



2026:DHC:7480



\$~1 & 2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 03.09.2026*

CNR No. DLHC010121812026

+ **BAIL APPLN. 1220/2026**

YAGYA DUTT SHARMA

.....Petitioner

Through: Ms. Monika Arora and Mr.
Subhrodeep Saha and Ms. Anamika
Thakur, Advocates

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for State
with SI Rahul Lamba
Mr. Anil Kumar, Advocate for
complainant *de facto* with
complainant *de facto* in person

CNR No. DLHC010122262026

+ **BAIL APPLN. 1221/2026**

SHWETA SHARMA

.....Petitioner

Through: Ms. Monika Arora and Mr.
Subhrodeep Saha and Ms. Anamika
Thakur, Advocates

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for State
with SI Rahul Lamba



2026:DHC:7480



Mr. Anil Kumar, Advocate for
complainant *de facto* with
complainant *de facto* in person

CORAM: JUSTICE GIRISH KATHPALIA

COMMON JUDGMENT (ORAL)

1. The accused/applicants seek anticipatory bail in case FIR No. 109/2025 of PS Saket, South Delhi for offence under Section 420/468/471/34 IPC. The factual and legal matrix being same, those applications are taken up and heard together.
2. On last date, these anticipatory bail applications had to be adjourned because counsel for complainant *de facto* could not reach and status report also was awaited. Today, I have heard learned counsel for accused/applicants and learned APP for State, assisted by IO/SI Rahul. I have also heard at length, learned counsel for complainant *de facto*.
3. Broadly speaking, the prosecution case is as follows. The FIR was registered on the complaint of Ms. Madhu Bala Soni, alleging that she took a loan of Rs.25,00,000/- from both the present accused/applicants after mortgaging her flat; that the transaction was mortgage and not sale of the subject flat, though admittedly the transaction was by way of registered sale



2026:DHC:7480



deed; that the parties also executed MoU dated 04.07.2017, contemplating that the loan would be repaid within five years, after which, the present accused/applicants would return the subject flat to her; that she had repaid Rs. 13,77,000/- to the present accused/applicants, but they violated the MoU and sold away the subject flat to two other persons. Subsequently, in the year 2022, the complainant *de facto* also filed a civil suit for specific performance of contract. In the said suit, the present accused/applicants filed written statement, relying upon two MoUs, dated 04.07.2017 and 16.09.2020. According to the accused/applicants in their written statement, there were two MoUs dated 04.07.2017 and one MoU dated 16.09.2020 and they filed photocopies of those MoUs before the civil court, pleading specifically that the original MoUs are in possession of the complainant *de facto*. According to prosecution, this amounts to the offence of cheating.

4. Against the above backdrop, it is argued on behalf of the accused/applicants that what is a plain and simple case of civil liability, has been given colour of criminality and no offence of cheating is made out. It is submitted that the issue of civil liability and validity of sale executed by the accused/applicants in favour of those two strangers is already pending before the civil court of competent jurisdiction, so there is no need to deprive the accused/applicants of their liberty.

5. Learned APP for State opposes these anticipatory bail applications on



the ground that it is a clear case of cheating because despite having executed MoU dated 04.07.2017, the accused/applicants instead of returning the subject flat to the complainant *de facto*, sold away the same to strangers.

6. Learned counsel for complainant *de facto* supplements the submissions of State and contends that this is not a fit case for grant of anticipatory bail because the original MoUs dated 04.07.2017 and 16.09.2020 have not been handed over by the accused/applicants to the IO for forensic analysis, so it is a case requiring custodial interrogation. It is also submitted by learned counsel for complainant *de facto* that the accused/applicants falsely stated before the IO that originals of those MoUs are in possession of the complainant *de facto*.

7. No other argument has been advanced by either side.

8. So far as the issue of requirement for custodial interrogation is concerned, liberty cannot be denied merely for asking by the IO. The IO must justify the requirement to carry out custodial interrogation. In the present case, as mentioned above, stand of the accused/applicants is that those two original MoUs are with the complainant *de facto*, whereas stand of the complainant *de facto* is that those original documents are with the accused/applicants. The stand of the complainant *de facto* in this regard fails to convince for two reasons. Firstly, the first MoU dated 04.07.2017 in



original was admittedly with the complainant *de facto*, so it does not appear plausible that the second MoU dated 04.07.2017 and the third MoU dated 16.09.2020 in originals would not be retained by the complainant *de facto*. In the civil suit, the photocopies of those two MoUs were filed by the accused/applicants pleading specifically that originals are with the complainant *de facto*. Secondly, if the complainant *de facto* wanted to reclaim the subject flat, as per natural human conduct, original MoUs would be retained by her only. Where the complainant *de facto* retains the original documents, requirement expressed by the IO to carry out custodial interrogation does not appear to be a sound requirement to the extent of depriving the accused persons' liberty.

9. Admittedly, the transfer of the subject flat from the complainant *de facto* to the accused/applicants was by way of registered sale deed. There is no mortgage deed. The complainant *de facto* wants to nullify a registered instrument (Sale Deed) with an unregistered document (MoU). I am of the *prima facie* view that the dispute between the complainant *de facto* and the accused/applicants is only a civil dispute, for which denial of liberty to the accused/applicants would not be sustainable in the eyes of law. As mentioned above, the civil suit has already been filed and law shall take its course. However, I must also add a cautious rider that the above observations have been recorded for limited purposes of dealing with the rival arguments on grant of the anticipatory bail. The learned trial court, at



2026:DHC:7480



the final stage, shall take independent view on the basis of evidence adduced by both sides.

10. Therefore, both these applications are allowed and it is directed that in the event of their arrest, the accused/applicants shall be released on bail, subject to each of them furnishing a personal bond in the sum of Rs.50,000/- with one surety each in the like amount to the satisfaction of the IO/SHO concerned.

**GIRISH KATHPALIA
(JUDGE)**

SEPTEMBER 03, 2026/as