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

% *Judgment delivered on: 29th August, 2018*

\+ **BAIL APPLN. 904/2018**

RAVINDER KUMAR SEHGAL ..... Petitioner

Versus

STATE (GOVT. OF NCT OF DELHI) ..... Respondent

\+ **BAIL APPLN. 927/2018**

NIKHIL SEHGAL & ANR. ..... Petitioners

Versus

STATE GOVT. OF NCT OF DELHI ..... Respondent

Through: Mr. S.K. Sharma and Mr. Rahul Sharma, Advocates for Petitioners.

Mr. Tarang Srivastava, Additional Public Prosecutor for State with SI Suneel Siddhu, P.S. Parliament Street.

Mr. Karan Preet Singh, Advocate for Complainant.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This petition under section 438 of the Code of Criminal Procedure, 1973 seeks release of the petitioners on anticipatory bail in the event of their arrest in case FIR No. 103/2017 dated 16.09.2017

under sections 406/420/467/468/471/120-B of the Indian Penal Code, 1860, Police Station Parliament Street, New Delhi.

2. The above stated FIR was registered on the complaint of Sh. Rakesh Sehgal, wherein he alleged that after the death of his father namely Late Sh. Kundan Lal Sehgal , he, his brother namely Sh. Ravinder Sehgal and his sister relinquished property bearing No. A-1/107, Safdarjung Enclave, New Delhi in favour of their mother namely Late Smt. Krishna Kumari Sehgal. He further alleged that his father was a partner in the firm M/s Ram Lal Kundan Lal Jewellers situated at premises no. 1336, Chandni Chowk, Delhi-110006. He also alleged that the partners of M/s Ram Lal Kundan Lal Jewellers executed and got approved a loan in favour of M/s Ram Lal Kundan Lal Jewellers on 31.10.2006 by mortgaging the aforesaid property bearing No. A-1/107, Safdarjung Enclave, New Delhi in by fraudulently and dishonestly showing forged title deeds and other documents to the Standard Chartered Bank. The complainant alleged that despite the death of his mother on 11.01.2008, the said loan was extended on 08.05.2008 and 04.12.2009 by forging her signatures.
3. The petitioner's prayer for grant of interim bail was declined by the Trial Court, inter alia, for the following reasons:

".... In the present case, it is admitted fact that Late Smt. Krishna Kumari had died on 11.01.2018. It is also admitted fact that after the death of Smt. Krishna Kumar, original guarantee agreement dated 08.05.2008 was duly signed by Ms. Krishna Kumari Sehgal, original guarantee agreement dated 04.12.2009 signed by Ms. Krishna Kumari Sehgal, original letter of

confirmation of mortgage creation/ extension dated 08.05.2008 and 27.07.2009 duly signed by Ms. Krishna Kumari Sehgal, original acknowledgement of debt and confirmation of security dated 24.04.2008 duly signed by Ms. Krishna Kumari Sehgal were submitted with the Standard Chartered Bank. Thus, as Ms. Krishna Kumari Sehgal had left for heavenly abode on 11.01.2008 somebody had forged the signature of Ms. Krishna Kumari Sehgal on these documents...."

4. The learned counsel for the complainant states that although the bankers have been repaid the loan amount and the suit properties in which he claims interest have been secured and indeed is free from all encumbrances, nevertheless, the attempt by the petitioner to defraud the Bank by mortgaging the suit property needs to be investigated and duly answered.
5. The Status Report show that after registration of the case, investigation was conducted and the original loan documents were taken into possession by the police vide a Seizure Memo; they were scrutinized, and the following observations have emerged:

" 1. Original Partnership Authority Letter of M/s Ram Lal Kundan Lal Jewellers, dated 28.10.2006 which was referred to Standard Chartered Bank, Sansad Marg, New Delhi for consideration of the loan of Rs. 3 crore. The said letter authorizes Mr. Rohit Sehgal, Mr. Nikhil Sehgal, Mr. Karan Sehgal, Mr. Sudesh Sehgal & Mr. Ravinder Sehgal Partners of the firm to represent all of them to do, execute & perform the any one or more of the following acts, deeds, matter & things:

a) That partners are hereby authorized to borrow any type of loan from banks/financial institutions.

b) To accept & agree with the terms of conditions as may be offered by the bank.

c) To create an equitable mortgage in favour of Standard Chartered Bank by depositing of title deeds of immovable property/ies belonging to Smt. Krishna Kumari situated at A-1/107, Safdarjung Enclave, New Delhi-29.

2. Letter of Personal Guarantee Agreement between Standard Chartered Bank and the Guarantor, Mrs. Krishna Kumari made on 28.10.2006 & 15.03.2007.

3. Original Guarantee Agreements, dated 08.05.2008 & 04.12.2009 had the signature of Mrs. Krishna Kumar Sehgal along with the Partners of the firm , M/s Ram Lai Kundan Lai Jewellers. The documents used in Original Guarantee Agreement were of Rs. 100/-, Rs. 50/- & Rs. 10/- Stamp papers.

4. Power of Attorney-Property executed between Standard Chartered Bank andthe Guarantor, Mrs. Krishna Kumari on 28.10.2006.

5. Original Letter of Confirmation of Mortgage Creation/extension had the signature of Mrs. Krishna Kumari Sehgal on 28.10.2006 & 15.03.2007.

6. Original Letter of Confirmation of Mortgage Creation/extension had the signature of Mrs. Krishna Kumari Sehgal on 08.05.2008 & 04.12.2009.

7. Original letter of Acknowledgement of Debt and Confirmation of Securitydated 24.04.2008, 27.07.2009 & 04.12.2009 had the signature of Mrs. Krishna Kumar Sehgal along with the Partners of the firm."

6. The learned counsel for the complainant further refers to the documents signed by the accused persons, for continuance of the Mortgaged Deed in which Ms. Krishna Kumari Sehgal is shown to be alive on 08.05.2008 and 04.12.2009, when admittedly, she had passed away on 11.01.2008.

7. The learned counsel for the petitioners submits that the petitioners

joined investigations on two occasions. After 08.03.2018, they were never called for any investigation by the I.O. However, petitioners are ready to join the investigation as and when called for. It is also his case that during the course of arguments, the I.O. had informed the Court that till date the questionable signatures have not been sent to any expert to ascertain as to who is responsible for forging the alleged signatures. He further argues that the entire case of the prosecution is based on documents and there is no possibility of applicant to tamper with the prosecution evidence.

8. The learned counsel for the petitioners further state that the applicants had no dealing with the Bank and even otherwise, no inducement or wrongful loss has been caused to any person including the Bank or the complainant and all the allegations in the FIR are baseless and motivated.

9. The bail is opposed by Mr. Rajat Wadhwa, the learned counsel for the complainant that although the bankers have been repaid the loan amounts and the suit properties in which he claims interest have been secured and are indeed is free from all encumbrances, nevertheless, the attempt by the petitioner to defraud the banker in obtaining and/or continuing to obtain monies- borrowed from the bank by mortgaging the suit property, needs to be answered. He refers to the documents signed by the accused persons, for continuance of the Mortgage Deed in which Ms. Krishna Kumari Sehgal is shown to be alive on 24.04.2005, 08.05.2008 as well as on 04.12.2009; when admittedly, she had already passed away on

the 11.01.2008. In particular, he refers to a document dated 24.12.2009 (at pages 91-97 in Crl. M.C 3758/2018) purportedly signed by Ms. Krishna Kumari Sehgal and given to the bank, as "letter of confirmation of mortgage creation/extension". Similarly, signature of the deceased is also appended to a document which has been conjointly signed by all the five partners of M/s. Ram Lal Kundan Lal Jewellers, of which the petitioner was and is a partner. The said document is at page 97 in Crl. M.C.3758/2018.

10.Mr. Amit Gupta, the learned counsel for the State opposes the bail on the ground that the aforesaid submissions of the learned counsel for the petitioner clearly show that there is confusion as to who had presented the Guarantee Agreement signed on 08.05.2008 (page 97) as, aforementioned. It shows seven signatures. Since there is no clarity as to who signed on behalf of Ms. Krishna Kumari Sehgal, who had already passed away about four months earlier on 11.01.2008, there are good and compelling reasons for custodial interrogation.

11. Keeping the aforesaid facts in consideration and in view of the judgment of the Supreme Court in ***Maruti Nivrutti Navale v. State of Maharashtra and Another*** (2012) 9 SCC 235 which held that:-

> "12....... *in order to bring out all the material information and documents custodial interrogation is*

required, more particularly, to ascertain in respect of the documents which were alleged to have been forged and fabricated. In the said documents and other materials which are in the possession of the appellant and the allegation against him that he has made false representation before the public authority on the basis of those documents for obtaining necessary permission, as pointed out by the State, in order to secure possession of those documents, custodial interrogation is necessary....".

And further keeping in view the judgment in ***State v. Anil Sharma*, (1997) 7 SCC** *187,* which held:

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

This Court is of the view that a case for custodial interrogation is made out.

12. The learned counsel for the State submits that the Status Report also shows that the papers used in the Original Guarantee Agreement were purchased after the death of Mrs. Krishna Kumari; that Custodial interrogation is required to establish the chain of incidents and also to find out whether the forged signatures of Mrs. Krishna Kumari Sehgal were made by the partners themselves or by any other person; that the accused persons are misleading the Court and if released on bail, they might hamper the investigation and assist other accused persons to abscond.

13. In view of the aforesaid circumstances, no case for anticipatory bail is made out and custodial interrogation is necessary so as to find out as to who forged the signatures of Late Smt. Krishna Kumari Sehgal after her death so as to mislead the Bank to approve and disburse a loan to M/s Ram Lal Kundan Lal Jewellers.

14. In view of the foregoing, the petitions are dismissed.

NAJMI WAZIRI, J

AUGUST 29, 2018

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