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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 11.11.2022

Judgment delivered on: 25.11.2022

+ **BAIL APPLN. 892/2022**

ANITA MOUDGIL

..... Petitioner

Through: Ms. Rebecca John, Sr. Advocate with
Mr. Shantanu Singh, Mr. Ravi Sehgal,
Mr. Ravinder Kumar Yadav,
Mr. Vinay Mohan Sharma, Mr. Pravir
Singh, Mr. Adya Luthra, Ms. Arti
Anupriya, Mr. Raghavnath,
Mr. Kartikey, Ms. Charu Sharma,
Mr. Paras Juneja, Mr. Abhimanyu
Yadav and Mr. Aditya Gupta,
Advocates.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Aman Usman, APP for State.

Mr. N. Hariharan, Sr. Advocate with
Mr. Saleem Ahmad, Mr. Arvind
Pandey, Mr. Siddharth S. Yadav,
Ms. Punya Rekha Angara, Mr. Prateek
Bhalla, Mr. Sharian Mukherji and
Mohd. Qasim, Advocates for
Respondent No.2.

+ **BAIL APPLN. 1271/2022**

MANEESH MOUDGIL

..... Petitioner

Through: Ms. Rebecca John, Sr. Advocate with
Mr. Shantanu Singh, Mr. Ravi Sehgal,
Mr. Ravinder Kumar Yadav,
Mr. Vinay Mohan Sharma, Mr. Pravir
Singh, Mr. Adya Luthra, Ms. Arti
Anupriya, Mr. Raghavnath, Mr.
Kartikey, Ms. Charu Sharma, Mr. Paras
Juneja, Mr. Abhimanyu Yadav and
Mr. Aditya Gupta, Advocates.

versus

STATE

..... Respondent

Through: Mr. Aman Usman, APP for State
Mr. N. Hariharan, Sr. Advocate with
Mr. Saleem Ahmad, Mr. Arvind
Pandey, Mr. Siddharth S. Yadav,
Ms. Punya Rekha Angara, Mr. Prateek
Bhalla, Mr. Sharian Mukherji and
Mohd. Qasim, Advocates for
Respondent No.2.

+ **BAIL APPLN. 3125/2022**

ANITA MOUDGIL

..... Petitioner

Through: Ms. Rebecca John, Sr. Advocate with
Mr. Ravinder Kumar Yadav,
Mr. Vinay Mohan Sharma, Ms. Arti
Anupriya, Mr. Shantanu Singh,
Mr. Ravi Sehgal, Mr. Pravir Singh,
Mr. Adya Luthra, Mr. Abhimanyu
Yadav, Mr. Raghav Anthwal, and
Mr. Kartikey, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Aman Usman, APP for State
Mr. N. Hariharan, Sr. Advocate with
Mr. Saleem Ahmad, Mr. Arvind
Pandey, Mr. Siddharth S. Yadav,
Ms. Punya Rekha Angara, Mr. Prateek

Bhalla, Mr. Sharian Mukherji and
Mohd. Qasim, Advocates for
Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. (i) BAIL APPLN. No.892/2022 and BAIL APPLN. No.1271/2022 have been preferred on behalf of Anita Moudgil and Maneesh Moudgil for anticipatory bail in FIR No.266/2021 under Sections 420/406/467/471/120-B IPC.

(ii) BAIL APPLN. No.3125/2022 has been preferred on behalf of Anita Moudgil under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No.146/2022 under Sections 192/467/120-B IPC registered at PS: Vasant Vihar. Section 471 IPC is stated to have been subsequently invoked during the course of investigation.

2. **Background of registration of first FIR No.266/2021 dated 03.12.2021 under Sections 420/406/467/471/120-B IPC registered at PS: Vasant Vihar:**

(i) In brief, Dr. Charu Sharma (complainant) and Manish Moudgil (petitioner) are children of late Dr.Dev Kumar, while Anita Moudgil (wife of Maneesh Moudgil) is the sister-in-law of Dr. Charu Sharma (complainant).

(ii) As per the case of the petitioners/accused, late Dr.Dev Kumar disposed of his self acquired property at B-33, Multan Nagar, Rohtak Road in the year 2017 by way of registered sale deed. Thereafter, Dr.

Dev Kumar, Anita Moudgil and Maneesh Moudgil purchased the ground floor of property bearing No.53, Paschimi Marg, Vasant Vihar, New Delhi from M/s. Heritage Holidays Pvt. Ltd. vide registered sale deed dated 17.10.2018.

(iii) The petitioners and Dr. Dev Kumar also entered into an 'Agreement to Sell' dated 26.03.2019 for the purchase of basement of property bearing No.53, Paschimi Marg, Vasant Vihar, New Delhi with M/s. Heritage Holidays Pvt. Ltd. For the purpose of purchase of aforesaid property bearing No.53, Paschimi Marg, the petitioners along with Dr.Dev Kumar took a loan amounting to Rs.3 crores from HDFC Bank vide loan agreement dated 16.10.2018.

(iv) Dr.Dev Kumar executed a registered Will dated 05.11.2019 bequeathing his complete 1/3rd share in the ground floor and basement of the aforesaid property bearing No.53, Paschimi Marg in favour of his son (Maneesh Moudgil).

(v) It is further the case of the petitioners that the complainant (Dr. Charu Sharma) aggrieved by the execution of aforesaid Sale Deed dated 27.08.2018 registered on 17.10.2018 and registered Will dated 05.11.2019, filed an application under Section 156(3) Cr.P.C. alleging false averments, after the death of her father, Dr. Dev Kumar on 13.12.2019. The aforesaid FIR No.266/2021 dated 03.12.2021 under Sections 420/406/467/471/120B IPC (herein referred as First FIR) was accordingly registered at Police Station: Vasant Vihar in terms of order dated 27.11.2021 passed by learned MM.

3. **Registration of second FIR No.146/2022 dated 16.06.2022 under Sections 192/467/120-B IPC registered at PS: Vasant Vihar:**

- (i) As per the case of the prosecution in the status report filed on record, complaint dated 18.01.2021 made by Dr. Charu Sharma against Maneesh Moudgil and Anita Moudgil for commission of offence of cheating, forgery of Will, Sale Deed etc. was marked to SI Deepak Tanwar.
- (ii) Accused in response to notice dated 13.06.2021 of the IO filed joint reply but did not furnish the documents. Instead they jointly submitted photocopies of Sale Deed dated 17.10.2018 and Will dated 05.11.2019 duly signed by them.
- (iii) In the complaint filed by Dr. Charu Sharma under Section 156(3) and Section 200 Cr.P.C., the IO submitted the Action Taken Report and also supplied copy to Dr. Charu Sharma.
- (iv) An FIR No.266/2021 under Sections 336/406/409/420/467/471/120-B IPC was lodged on 03.12.2021 in terms of order dated 27.11.2021 passed by learned MM.
- (v) Further, based upon Action Taken Report and documents attached to it, Dr. Charu Sharma filed another complaint on 08.12.2021 of forging of copy of Sale Deed and copy of Will for lodging an FIR for separate offences committed by accused.
- (vi) On comparison between certified copy of Sale Deed and copy submitted by accused, it was revealed that there was an intentional concealment of details of payment on Sale Deed and names and address of the witnesses Will dated 05.11.2019. As such, the concealment was to mislead the enquiry. Accordingly, separate FIR No.146/2022 under Sections 192/647/120-B IPC, PS: Vasant Vihar was registered and Section 471 IPC has been invoked thereafter. The

same is hereinafter referred to as 'second FIR' for reference.

(vii) Accused Maneesh Moudgil is stated to have been arrested in aforesaid FIR on 23.08.2022 and mobile phone and laptop was recovered but no original documents could be recovered. It is also the case of the prosecution that Maneesh Moudgil did not cooperate and original documents and other relevant evidence is to be recovered from present applicant Anita Moudgil.

(viii) The bail application No.3125/2022 has been preferred by Anita Moudgil in aforesaid second FIR No.146/2022.

4. (i) It is urged by learned counsel for the petitioners that petitioner Anita Moudgil is the sister-in-law of complainant Dr. Charu Sharma and aged about 56 years. The present proceedings have been initiated to pressurize and harass her on account of civil disputes between the parties in respect of the Will left by deceased Dr.Dev Kumar. Petitioner Anita Moudgil is further claimed to be a homemaker with a son of tender age to be looked after. The Will left by deceased Dr.Dev Kumar is stated to have been duly registered. It is also submitted that petitioner Maneesh Moudgil is a retired Colonel from Army, currently serving at a senior post under NTRO. Further, the deceased Dr.Dev Kumar had estranged relationship with the complainant. The Sale Deed executed in respect of B-33, Multan Nagar, Rohtak Road is stated to have never been challenged by the complainant during the lifetime of Dr.Dev Kumar and has been challenged only after his death. It is also urged that at the time of execution of aforesaid Sale

Deed, Dr.Dev Kumar was in good health and only in August, 2019, the cancer had set in.

(ii) It is also contended that Agreement to jointly purchase the Basement at B-53, Paschimi Marg was executed on 26.03.2019. However, since complete payments were not made, the same was not registered. Further, loans were also availed from HDFC Bank, KG Marg vide Loan Agreement dated 06.10.2018 by all co-owners i.e. Anita Moudgil, Maneesh Moudgil and late Dr.Dev Kumar. The Will dated 05.11.2019 is stated to have been duly executed in accordance with law and Dr.Dev Kumar is stated to have been in a fit mental state at the aforesaid time. The petitioners are further stated to have duly cooperated in the investigation.

Reliance is further placed upon *Rajesh Dua Vs. State, 2017 SCC OnLine Del 9807; Ravindra Saxena Vs. State of Rajasthan, 2010 1 SCC 684; Hira Lal Vs. State of U.P., (2009) 11 SCC 89; Sukhwat Kaur & Ors. Vs. State of Punjab, (2021) 204 PLR 591; Bhadresh Bipinbhai Sheth Vs. State of Gujarat, (2016) 1 SCC 152.*

(iii). With respect to registration of FIR No.146/2022 dated 16.06.2022, it is submitted that the second FIR could not have been registered since FIR No.266/2021, on the same allegations, already stood registered. It is also pointed out that the offences in FIR No.146/2022 (second FIR) are non-cognizable in nature and there is statutory bar under Section 155(2) Cr.P.C. to this effect. Section 471 IPC is stated to have been subsequently invoked to cover-up the lacunae.

Reliance is further placed by learned counsel for the petitioners upon order passed by Hon'ble Supreme Court of India in *Keshav Lal Thakur vs. State of Bihar*, (1996) 11 SCC 557; order passed by Hon'ble High Court of Delhi in *RC Sharma vs. Central Bureau of Investigation*, 2010 SCC OnLine Del 24845; order passed by Hon'ble High Court of Karnataka in *Yamanappa Hunugunda & Ors. vs. State of Karnataka*, CRL.P. 7169/2015 and *Sri Lingaraj vs. The State of Karnataka*, CRL.P. 9087/2009; *TT Antony vs. State of Kerala & Ors.*, (2001) 6 SCC 181; *Babubhai vs. State of Gujarat*, (2010) 12 SCC 254; *Amitbhai Anilchandra Shah vs. Central Bureau of Investigation & Anr.*, (2013) 6 SCC 348; *Arnab Manoranjan Goswami vs. State of Maharashtra*, (2020) 14 SCC 12 and *Anju Chaudhary vs. State of U.P.*, (2013) 6 SCC 384.

(iv) It is further contended that the laptop and the printer have already been recovered by the Investigating Agency and Maneesh Moudgil is in custody since 23.08.2022.

(v) Placing reliance upon *Bhadresh Bipinbhai Sheth vs. State of Gujarat*, (2016) 1 SCC 152; *Arnesh Kumar vs. State of Bihar*, (2014) 8 SCC 273 and *Sushila Aggarwal & Ors. vs. State (NCT of Delhi) & Ors.*, (2020) 5 SCC 1, it is also submitted that petitioner be released on anticipatory bail as petitioner has already joined the investigation.

(vi) It is further urged that in view of the provisions of Section 195(1)(b)(i) Cr.P.C., cognizance of offences in FIR No.146/2022 cannot be taken until and unless there is a complaint in writing from the Court or such official or Court.

(vii) Learned counsel for the petitioner also submits that a civil suit

also stands filed on behalf of the complainant (Dr. Charu Sharma), wherein copies of the original sale deed and Will have been relied upon and at no point of time, the original Will or sale deed is alleged to have been tampered or fabricated.

(viii) It is further pointed out that original Sale Deed was not in the possession of the petitioner since the same was lying mortgaged with the HDFC Bank. The property in Multan Nagar is stated to be a self-acquired property which was sold in the year 2017 without any objection from the complainant's side or any claim that she had a share in the same.

Further, property No.53, Paschimi Marg, Vasant Vihar, New Delhi is stated to have been purchased about a year prior to the death of Dr. Dev Kumar and they were residing in the aforesaid property which was within the knowledge of the complainant. As such, it is submitted that deceased Dr. Dev Kumar was entitled to deal his 1/3rd share in the property, which had been done in accordance with law. It is further urged that dispute is of civil nature and needs to be decided by the civil forum.

5. ***Per contra***, the applications for anticipatory bail have been vehemently opposed by learned APP for the State along with Shri Hariharan, learned Senior Advocate for the complainant.

(i) It is urged that recovery of the original sale deed is yet to be made and the petitioners have not been cooperating in the investigation. Further, the mobile phone as well as laptop is yet to be recovered and the e-mail ID and password of the petitioners is required for the purpose of investigation, for which custodial interrogation of Anita

Moudgil is required. It is contended that witnesses of the Will are being influenced by the petitioner as well as her husband.

(ii) Learned senior counsel for the complainant further submits that conduct of the petitioner as well as her husband has been completely unfair during the proceedings as interim protection had been granted in FIR No.266/2021 to merely provide opportunity to explore the possibility of settlement. Attention is also drawn to order dated 16.09.2022 passed by the learned Trial Court, wherein the parties are stated to have reached some stage of settlement but thereafter, the petitioner and her husband took a U-turn.

(iii) It is urged that acts relating to FIR No.266/2021 and FIR No.146/2022 are in respect of distinct offences committed at different point of time and registration of FIR is in accordance with law.

(iv) It is further urged that merely because Section 471 IPC was not invoked at the time of registration of FIR No.146/2022, it cannot be said that the proceedings have not been initiated in accordance with law as Section 471 IPC was disclosed from the complaint itself. As such, no illegality can be attributed in registration of aforesaid FIR merely on account of non-mentioning of Section 471 IPC in the FIR. Non-bailable warrants are also stated to have been issued against the petitioner Anita Moudgil in second FIR.

(v) It is also pointed out that at the time of granting the interim protection to the petitioner in FIR No.266/2021, the proceedings under Section 82/83 Cr.P.C. had been initiated but the protection was not opposed in order to give a fair opportunity to the parties for exploring the possibility of settlement.

(vi) Learned counsel for the complainant further urged that Dr. Charu Sharma (Daughter of late Dr. Dev Kumar) had a share in the ancestral property which came in hands of late Dr. Dev Kumar along with her brother (Maneesh Moudgil). It is urged that under suspicious circumstances, the Will dated 05.11.2019 was executed since deceased Dr. Dev Kumar was never in a fit position to execute the aforesaid Will as he had been discharged from the hospital only on 03.11.2019 and was suffering from Stage IV Cancer. The deceased is stated to be under influence of heavy medication for the purpose of relieving the pain suffered during cancer.

(vii) It is further submitted that ancestral property at B-33, Multan Nagar, Rohtak Road was sold for a consideration of Rs.14 crores, in lieu of which, property No.53, Paschimi Marg, Vasant Vihar, New Delhi was purchased for a consideration of Rs.10 crores and the difference of the amount is also required to be investigated. Further, the properties are stated to have been suspiciously purchased in the name of the petitioner, her husband and her father-in-law removing the name of the complainant Dr. Charu Sharma and denying her the legal share of the property.

(viii) It is urged that complainant was wrongly informed by her brother (Maneesh Moudgil) on 05.11.2019 that deceased Dr. Dev Kumar was in hospital for treatment, while he had been taken for the registration of Will. The timing of the chats has also been disputed by learned counsel for the petitioner.

Reliance is further placed upon *Awadesh Kumar Jha Alias Akhilesh Kumar Jha and Another vs. State Of Bihar*, (2016) 3 SCC

8; *Priti Saraf And Another vs. State of NCT of Delhi*, (2021) SCC Online SC 206; *Arnab Ranjan Goswami vs. Union Of India & Ors.*, Writ Petition (Crl. No.130 of 2020); *Manoj Kumar vs. State of Uttarakhand*, (2019) 5 SCC 667; *Amitbhai Anilchandra Shah vs. Central Bureau of Investigation And Another*, (2013) 6 SCC 348; *State vs. Khimji Bhai Jadeja*, 2019 SCC online Del 9060; *State of Jharkhand vs. Lalu Prasad Yadav*, (2017) 8 SCC 1; *Siddharth Mukesh Bhandari vs. State of Gujarat And Another*, 2022 SCC OnLine SC 952.

6. I have given considered thought to the contentions raised.

It may be appropriate to notice that custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail but the overall background cannot be ignored or overlooked at the stage of consideration of grant of anticipatory bail.

7. The petitioners who are husband and wife in both the respective FIRs have been accused of forgery, cheating and criminal breach of trust by taking advantage of ill health of late Dr.Dev Kumar and by getting a Will registered in favour of the petitioners on 05.11.2019. The dispute revolves around the claims in respect of inheritance between the complainant on one side and the petitioners on the other side. Unfortunately, despite an opportunity given to the parties for reconciliation, the settlement could not be arrived at.

8. It is imperative to notice that foundation of second FIR No.146/2022 is placed upon the furnishing of redacted documents referred in the first FIR during the course of investigation. The legality of the registration of second

FIR, which has been strongly challenged, can be considered at the appropriate stage since Section 471 IPC already stands invoked in the said proceedings.

Petitioner Maneesh Moudgil is stated to have been arrested in second FIR No.146/2022 only since he had been extended interim protection in earlier FIR No.266/2021. The custodial interrogation of petitioner Maneesh Moudgil had been duly obtained in second FIR No.146/2022. The edifice of both the FIRs arises out of execution of Will dated 05.11.2019 executed by Dr.Dev Kumar and Sale Deed and other documents executed by the petitioners and Dr.Dev Kumar though the offences are stated to have been distinctly committed. It does not appear to be logical that on account of registration of separate FIRs, again the custodial interrogation of accused Maneesh Moudgil would be required merely alleging that he did not cooperate and some recoveries are yet to be made. Accused Maneesh Moudgil is already in custody in FIR No.146/2022 since 23.08.2022.

Further, it cannot be ignored that so far as petitioner Anita Moudgil is concerned, she is a woman and the proceedings in relation to inheritance of the properties of late Dr.Dev Kumar (her father-in-law) would generally be taken care of by her husband Maneesh Moudgil. Petitioners have no criminal antecedents except the present proceedings. The threat of influencing of witnesses, as apprehended by the prosecution can be checked by imposing of suitable conditions.

Considering the totality of facts and circumstances, petitioner Anita Moudgil in BAIL APPLN NO.892/2022 as well as BAIL APPLN. NO.3125/2022 and Maneesh Moudgil in BAIL APPLN. NO.1271/2022 be

admitted to bail in the event of arrest on furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) each with one surety in the like amount to the satisfaction of the Investigating Officer/SHO concerned and subject to the following conditions :

- (i) The petitioners shall not leave Delhi without the prior permission of the concerned trial court;
- (ii) The petitioners are further directed to join the investigation, as and when required;
- (iii) The petitioners shall not influence the witnesses or tamper with evidence, in any manner; and
- (iv) During the pendency of proceedings and subject to determination, if any, in civil proceedings, the petitioners shall ensure to safeguard the interest of the complainant to the extent of 50% of share in the property, as claimed by her by way of undertaking before the learned Trial Court/MM concerned.

Applications are accordingly disposed of.

9. Nothing stated hereinabove shall tantamount to expression of opinion on the merits of the case.

(ANOOP KUMAR MENDIRATTA)
JUDGE

NOVEMBER 25, 2022/SD