

25.09.2024
Sl. No.14
akd

C. R. M. (DB) 3139 of 2024
(CRAN 1 of 2024)

[ASSIGNED]

In Re: **Meena Agarwal**

... .. Petitioner

Mr. S. N. Mookherjee .. Sr. Advocate
Mr. Ranjan Bachawat .. Sr. Advocate
Mr. Phiroze Edulji
Mr. Ayan Bhattacharya
Mr. Dipanjan Dutt
Mr. Rudraman Bhattacharya
Mr. Shaunak Mondal
Ms. Sarita Sinha
Ms. Sambrita B. Chatterjee
Mr. Rajiv Kumar

... .. for the petitioner

Mr. Kalyan Bandyopadhyay .. Sr. Advocate
Mr. Sandipan Ganguly .. Sr. Advocate
Mr. Sourav Chatterjee
Mr. Soumya Nag
Mr. Abhinav Rakshit

... .. for the de-facto complainant

Mr. Sudip Ghosh .. Spl. Public Prosecutor
Mr. Bidish Ghosh

... .. for the CID

1. Petitioner is the wife of one Mahesh Kumar Agarwal who expired in 2020. Nephew of Mahesh propounded a will in a probate proceeding being PLA 101 of 2020.
2. By order dated 23.12.2020 Hon'ble Single Judge of this court directed the petitioner and other intestate heirs of Mahesh Kumar Agarwal not to deal with the assets and property of the deceased without leave of the court.
3. It is alleged an agreement for sale was executed on 18.05.2023 by the Power of Attorney holder of the petitioner i.e. Yogesh Kumar Khemka and the complainant to purchase the property in question. It is also alleged a sum of Rs.44 lakhs was handed over to Mr.

Khemka as earnest money. Subsequently, a criminal case was registered alleging the petitioner, her Power of Attorney holder viz. Yogesh Kumar Khemka and others had used a forged court order to give an impression that the property in question is unencumbered and thereby deceived the complainant to enter into the sale transaction and suffer wrongful loss. During investigation, said Power of Attorney holder was arrested and we are informed he has been enlarged on bail. Daughter of the petitioner has been granted pre-arrest bail which however, has been assailed before the Hon'ble Apex Court.

4. Initial charge sheet was filed and warrant of arrest was issued against the petitioner. Pursuant thereto, petitioner was arrested. As per roster petitioner's bail prayer was listed before the Hon'ble Single Judge as the offences in the charge sheet were punishable upto seven years.
5. During hearing of the bail application it was brought to the notice of the Hon'ble Single Judge that offence under Section 467 IPC has been added. Under such circumstances, Hon'ble Single Judge released the matter and the same has been placed before this Bench.
6. By the selfsame order Hon'ble Single Judge enlarged the petitioner on interim bail observing the petitioner was a lady and initial charge sheet had been filed. Hon'ble Judge also transferred the investigation to ADG, CID, Bhavani Bhawan, West Bengal who was directed to depute an officer in the rank of Inspector-in-charge preferably engaged with Anti Cheating Squad to conduct further investigation.

7. Mr. S. N. Mookherjee, learned senior Advocate for the petitioner contends the present case is a malicious abuse of criminal law to browbeat the petitioner and her associates who were opposing the grant of probate of a purported will of her husband. He further contends another false criminal case alleging attempt to rape was registered against the petitioner's son who has been enlarged on bail. Property was owned by the company and cannot be said to be the assets of the deceased over which injunction order is in force. He also contends allegation that petitioner did not participate in the investigation is wholly false as notice under Section 41A of the Code of Criminal Procedure was sent to a different address and she was unaware till warrant of arrest came to be issued. Investigation has substantially progressed and initial charge sheet has been filed. Petitioner was in custody for over three weeks when she was being released on interim bail. Till date there is no allegation of misuse of liberty. Co-accused viz. Yogesh Kumar Khemka has been enlarged on bail. Accordingly, he prays interim bail granted to the petitioner may be confirmed.
8. Per contra, Mr. Kalyan Bandyopadhyay, learned senior Advocate for the de-facto complainant submits allegations show the daring nature of the crime. Petitioner and her associates forged a court order to give an impression that property was unencumbered and persuaded the complainant to part with money. He refers to the recitals in the agreement for sale which gives reference to the forged order. The forged order and other incriminating materials were recovered from a spa which is run by the company owned by the petitioner and others. Anticipatory bail granted to the petitioner's daughter has

been assailed before the Hon'ble Apex Court. Yogesh Kumar Khemka had been enlarged on bail when offence under Section 467 IPC had not been added and petitioner cannot claim parity.

9. Learned Special Public Prosecutor for the Criminal Investigation Department (CID) opposes the prayer for bail and produces the case diary and other documents relating to investigation. He contends notices under Section 91 of the Code of Criminal Procedure were issued upon the petitioner but she did not personally attend.
10. We have considered the materials on record. Crux of the allegation is that the petitioner and others had manufactured a forged court order to give an impression that she was permitted to deal with the assets of the deceased. On the strength of the said forged order the complainant was induced to enter into the transaction and pay an initial sum of money.
11. Mr. Mookherjee has brought to our notice the property in question is not the asset of the deceased but belongs to a company of which the petitioner is the Director. Accordingly, the order injunctioning petitioner and other legal heirs in the probate proceeding does not apply to the said property.
12. On the other hand, Mr. Bandyopadhyay draws our attention to the recitals in the agreement for sale which refers to the forged order to establish the right of the petitioner to convey the property.
13. Materiality of the forged order in the transaction may be thrashed out in light of the rival submissions in course of trial. However, it is relevant to note forged order has already been recovered and remanding the petitioner to custody for purpose of its recovery is not necessary. It is also relevant to note investigation undertaken by the

Income Tax authorities with regard to financial capacity of the complainant does not give an impression that he was in a position to arrange for Rs.44 lakhs as earnest money on his own.

14. Though this aspect would not wholly discredit the prosecution case, the manner and circumstances in which the complainant is alleged to have handed over a tranche of Rs.44 lakhs to Mr. Khemka in a public eatery requires to be enquired into in light of the aforesaid fact during course of further investigation. Co-accused viz. Yogesh Kumar Khemka is on bail and no prayer has been made either at the end of the State or the complainant to cancel his bail after addition of Section 467 IPC.
15. Though some submissions are made that petitioner did not personally respond to the notices under Section 91 of the Code of Criminal Procedure/Section 94 of BNSS, we are apprised she replied to the said notices. That apart, notice upon an accused under Section 91 of the Code of Criminal Procedure/Section 94 of BNSS is barred under Article 20 sub-clause (3) of the Constitution of India.¹
16. On the other hand, petitioner attended during Test Identification Parade and it is submitted she is ready and willing to render all assistance for progress of further investigation.
17. Under such circumstances, we are of the opinion interim bail granted to the petitioner vide order dated 24.04.2024 be confirmed subject to the condition that petitioner shall deposit her passport before the trial court within 24 hours and shall not leave the country without the leave of the court. She shall cooperate with the investigation and subject herself to interrogation as and when called

¹ State of Gujarat vs. Shyamlal Mohanlal Choksi, (1964) SCC OnLine SC 41

for. She shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future.

18. Other conditions of interim bail vide order dated 24.04.2024 shall remain unaltered.

19. The application for bail is thus disposed of.

20. Learned Advocate for the petitioner submits his client does not wish to press the application being CRAN 1 of 2024.

21. Accordingly, CRAN 1 of 2024 stands dismissed as not pressed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)