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

+ **BAIL APPLN. 943/2016**

UPENDER MAHTO & ANR Petitioner

Through: **Mr. Vikas Mahajan, Advocate**

versus

STATE Respondent

Through: **Mr. Rajat Katyal, APP**
Mr. Narender Mann, Advocate for the complainant.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% **24.10.2016**

The petitioners have preferred the present bail application under Section 438 Cr.P.C. to seek anticipatory bail in case FIR No. 166/16 registered under Sections 420/467/468/471/34 IPC at police station New Ashok Nagar, East Delhi, Delhi. By the order dated 09.05.2016, the petitioners who are husband and wife were granted protection by this Court on the condition that they shall not be arrested if they join investigation and they shall not leave the country without permission of the court and shall not tamper with the evidence. The said interim protection is continuing till date.

Mr. Katyal has tendered in court the status report filed by the State. Mr. Mann appears for the complainant.

I have heard learned counsel for the parties.

The submission of learned counsel for the petitioner is that the

complainant had issued an acknowledgement that upon receipt of Rs. 1.5 lacs, he had executed a General Power of Attorney in favour of the petitioners in respect of the property in question which had been retained by the complainant. Subsequently, he had further received Rs. 5 lacs from the accused and delivered the GPA to the petitioner so that the petitioners could use the same for obtaining loan from a bank. This acknowledgement also records that the amount of Rs. 5 lacs shall be retained by the complainant. Learned counsel for the petitioner further submits that the complainant had also obtained loans of Rs. 36 lacs from the accused, towards repayment of which, two cheques of Rs. 15 lacs and Rs. 11 lacs had also been issued by the complainant. The submission of learned counsel for the petitioner is that the petitioners had joined the investigation and there is no need for custodial interrogation of the petitioners.

The status report filed by the State discloses that according to the complainants, he and his brothers were the joint owners of the property comprising 1200 sq. yds. situated in khasra No. 259, village Kondli, presently at Himmat Singh Market, Delhi – 110 096. The petitioners/accused Upender had approached the complainant for opening a school in the said property on which 27 shops already existed. Accordingly, a rent agreement dated 13.09.1994 was executed between the petitioner – Upender Mahto and the owners on a monthly rent of Rs. 11,000/-. A school, namely, Dinkar Senior Secondary School was to be run by the accused/petitioner-Upender Mahto on the said property. A rent agreement dated 24.02.1999 was further got executed between Upender Mahto in his personal capacity as well as in capacity as Manager of Dinkar National Model School, and the owners.

The case of the complainant was that under the garb of the said rent deed, the petitioner/accused Upender Mahto with active connivance of other named persons got prepared a forged GPA and agreement to sell etc. in favour of Dinkar National Model School through its Manager Upender Mahto for a sum of Rs. 1,50,000/- which was got registered while no payment was made by Upender Mahto and the complainants were not aware of the nature of the papers got registered on 05.10.1994. They had no intention to sell the property to Dinkar National Model School or to anyone else. As per the case of the prosecution, the said property was sold by Dinkar National Model School through its Manager Upender Mahto in favour of Gautam Budh Welfare & Education Society, Kondli, through its President Upender Mahto-petitioner No.1, for a sum of Rs. 8 lacs on 21.03.2005, which was also purportedly got registered on the same day with alleged connivance of the Sub-Registrar and officials in his office. Petitioner No.2-Sushila wife of petitioner No. 1, inter alia, appended her signature as witness in the sale deed. The case of the prosecution is that no sale consideration passed under this sale deed as the seller and purchaser were both one and the same person. The purchaser society then obtained a loan from UCO Bank by mortgaging the said property, for an amount of Rs. 513.23 lacs which was eventually settled for Rs. 208 lacs.

The further case of the prosecution is that the Society Gautam Budh Welfare & Education Society was sold for Rs. 7.5 crores along with all its assets to Mr. Sumit Sharma, Mr. S.D.Sharma, Mrs. Suman Sharma, Mr. Lokesh Vats and Mr. Hariom Sharma on 05.07.2013 and new management was brought in. In this regard, petitioner No. 1- Upender Mahto executed a GPA and got the same registered on 15.10.2013 in favour of the new

management and handed over the registered GPA of 1994 and sale deed of 2005. There are allegations with regard to fraudulent preparation of the documents at that stage as well.

As per the status report, during investigation, it has been found from the Sub-Registrar, Seelampur, Delhi, that no record is found in his office with regard to registration of the GPA between the complainant Bhagat Singh and his brothers on the one hand and the accused/petitioner No.1 Upender Mahto, dated 05.10.1994. Abhay Singh, the alleged witness on the said GPA has also stated that the signatures attributed to him are not his and also the parentage of this witness has been wrongly mentioned. The Sub-Registrar, Geeta Colony, has also stated that the sale deed bearing registration No. 3375 dated 24.03.2005 is not found registered in the said office. The status report further discloses that though the petitioner accused Upender Mahto joined the investigation, but he has not co-operated since he has not disclosed the facts regarding the preparation of the forged documents, forged stamps and the role of the other co-accused.

Having heard learned counsel for the petitioner, State counsel and the counsel for the complainant and perused the status report, it appears to the Court that the custodial interrogation of the petitioner No.1, at least, is absolutely essential at this stage to unearth the entire conspiracy and crime. It is only the petitioner No. 1 who can disclose with regard to the mannerism of preparation of documents and their execution and registration, particularly, the GPA and the sale deed, both of which apparently are not registered instruments as claimed by the petitioner.

Prima facie, it appears that the forged and fabricated documents were used and exploited to stake a claim to the property and also to obtain loans

and sale considerations by further sale of the property through transfer from one to the other society and further transfer of management of the said society as noticed hereinabove.

The submission of learned counsel for the petitioner that the petitioner has joined the investigation and custodial interrogation is not necessary, has no merit. The petitioner has apparently not co-operated with the investigation in respect of matters on which he can throw light. It is well settled that there is a qualitative difference in the investigation which is conducted under an order of protection granted by a Court and in the investigation done in custody.

So far as petitioner No. 2 is concerned, considering the fact that she is a lady, at this stage, her custodial interrogation may not be considered necessary and she could be granted protection at this stage to await further unravelling of the crime depending upon the co-operation rendered by petitioner No.1. Accordingly, qua petitioner No.1, the present bail application is dismissed. However, petitioner No.2 is presently granted protection. In case of her arrest, petitioner No.2 shall be released on bail upon her furnishing a personal bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of the arresting officer. However, in case, it is found that she is not co-operating in the investigation, it shall be open to the State to seek the cancellation of the protection granted to her by moving an appropriate application.

The Bail Application stands disposed of. Dasti.

VIPIN SANGHI, J

OCTOBER 24, 2016 sl