

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

Reserved on : 11.10.2019
% *Pronounced on : 22.10.2019*

+ **BAIL APPLN. 2564/2019**

YOGENDER PRASAD AGGARWAL Petitioner

Through: Mr. Puneet Mittal, Sr. Adv. &
Mr. Dayan Krishnan, Sr. Adv.
with Mr. Puneet Garg Ms.
Vasudha Bajaj, Mr. Sanjeev
Seshadri and Ms. Niharika
Kaul, Advs.

versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP for the
State with SI Neeraj Kumar,
P.S.K.M.Pur.

Mr. Sudhir Naagar and Mr.
Mohit Singh, Advocates for the
complainant.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

Crl. M.A. 37838/2019

Exemptions allowed subject to just exceptions.

The applications stand disposed of.

BAIL APPLN. 2564/2019

1. This is an application filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in case FIR No. 0029/2018 U/s 420/468/471 IPC registered at Police Station- K.P. Pur.

2. In brief, the facts of the case are that the complainant is the co-owner of the property bearing no. 289, Gurudwara Road, Punjabi Bagh, Kotla Mubarakpur, New Delhi. Initially in the year 1966 late Sh. Mangat Ram Aggarwal, father of the petitioner, resident of F-470, 471 and 472, Krishna Gali, Kotla Mubarakpur, New Delhi was inducted as a tenant in respect of one shop on the ground floor of the said property. After the death of Sh. Mangat Ram Aggarwal, the petitioner inherited the tenancy rights and continued to pay rent which was collected by the grand-father of the complainant. The complainant along with other co-owners had filed an eviction petition no. RC/ARC/5022/2016 against the petitioner and his brother Tek Chand Aggarwal for eviction from the property in question in the year 2014. In those proceedings, the petitioner had throughout admitted himself to be the tenant having inherited the tenancy rights from his late father but during the pendency of the eviction petition the petitioner along with his co-accused filed an application to place on record certain documents claiming themselves to be the owners of the property in question. The petitioner claimed that his father has purchased the property in question from the grandfather of the complainant. It is alleged that the ownership documents filed by the petitioner in the court below consisting of agreement to sell, affidavit,

Will, power of attorney, all dated 28.4.1982 are forged and fabricated and the signatures on these documents of grandfather of the complainant have been copied after seeing the rent receipts issued by him. It is further alleged by the complainant that in an earlier suit titled as ***Tek Chand Aggarwal and Anr. Vs. South Delhi Municipal Corporation & Ors*** filed in the year 2013, the petitioner and co-accused had admitted and stated on affidavit that they were the tenants in the property in question. In a writ petition, being W.P.(C) 5672/2013 filed before this Court the petitioner and the co-accused had once again admitted themselves to be the tenants in the property, and now on the basis of the aforementioned forged and fabricated documents they are claiming themselves to be the owner thereof.

3. It is urged by the learned senior counsel for the petitioner that petitioner has been falsely implicated in the present case. It is further submitted by him that the documents were only located by the petitioner and his co-accused in the year 2015 which were lying in possession of their younger brother with whom they were having dispute. They only came to know about these documents from their younger brother and accordingly they had filed an application before the civil court for taking these documents on record. It is further urged that the father of the petitioner is the owner of the property in question by virtue of these documents having purchased from the grandfather of the complainant. It is further urged that the complainant is putting uncalled pressure on the petitioner and his co-accused who is his brother to vacate the property in question. It is

further submitted that the petitioner had joined the investigation and has handed over all the original documents to the IO and no useful purpose will be served by sending him to custody.

4. On the other hand, it is urged by Ld. APP for the State that all the documents produced by the petitioner and his co-accused are forged and fabricated, and as per the report received from Indian Security Press, all the stamp papers produced by the petitioner and his co-accused on which affidavit, irrevocable power of attorney, agreement to sell have been executed, are tampered. He further urged that as per the investigation the signatures of notary on all these documents are also forged. It is further urged that the notary stamp which has been affixed on these tampered documents is also to be recovered. Ld. APP further urged that story as put forth by the petitioner with regard to the tracing of the documents from the trunk of the younger brother is false and fabricated and only bald assertion has been made in this regard that these documents were traced sometime in the year 2015 without even mentioning any date and month. Ld. APP urged that even on bare perusal of the signatures of late Hari Chand on the affidavit, irrevocable power of attorney and agreement to sell are different which clearly shows the forgery committed by the petitioner and co-accused. It is further urged that no doubt the petitioner has joined the investigation but it was prior to the receipt of the report from RESL, and thereafter notices were again issued to the petitioner and the co-accused but they have not joined the investigation and were not present at their given addresses.

5. The petitioner and his brother Sh. Tek Chand Aggarwal had filed a suit for declaration and permanent injunction. In the said suit they claimed themselves as a tenant in the property in question. In support of their civil suit No. 542/13 co-accused Tek Chand aggarwal had filed his evidence by way of affidavit dated 24.02.2015. Thereafter, the petitioner and his co-accused have come up with a story that the property has been purchased by their father from the grandfather of the complainant on the basis of the documents mentioned hereinabove. When these documents were sent for forensic examination, the stamp papers were found to be tempered by the Indian Security Press, Nasik and the year of first printing of variety of these stamp papers on which the alleged documents have been prepared is stated to be of the year 1977 and 1978 and the year of dispatch for these variety of stamp papers were also of 1977-78, but the date of purchase of these stamp papers is 28.04.1982 i.e. more than 5 years after the printing and dispatch of these stamp papers from the Indian Security Press, Nasik.

6. In my opinion, the contention of the Ld. Sr. counsel that there is no requirement of the custodial interrogation of the petitioner is concerned has no force because the petitioner has failed to join the investigation after the receipt of the report of RESL and was not found present at his given address. The source of procurement of the stamp papers is yet to be ascertained as the same bears the date of issue as 28.04.1982 but as per report of the Indian Security Press, Nasik, they were printed is 1977-1978 and dispatched in the same year, so from

where and from whom they were purchased. The notary stamp is also to be recovered because the notary who is alleged to have attested these documents is also not in existence. Therefore, in these circumstances, it cannot be said that the custodial interrogation of the petitioner is not required.

7. In view of the observations, mentioned hereinabove, no ground for grant of anticipatory bail to the petitioner is made out. The application is, therefore, dismissed.

RAJNISH BHATNAGAR, J

OCTOBER 22, 2019

Sumant



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