

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: August 9th, 2017

+ BAIL APPLN. 778/2017

RAJESH DUA

... Petitioner

Through: Ms.Vibha Dutta, Senior Advocate
with Mr.Dheeraj Manchanda,
Advocate

versus

STATE

..... Respondent

Through: Mr.Rahul Mehra, Standing Counsel
(Crl) with Ms.Kusum Dhalla,
Additional Public Prosecutor for the
State.
Mr.Jatin Narwal, IPS/DCP/North.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

P.S.TEJI, J.

1. The present application has been filed for the grant of anticipatory bail in FIR No.324/2016, under Sections 420/467/468/471/120B/34 IPC, Police Station Kashmere Gate.

2. As per the FIR, the allegations leveled are that the complainant Ram Krishan Dua made a complaint to the police that he is the son of late Sh.Balak Ram Dua in whose name property no.111/1053at Gali Hinga Beg, Tilak Bazar, Delhi was allotted vide Deed of Conveyance dated 20.05.1981. Co-accused Anil Dua in collusion with his father

Megh Raj forged and fabricated a false will dated 19.10.1982 regarding the said property claiming that Anil Dua will be the sole owner of the said property after the demise of Sh.Balak Ram Dua. Sh.Balak Ram Dua had made a complaint dated 24.11.1982 that his two sons, namely, Megh Raj Dua and Jaman Dass Dua wanted to get the will in their favour. On the basis of the forged will, accused Anil Dua got the said property mutated in MCD record in his favour. It was further alleged that accused no.1 to 4 hatched a criminal conspiracy and in furtherance thereto executed a forged sale deed dated 28.07.2014 in favour of accused Pawan Kumar Sharma for a total consideration of Rs.90 lacs.

3. Arguments advanced by the learned Senior Counsel for the petitioner as well as learned Standing Counsel for the State were heard.

Bail in the Forgery of Documents under Section 467 IPC

4. During the hearing of the present matter, it was informed by the Deputy Commissioner of Police (North District), namely, Mr. Jatin Narwal that, the moment Section 467 IPC comes into play, Section 41A of the Cr.P.C. does not operate in the matter of arrest of the accused.

5. In the present case, the petitioner/accused has been booked for commission of offence punishable under sections 420/467/468/471/120B/34 IPC. It was submitted by the learned counsel for the petitioner that he had already joined the investigation on 19.10.2016

and on 10.01.2017 when his statement was recorded and thereafter he again joined the investigation on 10.01.2017 and 07.04.2017. It is apparent from the record that the accused was available to the Investigating Officer during the pending investigation but he was never arrested. The offences complained of in the present case involves non-bailable offences and the prosecution has failed to show under which provision the accused was let off when he was available before the Investigating Officer in a non-bailable offence.

6. Section 41A of the Cr.P.C. puts certain restrictions upon the police to arrest an accused where the offence complained of attracts punishment for less than seven years. Section 41A reads :

“41A. Notice of appearance before police officer-

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4)Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

7. Section 467 of the IPC provides for punishment of imprisonment for life, or imprisonment of either description for a term which may extend to ten years and also to fine.

8. Apparently, there is a practice that while making a complaint or initiating the proceedings in cheating matters, Section 467 IPC is added apart from other sections where punishment provided is less than seven years and the Investigating Officer is required to summon the accused for the purpose of investigation. This Court is of the considered opinion that mere mentioning of a penal section in the complaint to register the FIR under Section 467 IPC is not sufficient to preclude the scope of Section 41A Cr.P.C.

9. In the case of **Narinder Singh & Ors v. State of Punjab & Anr.** (2014) 6 SCC 466 the Hon’ble Apex Court observed as under :

“Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only

because FIR/Charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidenced to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.”

In a similar manner, mere mentioning of Section 467 IPC ipso facto does not take away the power of the Investigating Officer to invoke the provision of Section 41A of the Cr.P.C. This Court is of the opinion that the present case relates to the alleged offences of cheating etc. and Section 467 IPC has been added merely to make out a case against the accused. Apart from Section 467 IPC, other sections mentioned in the FIR attract the punishment of less than seven years which clearly gives the scope of Section 41A Cr.P.C. in the present case.

10. Similarly, the Investigating Officer is required to look into whether the allegations of Section 467 IPC are established on the record. In the absence of documents claimed to be forged, no arrest can be made. Mere the allegation of Section 467 IPC in the FIR or the complaint, in the absence of original documents claimed to be forged, would not debar the police to apply Section 41A of the Cr.P.C.

11. However on production or having the possession of original forged documents, the Investigating Officer is not left with the discretion whether to arrest the accused persons or not i.e. he is duty bound to arrest the accused.

12. In the absence of original forged documents, discretion lies with the Investigating Officer under Section 41A Cr.P.C, whereas having the possession of original forged documents takes away the discretion of the Investigating Officer and he is duty bound to arrest the accused.

13. Next question arises as to how certain accused having the possession of forged documents would be determined by the Investigating Officer during the course of investigation. As per Standing Order No.444/2016, it has been circulated by Delhi Police that :

“As laid down by the Hon’ble Apex Court, the Investigating Officers shall not automatically arrest a person but have to satisfy himself about the necessity of arrest. Further, in all cases punishable with imprisonment for a term up-to 7 years, the decision not to arrest an accused shall be forwarded to the concerned court within 2 weeks

from the date of the institution of the case. Notice for appearance of an accused shall also be served within 2 weeks from the date of institution of the case. The period of 2 weeks can be extended by the DCP concerned for reasons to be recorded in writing.”

14. So in a similar manner, this Court is of the opinion that :

- (i) *At the initiation of criminal process at the time of registration of FIR under Section 467 IPC, having original forged documents with the Investigating Officer, the Investigating Officer is duty bound to arrest the accused.*
- (ii) *Mere allegation of Section 467 IPC, in the absence of documents, is not sufficient to arrest the accused and taking him out of the purview of Section 41A Cr.P.C. particularly when other sections are covered under Section 41A Cr.P.C. providing imprisonment less than seven years.*
- (iii) *In case the alleged forged document is produced or otherwise comes in the possession of the Investigating Officer, he shall approach the DCP concerned to seek the permission of arrest of the accused.*

15. In view of the above mentioned facts and circumstances, the application is allowed. It is hereby ordered that in the event of arrest of the petitioner/accused, he shall be released on bail on furnishing the

personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the arresting officer. The petitioner is directed to join the investigation as and when required. He is further directed not to tamper with the prosecution evidence and not to influence the prosecution witnesses. He is further directed not to leave the country without prior permission of the Court concerned.

16. Before parting with the order, this court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court.

17. A copy of the order be sent to the Commissioner of Delhi Police to consider and issue appropriate directions/standing order to clarify the possession as mentioned above.

18. Application is disposed of accordingly.

(P.S.TEJI)
JUDGE

AUGUST 09, 2017
dd