatures of the complainants.

9. Explanation to Section 415 IPC shows that an dishonest concealment of fact is a deception within the meaning of cheating as defined in Section 415 IPC.

10. Grant or refusal of anticipatory bail depends on various circumstances. It should normally not be allowed to circumvent the normal procedure of arrest and investigation or to prejudice the investigation. While exercising judicial discretion to grant anticipatory bail, the court should not be unmindful of the difficulties likely to be faced by the investigating agency as also public interest likely to be affected if anticipatory bail is granted. Indeed, anti social adventure need to be viewed seriously.

11. Under ordinary circumstances, I may have declined to confirm the interim anticipatory bail granted. But for the reason that the offending acts complained of were committed as far back as in 1998 and parties are in civil litigation since 1998.

12. As of today, investigation has been completed. Evidence is by and large documentary. It is not the case of the complainants that the petitioner has been

threatening them. It is not the case of the State that custodial interrogation of the petitioner is necessary.

13. Petition accordingly stands disposed of with a direction that in the event of arrest by the Investigating Officer, petitioner would be admitted to bail on his furnishing a personal bond in the sum of Rs.10,000/- with one surety in the lime amount to the satisfaction of the Arresting Officer in FIR NO. 130/2004 P.S. Lodhi Colony. Needless to state that the anticipatory bail granted to the petitioner would endure till the challan is filed. However, before filing the challan, I.O. shall give 7ays prior intimation to the petitioner informing the petitioner of the fact that challan is going to be filed.

14. dusty.