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

Judgment delivered on: 20th January, 2016

+ BAIL APPLN. 133/2016

RAM MURTI DEVI & ORS

..... Petitioners

Represented by: Mr. V.K. Garg, Sr. Adv.
with Mr. P.K. Aggarwal, Ms. Noopur Dubey
and Mr. Prashant Shama, Advs.

versus

STATE (THROUGH PUBLIC
PROSECUTOR)

..... Respondent

Represented by: Mr. Ashish Dutta, APP for
the State with SI Rampal, PS-Safdarjung
Enclave.

Mr. Ajay Avinashi, Mr. S.P. Kaushal,
Mr. Madhu Sudan Bhayana and Ms. Dipti
Bhatia, Advs. for Complainant.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of the present petition, filed under Section 438 Cr.P.C., petitioners seek directions thereby releasing them on bail in the event of arrest in case FIR No.1038/2015 registered at police station

Safdarjung Enclave for the offences punishable under Sections 420/467/471 of the IPC.

2. Ld. Counsel appearing on behalf of the petitioners submits that initially Late Kali Ram became the owner of the land bearing no. 51A, Arjun Nagar (then “Village Humayunpur” Delhi) in the year 1943-44 when said land was governed by U.P. Land Revenues Act, 1901 and Punjab and Agra Tenancy Act in the year 1943-44.

3. On 05.03.1948 ‘Patta Dawami’ in respect of the land in question was executed by Late Kali Ram in favour of Rameshwar Dass and Bhagwan Das, sons of Maman Chand and a “Patta Deed” was registered on 23.04.1948. Thereafter, aforesaid Rameshwar Dass started constructing houses over the land for inducting tenants.

4. On 14.06.1951, Patwari Form no. 16 of the said village was issued to Late Rameshwar Dass, wherein stated that Kali Ram had transferred the Patta in the name of Rameshwar Dass and that the transaction was admitted by all of them as on 30.05.1951. Thereafter, Delhi Land Reforms Act, 1954 was notified to provide for modification of Zamindari System so as to create a uniform body of peasant proprietor intermediaries for the unification of the (1) Punjab and (2) Agra systems of tenancy laws within the State of Delhi. On 23.03.1959, MCD recognized Rameshwar Dass as owner in respect of the property in question. Thereafter, in the year 1962, Sh. Maman Chand, father of Rameshwar Dass had established a shop under the Delhi Shops and Establishment Act, 1954 for the sale of kerosene oil

at the property in question. Thereafter, on 03.05.2016, DDA recognized Rameshwar Dass as an owner of the land.

5. Ld. Counsel further submits that Late Kali Ram executed two Wills; one in the name of the petitioners and second in the name of the complainant and on the basis of the Will the petitioners are claiming their right over the property in question and for that they filed a petition before this Court being W.P.(C) 7728/2008, which was dismissed as withdrawn vide order dated 28.03.2012.

6. Ld. Counsel further submits that if the contents of the complaint are accepted as true, even then the offences punishable under Sections 420/468/471 are not made out against the petitioners. Therefore, the petitioners are entitled for anticipatory bail.

7. To strengthen his arguments, ld. Counsel has relied upon a case of ***Mohd. Ibrahim and Ors. v. State of Bihar and Anr. 2009 (8) SCC 751.***

8. It is not in dispute that the petitioners were granted interim bail by the Addl. Sessions judge, accordingly, they joined the investigation. However, they did not file the relevant documents asked by the Investigating Officer which are necessary to investigate the case.

9. It is further not in dispute that collusive suits were filed by Rameshwar Dass and through those suits, petitioners tried to derive

and strengthen their ownership rights. But said move was to usurp the property of the complainant.

10. The petition being No.WP (C) No.7728/2008 as noted above filed by the petitioners before this Court was withdrawn on the terms that the petitioner shall establish their lawful title in respect of the land in question and then approach the MCD. It is established from the said petition that the petitioners were not sure about their ownership till 2012.

11. To the suit filed by the Ram Chander, i.e., complainant against Rameshwar Dass, i.e., the ancestor of the petitioners, a written statement was filed by Rameshwar Dass in which it has been clearly admitted that land in question was let out by Kali Ram against a rent of Rs.50/- and another piece of land against annual rent of Rs.200/-. The said Rameshwar Dass never claimed ownership in the land in question and since the petitioners derive their right through Rameshwar Dass, whose right in the property as a son was not there. Therefore, the petitioners cannot claim to be owners.

12. It is submitted by the Id. APP for the State that similar nature of cases were also registered against the petitioners as some piece of land of the property in question was illegally sold by them to a company which disentitles them to be considered for relief under Section 438 Cr.P.C. Moreover, after withdrawal of the above-noted petition in 2012, petitioners have not been able to establish their rights over the property but are transacting the same illegally and as a result of which

the aforesaid FIR was registered. As per the complaint, number of documents have been forged in the process and the petitioners have provided only few photocopies of the same and not provided the original documents.

13. It cannot be disputed that until and unless the original documents on the basis of which the petitioners are claiming their right are not provided to the Investigating Officer concerned, said officer is unable to investigate the matter properly. Despite, the interim protection granted to the petitioners, they failed to do so. Therefore, their custodial interrogation is required.

14. The case relied upon by the counsel for the petitioners is not relevant to the facts of the present case as in that case, after investigation, chargesheet was filed, charges framed and the petitioners therein were aggrieved by the charges framed. Whereas in the present case, only the FIR is lodged, the Police has to investigate the case and thereafter, if necessary, they may file the chargesheet.

15. Thus, finding no merit in the instant petition, present petition is dismissed.

16. Petitioners are directed to surrender before the Police and join the investigation.

SURESH KAIT, J

JANUARY 20, 2016*jj*