

*** HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPL. No.413/2012

Date of Decision : 27.3.2012

AJIT SINGH YADAV

..... Petitioner

Through: Mr. Sunil Malhotra, Adv.

Versus

STATE

..... Respondent

Through: Mr. Sunil Sharma, APP

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (Oral)

1. This is the third application for grant of anticipatory bail by the petitioner.
2. I have heard the learned counsel for the petitioner at length. He has contended that the petitioner deserves to be enlarged on anticipatory bail as the sale agreement on the basis of which the petitioner is alleged to have cheated the complainant, Jagdish Maan (deceased) is a forged and fabricated document.
3. It has been contended by the learned counsel that the petitioner had already joined the investigation and he

was interrogated by the police. It is contended that during the course of investigation, the police has not recorded the statement of the notary public or any of the witnesses although, the charge sheet against the co-accused has been filed. It has been contended by him that the petitioner is not in any way connected with the chain of documents on the basis of which transaction has been taken place nor did he authorize or ask anyone to impersonate as Rajesh Sharma to sell the property. The petitioner is stated to be 60 years of age and the only evidence which is alleged to have been gathered against him, is the purported disclosure statement made by one Gabbar Singh, who is alleged to be his driver. It has been contended by the learned counsel that this is essentially a civil dispute between the parties which is pending since 2006 which is sought to be given a criminal colour only with a view to extract money from the petitioner.

4. The learned counsel has also placed reliance on the judgment of the Apex Court in **Ravindra Saxena Vs. State of Rajasthan** 2010 (1) SCC 684 and **Manoj Rana Vs. The State** (NCT of Delhi) 2010 (4) JCC 2448 in support of his submission.
5. The learned APP has vehemently opposed the grant of anticipatory bail to the petitioner. He has also been assisted by a private counsel representing one of the complainants against the petitioner. It has been contended by the learned APP that the case is at the crucial stage of investigation and the nature of transaction which has been entered into by Gabbar Singh at the instance of the petitioner is so complex that the real facts could not be unearthed unless and until custodial interrogation of the petitioner is carried out. It has been further stated that the petitioner is the main kingpin of the entire transaction. Firstly, he had asked his driver Gabbar Singh to represent as Rajesh Sharma and approach the complainant. He took an amount of ₹12

lacs by agreeing to sell a land measuring 7 bighas and 11 biswas in Village Rajokari, Vasant Kunj, for a total sale consideration of ₹1.17 crores and later sold the same land by different sets of documents through his driver to one Kishan Lal. It is the case of the prosecution that the land did not belong to the petitioner or Gabbar Singh at all. The land was sold by the duo by impersonating Rajesh Sharma. The actual owner has filed a civil suit against various persons who are claiming the ownership of the said property on the basis of the transactions emanating from the petitioner and his driver.

6. On the basis of these serious allegations of cheating, forging documents and using the forged documents as genuine, the learned APP has opposed the grant of anticipatory bail to the petitioner.
7. I have carefully considered the submissions made by the learned counsel for the petitioner as well as learned APP and gone through the record.

8. Briefly stated the facts of the case are that the present FIR no. 282/2006, u/S 419/420/467/468/471/120B IPC was registered on the basis of a complaint made by one Jagdish Maan (since deceased) that he came in contact with the present petitioner in the month of November, 2005 and he introduced one Rajesh Sharma to him who projected himself to be the owner of a land measuring 7 bighas and 11 biswas in Village Rajokari, Vasant Kunj. It has been alleged that Gabbar Singh, driver of the present petitioner who has already been enlarged on regular bail had represented himself as Rajesh Sharma on asking of the petitioner and both the petitioner and Rajesh Sharma @ Gabbar Singh had represented him to be the owner of the land which was agreed to be sold to Jagdish Maan vide agreement dated 2.12.2005 for a total consideration of ₹1.17 crores out of which, an advance of ₹12 lacs was paid by the complainant to Rajesh Sharma at the time of signing of the agreement.

9. The amount of Rs.12 lacs is alleged to have been shared by Gabbar Singh posing as Rajesh Sharma and the present petitioner. After having entered into this transaction, Gabbar Singh had sold the said land representing himself as Rajesh Sharma and executed the sale deed in respect of the same property on 16.1.2006 in favour of a third person. For selling this property to a third person, a fresh chain of documents were created and the property was sold to Kishan Pal using the forged documents and an amount of ₹24 lacs is alleged to have been taken from Kishan Pal also.
10. The prosecution has gathered evidence with regard to the petitioner being the main kingpin of cheating two different sets of persons and alluring them into a deal in respect of a property which was not owned by him or his driver Gabbar Singh @ Rajesh Sharma.
11. On the basis of the aforesaid complaint, an FIR was registered under Section 419/420/467/468/471/120B

IPC that is for an offence of cheating, forging a document and using a forged document as genuine.

12. The pleas which have been taken by the learned counsel for the petitioner for grant of anticipatory bail are the old age of the petitioner and the fact that he has denied any involvement in the transaction of the land in question and there is lack of evidence for the same.
13. It has not been denied by the learned counsel for the petitioner that Gabbar Singh was his driver and there is a definite prima facie evidence against Gabbar Singh who had represented himself as Rajesh Sharma. Gabbar Singh is purported to have made his disclosure statement which has led to the discovery of new facts that it was the petitioner who had acted as a kingpin and shared the sale proceeds received from both the transactions, therefore, it is, prima facie, sufficient ground to lead the interrogation of the petitioner. Experience has shown that there is a perceptible difference between an interrogation, which takes place when a petitioner is

enjoying the protection of Court order and when there is absence of protection of the court order. This fact has also been noted by the Supreme Court in case titled **State (CBI) Vs. Anil Sharma** (1997) 7 SCC 187 that custodial interrogation leads to an elucidatory facts which a person tries to conceal when he has got a bail order in his pocket.

14. In the instant case, the nature of allegations are so serious that the police would not be able to reach at the root of the matter without subjecting the petitioner to custodial interrogation.
15. The contention of the learned counsel for the petitioner that he has joined the investigation or that he is prepared to join the investigation are of no consequence, keeping in view the allegations, the benefit of anticipatory bail is not to be given as a matter of course so as to kill the prosecution case in the womb itself which would happen in the instant case in the event the petitioner is granted anticipatory bail. Moreover, the power of grant of

anticipatory bail is concurrent both with the Court of Sessions and with the High Court.

16. The petitioner having availed of two opportunities of approaching the Trial Court for grant of anticipatory bail and having failed to get a favourable order, I feel it is totally improper for the petitioner to file the present anticipatory bail application because no new fact has arisen or brought to my notice which may not have already received consideration by the Sessions Judge. A detailed and reasoned order has already been passed on 17.3.2012 by the Court of Sessions.
17. In the judgment of the Apex Court in Ravindra Saxena's case (supra), anticipatory bail was given to the accused where the facts were such that there was a dispute between the appellant and the complainant regarding sale of specific flats and the complainant had filed a suit for specific performance. In the present case, there is no dispute between the complainant and the present petitioner in the Civil Court nor has anything been shown

in this regard. On the contrary, it has been stated that the actual owner Rajesh Sharma has filed a suit against Kishan Pal who is purported to have purchased the land in question through Gabbar Singh and the present petitioner. Therefore, a distinction has to be drawn between the facts of these two sets of cases. In the instant case, the very substratum of the complaint is forgery of a document with regard to the title of property and using forged document as genuine by persuading the complainant i.e. Jagdish Maan to enter into the transaction and take a sum of Rs.12 lacs from him. Therefore, the facts are totally different and the ratio of the said case is not applicable to the facts of the present case.

18. Similarly, in Manoj Rana's case (supra) also, the Court has observed that a person cannot be detained for custodial interrogation only on the strength of a disclosure statement, there must be independent evidence. In the present case, the custodial

interrogation of the petitioner is sought not only on the basis of the disclosure statement of Gabbar Singh but there is ample evidence otherwise also which would warrant his custodial interrogation.

19. I do not find any merit in the present anticipatory bail application of the petitioner and accordingly, the same is rejected.

V.K. SHALI, J.

MARCH 27, 2012
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