



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 20th October, 2023

+ BAIL APPLN. 2524/2023, CRL.M.A. 24136/2023 (For Extension of Interim Bail) & CRL.M.A. 27571/2023 (Additional Documents)

MD. SHAHID@ MUNNA BUILDER

..... Petitioner

Through: Mr. Tanveer Ahmed Mir, Mr. Shaurya Tyagi & Mr. Shashwat Sarin, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Aman Usman, APP for the State with Insp. Balmukund Rai, P.S. Chandni Mahal.
Mr. P.K. Rawal, Mr. Tarun Aggarwal and Mr. Rishabh Sharma, Advocates for complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeks regular bail in case FIR No. 191/2022 under Sections 380/448/453/420/467/468/471/120B/34 of the Indian Penal Code, 1860 ('IPC') registered at PS Chandni Mahal.



2. By a separate judgment of the same date passed in BAIL APPLN. 2526/2023 titled 'Md. Shahid @ Munna Builder v. State of NCT of Delhi', this Court has disposed of an application seeking regular bail filed on behalf of the applicant herein, in case FIR No. 376/2022 under Sections 420/467/468/471/120B/34 of the IPC registered at PS Chandni Mahal. The said FIR was registered at the instance of Sh. Gopal Krishan Gandhi based on a set of similar facts and circumstances, as in the present case.

3. The facts of the present case are as under:

- i. On 27.05.2022, a PCR call was received to the effect that four to five persons had trespassed into Property No. 867, Chandni Mahal, Delhi ('the property') and were destructing the place. Acting on the information, police personnel reached the spot and the PCR caller, i.e., one Sh. Lalit Kumar informed them that the property in question belongs to his sister-in-law, Smt. Kusum Lata ('complainant') and the property had been closed due to loss suffered in business in the month of March 2022. It was further informed that on 27.05.2022, when he visited the property, he found that someone had trespassed on to the property and the original locks had been broken opened and replaced with new locks.
- ii. SI Kuldeep visited the complainant's house and recorded her statement. She stated that the property was purchased by her paternal grandfather, late Sh. Data Ram Gupta in the year 1972. She further informed that the documents to that effect were kept at her Property No. 2328, Kucha Chelan, Chandni Mahal, Delhi and were burnt during the Babri Masjid riots in Delhi. She also produced an FIR No. 90/87 dated 22.05.1987



under Sections 188/147/148/149/136/436/427 of the IPC registered at PS Chandni Mahal registered at her instance, regarding the said documents. The complainant further stated that she was running her business at the property under the name and style of 'Delhi Flour Mills' and the same was closed in March 2022 due to losses.

- iii. The complainant further stated that unknown persons who had trespassed in to the property had used the documents relating to her bank account opened with Bombay Mercantile Bank, Daryaganj, Delhi. She stated that on 25.05.2022, a cheque for a sum of Rs. 1 Lakh was deposited to her account, however, the said cheque bounced. Thereafter, on 26.05.2022, another cheque for a sum of Rs. 1 Lakh was deposited to her account, which cleared. The complainant stated that the said sum was deposited to her account without her knowledge and consent and thereafter, she transferred the amount *via* NEFT into the account of the applicant.
 - iv. Based on the complainant's statement, the present FIR was registered on 31.05.2022 under Sections 448/453/380/34 of the IPC.
 - v. The applicant was arrested on 18.04.2023.
 - vi. Upon completion of investigation, chargesheet in the present case was filed under Sections 448/453/380/420/467/468/471/120B/34 of the IPC.
4. Learned counsel for the applicant submitted that the latter has been falsely implicated in the present FIR. It was submitted that the applicant is a builder by profession, engaged in the business of selling built houses. It was further submitted that the documents which have been relied upon by the complainant in respect of the property do not show any clear title to the same.



Learned counsel for the applicant submitted that the property was alleged to have been purchased by the grand father-in-law of the complainant, Sh. Data Ram Gupta in the year 1972. The complainant has no title deeds, as of today, to demonstrate that the property belongs to her and she herself claims that the documents were burnt during riots.

5. Learned counsel appearing on behalf of the applicant drew the attention of this Court to a status report filed on behalf of the State in W.P.(CRL.) 137/2022 filed at the instance of the present petitioner, wherein it has been recorded that the complainant, while applying for a connection from the BSES had shown herself as a tenant of Sh. Banwari Lal and had deposited rental slips for the same. Learned counsel for the applicant submitted that the possession of a property is not the same as ownership and the complainant has not shown any document to demonstrate that she owns the property.

6. Learned counsel for the applicant submitted that the latter claims the ownership of the property on the basis of the following chain of documents:

- i. A General Power of Attorney ('GPA'), agreement to sell, affidavit and receipt pertaining to the property executed by Sh. Fariduddin, Hafiz Kashiduddin and Salauddin, sons of Late Sh. Haji Gulam Aulia in favour of Mohd. Shafiq, son of Sh. Ahmad Hussain on 18.05.1960.
- ii. A GPA, agreement to sell, affidavit, receipt was executed by Mohd. Shafiq, son of Sh. Ahmad Hussain in favour of the applicant on 10.12.1998.
- iii. A registered gift deed dated 28.04.2022 in respect of the property executed by the applicant in favour of his wife.



7. It was pointed out that on 04.07.2022, the applicant filed a 'lost document report' for the aforesaid documents *vide* LR No. 559254/2022 and the said information was brought to the knowledge of concerned Investigating Officer in the present case.

8. Learned counsel for the applicant submitted that the investigation in the present case is complete and the chargesheet stands filed. In support of his contentions, learned counsel for the applicant placed reliance on the following judgments:

- i. **Maninder Singh v. State of NCT of Delhi, 2020:DHC:1519 -** Learned counsel for the applicant placed reliance on this judgment to submit that once the chargesheet has been filed and the necessary recoveries have been effected by the Investigating Officer, no useful purpose will be served by retaining the applicant in judicial custody any further.
- ii. **Amit Nagpal v. State (NCT of Delhi), 2015:DHC:5646-DB-** It was submitted that in the said case, a learned Single Judge of this Court while placing reliance on the judgment of the Hon'ble Supreme Court in Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40, observed that the object of bail is to secure the presence of the accused person at trial and pre-conviction detention should not be resorted to except in cases where it is absolutely necessary.
- iii. **Ritu Palgotra v. State Govt. of NCT of Delhi & Anr., 2023:DHC:6879 -** Reliance on this Judgment was placed to submit that the genuineness of the documents relied upon by either parties is not



relevant at this stage and can only be examined by the concerned Trial Court.

iv. **Rishi Gupta v. State of NCT of Delhi, Order dated 03.08.2023 passed by a coordinate bench in BAIL APPLN. 2506/2023** - Reliance was placed on this order to submit that the fact that the applicant was not arrested from registration of the FIR on 31.05.2022 till 18.04.2023 itself indicates that he has been cooperating with the investigation.

9. Learned counsel for the applicant further relies upon the judgments of the Hon'ble Supreme Court in **Mohammad Ibrahim and Others v. State of Bihar and Another, (2009) 8 SCC 751** and **Sheila Sebastian v. R. Jawaharaj and Another, (2018) 7 SCC 581** to canvas the issue that the present applicant is not the maker of the forged documents.

10. *Per contra*, learned APP for the State, assisted by learned counsel appearing on behalf of the complainant, submitted that the initially, the present FIR was registered under Sections 453/380/34 of the IPC with respect to trespass and forceful possession of the property. It is pointed out that during the course of the investigation when the documents relied by the applicant were found to be forged, subsequently, Sections 420/467/468/471/120B/34 of the IPC were added. It was further submitted that enough material was come on record to show that the complainant was the legitimate owner of the property and was in possession of the ground floor thereof, which is stated to have been forcefully trespassed upon by the present applicant.



11. It is further pointed out that the present applicant had been granted anticipatory bail *vide* order dated 14.07.2022 passed by the learned ASJ and was directed to produce the documents to demonstrate the ownership of the property before the Investigating Officer. It is pointed out that despite the said direction, no documents were placed on record. It was further stated that the applicant lodged a complaint regarding lost documents only on 04.07.2022 after registration of the FIR on 31.05.2022.

12. It was further stated that the person who allegedly sold the property to the applicant, i.e., Mohd. Safiq has since passed away on 13.05.2019. Moreover, documents including the GPA which are stated to be registered in 1960 give the details of the addresses of the property including a PIN Code of Delhi, i.e., 006. It was pointed out that the system of PIN Codes was introduced in India only in 1972 and therefore, the same could not have been mentioned in the said documents registered much prior in time, in 1960.

13. It was further pointed out that in case FIR No. 376/2022, which is subject matter of BAIL APPLN. 2526/2023, the present applicant is again claiming the ownership of the property in question therein on the basis of documents executed by the same Mohd. Shafiq. It is also pointed out that co-accused Mohd. Rehman is a witness in the gift deed executed by the applicant in favour of his wife with respect to property in the present FIR and is also stated to have executed an agreement to sell in favour of the applicant for a property which is the subject matter of FIR No. 376/2022 registered at PS Chandni Mahal.



14. It was urged that the present applicant, being a builder, in conspiracy with the other co-accused persons, is in a habit of grabbing the property and forcefully entering the same by creating forged documents.

15. Heard learned counsel for the parties and perused the record.

16. Two primary grounds for grant of bail have been urged on behalf of the applicant – firstly, the investigation in the present FIR is complete and since the chargesheet stands filed, no useful purpose will be served by keeping the present applicant in further judicial custody and secondly, that the ownership of the property is the matter of trial. Both the parties have relied upon certain chain of documents to substantiate their respective claims of ownership. The veracity or genuineness of the said documents, it was argued, cannot be conclusively adjudicated upon at this stage. It was further argued that the Investigating Officer is biased, inasmuch, as he has recorded statement of the one of the sons of Mohd. Shafiq who stated that the disputed property did not belong to his father, whereas another one of his sons testified to the contrary, whose statement has not been recorded by the Investigating Officer. It was further submitted that the all the relevant documents have been handed over to the Investigating Officer, however, he chose to ignore the same. It is pertinent to note that the present applicant was granted interim bail on account of a surgery *vide* order dated 07.08.2023 passed by this Court, which was extended subsequently from time to time on account of his ongoing medical treatment.

17. The proposition of law laid down in the judgments relied upon by learned counsel for the applicant is not in dispute. In the present case, it is relevant to note that the applicant has relied upon a chain of documents



purported to have been executed in the years 1960 and 1998. In the document executed in 1960, the address of the disputed property has been give as under:

“Property No. 569, (Old) and 866-867-868, (New) area measuring 77 Sq. yds. approx, consisting Two shops on Ground floor, Two rooms on First floor, Two rooms on Second Floor, with roof rights situated at Ward No. 10, Chandni Mahal, Delhi - 110006”

The contention of the learned APP for the State that the PIN Code assigned to the address of the property did not exist at the said point of time is correct. As per the Annual Report for the year 1972-73 published by the Indian Posts and Telegraphs Department, the PIN Code was introduced in India on 15.08.1972. In view thereof, it is *prima facie* apparent that the documents claimed by the applicant to have been executed in 1960 are forged. The applicant is also involved in FIR no. 376/2022, registered at P.S. Chandni Mahal wherein he has adopted the same modus operandi by placing reliance on chain of prima facie forged documents to demonstrate his possession and ownership of the property which is stated to be owned by the complainant therein.

18. The applicant is admittedly a builder by profession and is assumed to know nuances with regard to documents relating to ownership/transfer of property. In the present case, the fact that Mohd. Shafiq (the person who allegedly sold the present property to the applicant) is also the person who allegedly sold the property in question in FIR no. 376/2022 to Mohd. Rehman (a co-accused of the applicant therein) cannot be a mere co-incidence. The same is fortified by the fact that aforesaid Mohd. Rehman, who allegedly bought the property in question FIR no. 376/2022 from Mohd. Shafiq is also a



witness to the gift deed executed by the applicant in favour of his wife in the present FIR.

19. Apart from that, the conduct of the present applicant in not providing the documents to the Investigation Officer despite a specific direction given by the learned ASJ at the time he was granted anticipatory bail cannot be lost sight of. As far as the veracity of the documents relied upon by the applicant in support of the present application is concerned, it is noted that *prima facie*, the documents are ante-dated and it reflects the extent to which the present applicant is capable of going, in order to achieve his objectives. This Court is of the considered opinion that the conduct of the present applicant, right from the time of investigation till the filing of the present application has to be duly taken note of.

20. It is pertinent to note that in W.P.(CRL.) 1737/2022 filed by the present applicant, there is no mention of the aforesaid chain of documents, beginning from the year 1960. The applicant claims that the disputed property was gifted by him to his wife, however, there is no averment as to how the said property came into his possession.

21. In totality of the facts and circumstances of the case, the present application is dismissed.

22. The interim bail granted to the applicant *vide* order dated 07.08.2023 was subsequently extended from time to time. On 04.10.2023, this Court recorded that the applicant had undergone the surgery on 20.09.2023 and was discharged on 25.09.2023. As per the status report dated 06.10.2023 received alongwith a response from the concerned doctor, it was noted that if the patient requires follow up, the same can be done at Deen Dayal Upadhyay



Hospital, AIIMS, Dr. RML Hospital, Lok Nayak Hospital etc as well. Learned counsel for the applicant, on 04.10.2023 had further stated that the present applicant has developed some infection in his chest, post-surgery for which he had been advised best rest for next 07 days, and accordingly, interim bail was extended till the next date of hearing. The purpose of the interim bail has been fulfilled, the applicant stands discharged and in view of the status report dated 06.10.2023, no ground for extension of interim bail granted to the applicant *vide* order dated 07.08.2023 is made out. The applicant is directed to surrender before the concerned Jail Authorities tomorrow, i.e., on 21.10.2023.

23. The application is dismissed and disposed of accordingly.
24. Pending applications, if any, also stand disposed of.
25. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and is only for the purpose of the present application.
26. Copy of the judgment be sent to the concerned Jail Superintendent for necessary information and compliance.
27. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

OCTOBER 20, 2023/bsr