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

\+ BAIL APPLN. 2739/2018

ASHOK KUMAR & ANR. ..... Petitioners

Through: Ms. Rebecca John, Sr. Advocate with Mr. Sumit Choudhary and Ms. Aakanksha Bansal, Advocates

versus

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

Through: Mr. Amit Ahlawat, APP with SI Randeep

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

% 13.02.2019

The allegations have been made against the petitioners in first information report (FIR) no.246/2018 of police station Prashant Vihar registered on 18.05.2018 at the instance of Indrash Kishan alleging offences punishable under Sections 342, 448, 452, 506, 34 of Indian Penal Code, 1860. The first informant claims to be a person in possession of third floor portion of property described as F-2, 76/77, Sector-11, Rohini, Delhi. He has alleged that the petitioners alongwith certain others had come to the said premises at about 4.30 p.m. on 18.05.2018 and had forcibly taken the possession of the said premises besides committing certain other offences.

The petitioners, however, show from documents that the subject premises was part of a super structure built upon two adjoining plots

of land, they bearing nos.76 and 77 by Raj Kishan, brother of the first informant. The third floor portion which is the portion in dispute was statedly sold by two separate sale deeds executed on 19.03.2018, each showing the transfer of the right, title and interest to that extent in the super structure constructed over two plots of land in favour of the first petitioner. Though the sale deeds do indicate that the vacant peaceful possession of the third floor portion of the said property was handed over at the time of execution and registration of the said sale deeds, it is fairly conceded that the possession is with the first informant, as per the submissions of the petitioners such possession with the first informant being illegal and in the nature of trespass.

It is shown by the additional documents on record that both sides had filed civil suits which are pending trial before the civil court, the suit of the first informant being for the relief of permanent injunction purportedly against dispossession or interference in his possession while the suit of the first petitioner is, *inter alia*, for relief of possession.

The learned senior counsel pointed out that prior to filing of the said suit at the time of construction of the super structure over the said two plots of land by the vendor (brother of the first informant), the first informant had lodged a protest with the municipal authority on 18.04.2018, not indicating in the said communication in any manner as to the nature of his interest in the property, exception being taken over the fact that the two separate plots were being covered by a common super-structure. It is also pointed out that in the pleadings in

the civil suit instituted by the first informant, there is no clear averment made as to the source of his title to the subject premises, it being vaguely indicated that he was in possession, such possession being threatened.

In the above facts and circumstances, the dispute seems to be primarily civil in nature. Whether or not the incident alleged in the FIR actually took place is a matter which would need investigation. But, during the investigation, the petitioners deserve protection.

Thus, it is directed that in the event of the petitioners being arrested, they shall be released on bail by the arresting officer on furnishing personal bond in the sum of Rs.20,000/- each with one surety in the like amount subject to the following further conditions:-

(i) The petitioners shall continue cooperating with the investigation and join the same as and when called upon to do so;

(ii) The petitioners shall not come in contact with or try to influence any of the witnesses connected to the case;

(iii) Prior to their release, they shall give the telephone numbers of self and of at least one other responsible family member besides that of the surety to the investigating officer;

(iv) They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence;

(v) They shall not leave India without the prior permission of the

court of cognizance or the trial court, as the case may be, and to ensure due compliance with this condition and shall deposit their passports, if they hold one, with the said court.

This order will inure only till the date of first appearance of the petitioners in the event of a charge-sheet being filed on conclusion of the investigation and process being issued against them by the court of cognizance.

The petition stands disposed of in above terms.

Dasti.

R.K.GAUBA, J.

FEBRUARY 13, 2019
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