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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 61/2012

GIRDHAR LOHANI

..... Petitioner
Through: Mr. Vijay Aggarwal, Advocate with
Mr. Gorang Gopi and Mr. Saurabh
Bhatia, Advocates.

versus

STATE & ORS

..... Respondents
Through: Mr. Manoj Ohri, APP for State with
SI Sudhir Kumar, PS Model Town.

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Date of Decision: 19th July, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J : (Oral)

1. The petitioner has filed the present petition for grant of anticipatory bail. The allegation against the petitioner-tenant is that he has forged and fabricated a Codicil dated 16th December, 2009 of his landlord in order to grab the front portion of First Floor of property bearing No. D-14/A-6, Model Town-II, Delhi.

2. On 16th January, 2012, this Court had referred the original Codicil to FSL for comparison and analysis.

3. Now, the FSL report has been received. It states that the Codicil relied upon by the petitioner has not been signed by the deceased landlord-owner.

4. Learned counsel for petitioner relies upon Section 41 of the Evidence Act to submit that till the probate is granted, no criminal proceedings can be initiated.

5. In this context, he relies upon the judgment of this Court in ***Crl.M.C. No. 620/2009 Ravinder Kumar Jain & Anr. vs. State & Ors.*** and the judgment of two judges' Bench of the Supreme Court in ***Sardool Singh and Another vs. Smt. Nasib Kaur 1987 (Supp) SCC 146*** wherein it has been held as under:-

“2. A civil suit between the parties is pending wherein the contention of the respondent is that no Will was executed whereas the contention of the appellant is that a Will has been executed by the testator. A case for grant of probate is also pending in the court of learned District Judge, Rampur. The civil court is therefore seized of the question as regards the validity of the Will. The matter is sub judice in the aforesaid two cases in civil courts. At this juncture the respondent cannot therefore be permitted to institute a criminal prosecution on the

allegation that the Will is a forged one. That question will have to be decided by the civil court after recording the evidence and hearing the parties in accordance with law. It would not be proper to permit the respondent to prosecute the appellants on this allegation when the validity of the Will is being tested before a civil court. We, therefore, allow the appeal, set aside the order of the High Court and quash the criminal proceedings pending in the Court of the Judicial Magistrate, First Class, Chandigarh in the case entitled Smt. Nasib Kaur V. Sardool Singh. This will not come in the way of instituting appropriate proceedings in future in case the civil court comes to the conclusion that the Will is a forged one. We of course refrain from expressing any opinion as regards genuineness or otherwise of the Will in question as there is no occasion to do so and the question is wide open before the lower courts.”

6. A little further research on the part of the petitioner would have revealed that subsequently a three judges’ Bench of the Supreme Court in ***Syed Askari Hadi Ali Augustine Imam & Anr. Vs. State (Delhi Admn.) & Anr., (2009) 5 SCC 528*** has observed with regard to ***Sardool Singh and Another*** (supra) as under:-

“No ratio, however, can be culled out therefrom. Why such a direction was issued or such observations were made do not appear from the said decision.”

(emphasis supplied)

7. In fact, in *Syed Askari Hadi Ali Augustine Imam & Anr.*

(supra) the Supreme Court has observed as under:-

“Effect of pendency of a probate proceeding vis-à-vis a criminal case involving allegations of forgery of a Will is the question involved in this appeal....

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19. *Mr. Dinesh Dwivedi, learned Senior Counsel appearing on behalf of the appellants, would urge:*

(i) A judgment in a probate proceeding being a judgment in rem as envisaged under Section 41 of the Indian Evidence Act, the criminal proceedings should have been directed to be stayed.

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21. *Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case.*

22. *It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as*

expeditiously as possible. The law in this behalf has been laid down in a large number of decisions. We may notice a few of them.....”

8. Consequently, the submission advanced by learned counsel for the petitioner is not correct.

9. It also transpires that bail of another co-accused in the present FIR has already been rejected by a Coordinate Bench of this Court in Bail Appln. 147/2012 on 01st February, 2012. The relevant portion of the said order is reproduced hereinbelow:-

“10. Ld. Counsel further submits that since the civil case is filed by the complainant and probate case is filed by Girdhar Lohani, therefore till now, it is not established whether the documents in question is a forged. Therefore, till the report comes, on parity, he should also not be arrested.

11. Ld. APP on the other hand submits that though this court has given protection to co-accused mentioned above, however petitioner is a main accused who is dealing in sale and purchase of property. Therefore, without his connivance, the documents in question could not have been prepared. Therefore, custodial interrogation is required for the purpose of “modus operandi” and the trail of the benefits divided between them. He may also temper or influence the witnesses.

12. The petitioner with co-accused person usurped the aforementioned property of legal heirs, as all the accused persons are known to each other prior to commission of this offence.

13. Though the coordinate bench of this court has directed the police not to arrest co-accused Girdhar Lohani as counter civil cases are pending against each other. However, the petitioner is not on the same footing. The Investigating Authority cannot be put on hold. His custodial interrogation can give direction to the police. If during investigation, nothing found against the petitioner, then police may get him free. Therefore, I am not inclined to admit him on anticipatory bail.”

10. Keeping in view the aforesaid as well as the FSL report, this Court finds no merit in the present petition. Accordingly, the same is dismissed.

MANMOHAN, J

JULY 19, 2012

js/rn