



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

Date of decision: 04th January, 2022

IN THE MATTER OF:

+ **BAIL APPLN. 2115/2021**

SUNIL

..... Petitioner

Through Mr. Sudhir Mendiratta, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through Ms. Meenakshi Chauhan, APP for the
State with SI Sunil, PS Model Town

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 438 Cr.P.C. is for grant of bail to the petitioner in the event of arrest in FIR No. 82/2021 dated 12.03.2021 registered at Police Station Model Town for offences under Sections 420/467/468/471 IPC.

2. Facts, in brief, leading to the present petition are as under:

- a) Complaint was given by one Parv Mittal S/o Prem Mittal R/o 73-B Block, Shalimar Bagh, Delhi and one Mool Chand Mittal S/o Late Ram Kishan Dass R/o H.No. 54-A, Kamla Nagar, Malka Ganj, Delhi, stating that they are the owners of property bearing No. R-5/2, Model Town, Delhi admeasuring 31 Sq. Yards and property bearing No. R-5/3, admeasuring 75 Sq. Yards situated at Rishab Nagari, Model Town, Delhi-110009. It



is stated that they purchased the abovementioned properties on 07.12.2019 from one Kamal Kishore Jain R/o R-5/1, Model Town, Mohan Park, Delhi, 110009. It is stated that the said Kamal Kishore Jain gave the possession of property bearing No. R-5/2, Model Town, Delhi on 17.12.2019 but he could not give the possession of property bearing No. R-5/3, Model Town, Delhi (hereinafter referred to as '*the property in question*'), stating that 5-6 persons are staying in the said property and they will vacate the premises by 13.04.2020.

- b) It is stated that in March 2020, when Kamal Kishor Jain asked the occupants of the property in question to vacate it, they threatened him with dire consequences. It is stated that the occupants told Kamal Kishor Jain that they are the owners of the said property and they have valid documents of the same. It is stated that the occupants of the property in question also threatened the complainants herein. The complainants, thereafter, approached the Police and gave a complaint stating that Sunil (the petitioner herein) and his family members (all occupants of property bearing No. R-5/3, Model Town, Delhi) are trying to grab the property on the basis of forged documents. On the basis of this complaint FIR No. 82/2021 was registered at Police Station Model Town for offences under Sections 420/467/468/471 IPC.
- c) The petitioner approached the Trial Court by filing an application for anticipatory bail being, Bail Application No.1037/2021. The learned ASJ directed the petitioner to place



on record the documents of ownership of the property in question. When the petitioner was not able to produce any document of ownership, the learned ASJ *vide* order dated 05.04.2021 dismissed the anticipatory bail of the petitioner.

- d) The petitioner once again approached the Trial Court by filing another application, being Bail Application No.1183/2021, stating that the father of the petitioner had purchased the property in question from one Mrs. Chander Kala Jain in the year 1971, but the documents of ownership were misplaced in the floods. The learned ASJ dismissed the said application *vide* order dated 09.04.2021.
- e) The petitioner has thereafter approached this Court by filing the instant petition.

3. Mr. Sudhir Mendiratta, learned counsel appearing for the petitioner, submits that the father of the petitioner purchased the property bearing No. R-5/3, Model Town, Delhi from one Chandra Kala Jain. He states that the family of the petitioner is in possession of the property from the past 25 years. He states that electricity connection, Aadhaar Cards, ration cards and Voter ID cards of the family members of the petitioner are issued on the same address i.e. R-5/3, Model Town, Delhi which shows that the aforementioned property was in continuous possession of the petitioner's family. The learned counsel for the petitioner further submits that the petitioner has also filed a document i.e. electricity connection of the said premises, which is in the name of the petitioner, to show that the petitioner and his family members are the owners of the said premises. He, therefore,



states that the present FIR is only a ruse to evict the petitioner and his family members from the premises by putting pressure.

4. *Per contra*, Ms. Meenakshi Chauhan, learned APP for the State, submits that the property in question belonged to one Narayan Singh Nambardar S/o Pirthi Singh R/o Dheerpur, who sold the property in question to late Chandra Kala Jain through a registered sale deed bearing No. 212, Additional Book No.1, Volume No.2798 on pages 67 to 71. She further submits that late Chandar Kala Jain sold the property in question to Kamal Kishor Jain *vide* a registered sale deed dated 28.08.2001 and Kamal Kishor Jain sold the property in question to the complainants herein through a registered sale deed dated 28.08.2001 *vide* Registration No. 11220 in Volume-1788, Book No.1 on pages 182 to 187. She further states that the electricity connection of the property in question was obtained by the petitioner herein on the basis of a GPA executed between one Neeraj Khandelwal S/o Kailash Khandelwal R/o F-152, JJ Colony Wazirpur, Delhi and the petitioner herein. She states that during investigation Neeraj Khandelwal was not found at the given address and statement of one Anju D/o Lt. Sh. Gyan Singh, Age-55 years, and one Rajender Singh Rawat S/o Lt. Sh. Gyan Singh, who are residing at the given address, were recorded wherein they stated that they are residing at the given address from the last twelve years and they don't know any Neeraj Khandelwal. She states that Police has not been able to find the said Neeraj Khandelwal who purportedly executed the GPA in favour of the petitioner herein. She further states that the GPA has only been signed by the petitioner herein and there is no signature of Neeraj Khandelwal on it. She, therefore, states that the said GPA is a forged document. She further contends that though the GPA was



executed on 24.12.2013, the stamp paper was purchased on 12.09.2013. She further states that the custody of the petitioner is required to verify as to how the petitioner and his family members got the possession of the property in question and to discover further documents which might be in possession of the petitioner.

5. Heard Mr. Sudhir Mendiratta, learned counsel for the petitioner, Ms. Meenakshi Chauhan, learned APP for the State, and perused the material on record.

6. The petitioner has produced the following documents to substantiate that he and his family members are in continuous possession of the property in question:

- a) Copy of Aadhaar Card of Usha - Aunt of the petitioner.
- b) Copy of Ration Card of the father of the petitioner dated 10.08.1981.
- c) Copy of the Voter ID card of Sunita S/o the petitioner.
- d) Copy of the Voter ID card of Kamlesh Paswan.
- e) Copy of Voter ID card of Parmanand Manjhi B/o the petitioner.
- f) Copy of Ration Card of the father of the petitioner dated 21.09.2005.

7. There is no document of the petitioner showing that he is in possession of the property in question. The fact that these documents, at best, show that the father of the petitioner was in possession of the property in question up to 1998 but it is not known as to on what basis they continued beyond 1998 in the said property.

8. The material on record also indicates that the petitioner got electricity connection on the basis of a GPA which was executed by Neeraj



Khandelwal in favour of the petitioner herein. A copy of the said GPA has been filed by the petitioner. The GPA does not indicate as to on what basis Neeraj Khandelwal executed the GPA in favour of the petitioner herein. Moreover, the GPA has not been signed by Neeraj Khandelwal, it has only been signed by the petitioner. There is no document to show that Neeraj Khandelwal was the owner of the property in question or whether he was given a Power of Attorney by the owners of the property in question to execute a GPA in favour of the petitioner herein. Neeraj Khandelwal has not been produced by the petitioner before the investigating authorities. The learned APP for the State has contended that investigation has revealed that no person by the name Neeraj Khandelwal resides at the address mentioned in the GPA. It is also stated by the learned APP for the State that the GPA is forged and sanction has been obtained from the Electricity Department on the basis of forged documents.

9. The Status Report also reveals that notice was sent to the petitioner to join investigation on 18.03.2021, but the petitioner has not joined the investigation. It is further stated that the notices were sent to the father and brother of the petitioner to give information about the petitioner but they have refused to give the whereabouts of the petitioner. It is also stated that Non-Bailable Warrants issued against the petitioner have been returned un-executed and proceedings under Section 82 Cr.P.C have been initiated against the petitioner.

10. There is no document showing semblance of title in favour of the petitioner or any of his family members. Rather the electricity connection has been obtained on that basis of a forged document. The petitioner has



only been able to show that his family members were in possession of the premises.

11. Undoubtedly, the petitioner or his family members cannot be dispossessed of the property in question by the complainants on the basis of this FIR. They can be evicted only by following the procedure established by law i.e. by filing a proper suit for eviction. However, that does not mean that the petitioner, who is accused of forging documents, will not even co-operate in the investigation and will not even present himself before the investigating agencies.

12. It is well settled that the power exercisable under Section 438 Cr.P.C is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty. It is also well settled that ordinarily, arrest is a part of the process of investigation intended to secure several purposes and it may be necessary to curtail the freedom of an accused in order to enable the investigation to proceed without hindrance and prevent the disappearance of the accused.

13. The GPA which has been placed on record is only signed by the petitioner herein and not by the alleged executant - Neeraj Khandelwal. There is discrepancy in the date on which stamp paper was purchased. These documents have been used to obtain the electricity connection. The petitioner is accused of the offence of forgery and if convicted, the petitioner can be punished with life imprisonment. In view of the fact that the petitioner has been evading/avoiding to join investigation since March 2021, his family members have refused to disclose his whereabouts and the fact



that proceedings under Section 82 Cr.P.C have been initiated against the petitioner indicates that there is all likelihood of the petitioner fleeing from justice and not being available during trial. This Court is, therefore, not inclined to grant protection to the petitioner under Section 438 Cr.P.C.

14. Accordingly, the petition is dismissed along with all the pending application(s), if any.

JANUARY 04, 2021

Rahul

SUBRAMONIUM PRASAD, J