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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25579-2023 (O&M)
Date of decision : 30.01.2024

Randhir Singh Malik and another ...Petitioners
Versus
State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present : Mr. A.P.S.Deol, Senior Advocate, with
Mr. Sanjeev Sharma, Advocate,
for the petitioners.

Mr. Kiran Pal Singh, AAG, Haryana,
for the respondent.

Mr. R.S.Rai, Senior Advocate, with
Ms. Rubina Virmani, Advocate,
for the complainant.

MAHABIR SINGH SINDHU, J.

Petition under Section 438 of the Code of Criminal Procedure, 1973, has been filed for grant of pre-arrest bail to the petitioners in FIR No.100 dated 15.07.2022, under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860, registered at Police Station Mansa Devi Complex, Panchkula, District Panchkula.

2. Above FIR was registered on the basis of complaint made by one Sanjeet Malik, who happens to be the son of petitioner No.1 and brother of petitioner No.2; which reads as under:-

*“The SHO Mansa Devi Police Station Panchkula. Sub:
Complaint against Sh. Randhir Singh Malik s/o Late Sh Des
Raj, Vineet Malik s/o Sh. Randhir Singh Malik, Renu Malik w/o
Vineet Malik, all residents of Village Bhainsa Tibba, MDC,*

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Panchkula Kavita Thakur Bhuvnesh Saksena (both witnesses on WILL) for committing offences of Cheating, fraud, forgery, forgery of valuable security, using as genuine a forged document, criminal conspiracy punishable under IPC. Respected Madam, I am a permanent resident of Valley Estate, Mansa Devi Road, Panchkula 134 114. I have some agriculture lands in village Bhainsa Tibba besides a residential house owned by me. My mother Smt Nirmla Malik died on 2-3-2016. My mother owned several movable / immovable properties in Haryana/Chandigarh and Delhi. My mother died without making a valid "Will". My mother had 3 Class 1 Legal Heirs i.e 1. Sh Randhir Singh Malik (Husband) 2. Vineet Malik (son) 3. Myself Sanjeet Malik (son). As per law, after death of my mother, her property was supposed to be divided in 3 parts equally i.e. between her husband and sons. That my mother's properties were looked after by my father. After the death of my mother, my father Randhir Singh Malik, brother Vineet, Renu wife of Vineet Malik. dishonestly / malafidely and with a view to cause illegal gain to themselves and illegal loss to me, they prepared a false "Will" dated 1-8-2015 of my mother. My father took almost 80-90% of my mother's property, my elder brother took 2 properties of my mother on the basis of this false Will dated 1-8-2015 and in order to make me believe that this "Will" is true and genuine, they mentioned in the false and forged "Will that my son Shivjeet will get my mothers share in 2nd Floor of SCO No 18 in Swastik Vihar Mansa Devi Complex Panchkula. This SCO No 18 is in joint name of my son and my mother. On the basis of this "Will", my father got transferred in his name the agriculture lands of my mother in Village Bhainsa Tibba, MDC Panchkula and in Village Kakeri District Kaithal, SCO 818 NAC Mani Majra Chandigarh, besides her shares in a number of companies. Vineet got transferred in his name an office space in Delhi and a residential flat in Gurgaon. I believed my father that the Will of my mother is genuine and

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never suspected the genuineness of this "Will" as I had full trust in him. He never gave me a copy of this "Will". For the last about 2 years, the behavior Vineet and his wife Renu had changed towards me. In March 2021, Vineet his wife Renu committed offences of criminal trespass / criminal intimidation and theft of my valuable properties kept in my house in Valley Estate MDC Panchkula. Thereafter I started scrutinizing the property papers of my mother. I also obtained certified copy of the said "Will" of my mother from the office of Sub Registrar Panchkula on 12-7-2021. I was shocked and surprised to find out that the signatures of my mother on the alleged "Will" dated 1-8-2015, do not match with signatures of my mother done by her on other documents i.e. (1). Conveyance Deed Dated 22-2-2013 of SCO NO 18 Swastik Vihar Sector 5 Panchkula (2). Copy of Passport (3). Resolution dated 15-12-2002 of The Kakeri Krishna Cooperative Joint Farming Society Ltd (Which are available with me). The signatures of my mother have been forged by all the above mentioned 3 accused, in collusion with each other as well as in collusion with the witnesses Kavita Thakur and Bhuvnesh Saksena, in order to illegally grab my mother's property. I tried to inquire from my father regarding this issue but he did not respond. Involvement of Kavita Thakur in this conspiracy, who is also one of the witness on this "Will", is not ruled out because she is working as Principal of Valley Preparatory School, which is managed and run by Sh Randhir Singh Malik (one of the accused) and Bhuvnesh Saksena works in Panchkula Roller Flour Mills of which Randhir Singh Malik and Vineet Malik are incharge and major shareholders. Bhuvnesh Saksena works under Randhir Singh Malik and Vineet Malik. It is absolutely clear that all the 3 accused in collusion with each other and the witnesses, have committed the offences of Cheating/ Fraud / forgery with the complainant. All the accused knowingly got the forged "Will" registered with the office of Sub Registrar Panchkula on 24-8-2016 i.e. after

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the death of my mother and therefore they have also done cheating with the government. By using the false Will, the above named accused got the properties of my mother transferred in their names thereby committing the offences of using the false and forged document as original. They have committed the offence of forging valuable security and using the same as genuine. The accused with dishonest intention and with a view to make illegal gains to themselves and illegal loss to me, in collusion with each other have prepared a false and fabricated "Will" dated 1-8-2015 of my mother and have caused great financial loss to me illegally. My mother's movable / immovable properties are valued at about Rs. 35 Crores. You are requested to kindly register FIR under relevant sections of IPC and proceed ahead in the matter as per law. Yours Sincerely, Sanjeet Malik S/o Sh Randhir Singh Malik, age 57 years R/o Valley Estate, Mansa Devi Road, Panchkula 134 114 Correspondence Address: 316, Udyog Vihar, Phase 4, Gurgaon 122015 Enclosed : (1) Conveyance Deed Dated 22-2-2013 of SCO No 18 Swastik Vihar (2) Copy of Passport (3) Copy of WILL dt. 1-8-2015 Mobile No: 9810020738”

3. Learned Senior counsel contended that Will in question was executed by Smt. Nirmala Malik way back on 01.08.2015; she died on 02.03.2016. Thereafter, an application dated 13.07.2016 was moved by petitioner No.1 before Sub-Registrar, Panchkula, for registration of the Will and which was ultimately registered on 24.08.2016. Further contended that at relevant point of time, complainant never raised any objection against the registration of Will; rather, he submitted an affidavit dated 16.06.2016 in support of the same, which was produced before the Sub-Registrar, Panchkula. Still further contended that complainant had already filed a suit

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question on 07.02.2022 before Civil Court at Gurugram, and the same is still pending. Also contended that in terms of the Will dated 01.08.2015, son of complainant namely, Shivjeet Malik received ownership right in SCO No.18 (2nd Floor), Swastik Vihar, Panchkula; thus, the Will in question is already acted upon by both sides and as such, the registration of present FIR after seven years is nothing but to pressurize the petitioners for giving more shares in properties to the complainant. Again contended that both the petitioners tried their level best to settle the matter with the complainant amicably including mediation before a retired judge of this Court, but he remained adamant just to harass and humiliate the petitioners in society. Lastly, contended that from bare reading of entire FIR, no offence is made out against the petitioners; rather, it is purely a civil dispute and moreover, both the petitioners are ready to join the investigation; hence, they be protected while granting the concession of pre-arrest bail.

4. *Per contra*, learned State counsel, opposing the prayer, submitted that alleged Will has been prepared by the petitioners while forging the signatures of Smt. Nirmala Malik (since deceased) in connivance with other co-accused and this fact is quite evident from the report dated 12.04.2023 received from the Central Forensic Science Laboratory, Chandigarh (for short, 'CFSL'). Further submitted that as per CFSL report, the questioned signatures on the alleged Will do not match with the admitted signatures on various documents of Smt. Nirmala Malik; hence, *prima facie*, it is proved that both the petitioners committed forgery and fraud in connivance with the attesting witnesses of the alleged Will. Thus, custodial interrogation of both the petitioners would be very much necessary

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5. Learned Senior counsel for the complainant also, while supporting the prosecution case, opposed the prayer of petitioners on the premise that in order to grab the share of his mother-Nirmala Malik (since deceased), alleged Will was forged by petitioner No.1 in connivance with other accused, just to deprive the complainant from his lawful claim being Class-I heir. He also submitted that Smt. Nirmala Malik died on 02.03.2016 and during her life time, she never executed any Will, but complainant was given an impression by his father (petitioner No.1) that alleged Will was executed by Smt. Nirmala Malik during her life time. Further submitted that petitioner No.1 was managing the entire properties of deceased Smt. Nirmala Malik during her life time, therefore, due to mutual trust, an affidavit dated 16.06.2016 was obtained by his father under the pretext that the Will was genuine and complainant remained under a *bona fide* impression in this regard. Learned Senior counsel vehemently submitted that it was only on 12.07.2021, when complainant was shocked and surprised to see that signatures of his mother on the alleged Will were not genuine; rather, forged and the same did not match with her signatures on various documents and then only, complainant approached the police and after making various efforts, present FIR was got registered. While making reference to the alleged Will (P-1), he also submitted that petitioner No.1 claimed himself to be the testator (वसीयतकर्ता); thus, allegation of fraud and forgery are apparently evident in the present case. He also submitted that in view of the result of CFSL report, pendency of civil suit would not be a bar for prosecution of the petitioners along with other accused; rather, custodial interrogation is very much necessary to reveal the truth.

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भारतीय गैर न्यायिक

पचास
रुपये

रु.50

FIFTY
RUPEES

Rs.50

INDIA

INDIA NON JUDICIAL

हरीयाना HARYANA

WILL

Will

I, Nirmala Malik W/o Sh. R.S. Malik IAS (Retd.) R/O Village Bhainsa Tibba, MDC, Panchkula in all my good senses and without any pressure of any person hereby make the following WILL of inheritance on 1.8.2015 in respect of my moveable and immoveable property as under:

1. That my son Vineet Malik will get my ownership rights in 712, Tolstoy House, New Delhi and Plot 104 in South City Gurgaon.
2. That my grandson Shivjeet Malik will get my ownership rights in SCO-18, IInd Floor, Swastik Vihar, Panchkula.
3. That all my ownership rights in SCO 818 of NAC Manimajra, UT Chandigarh and ownership of all my lands and buildings in Village Bhainsa Tibba of Distt. Panchkula and Village Kakeri of Distt. Kaithal and all my credit balances in various Banks and all my Shares in various Companies will go to my husband Sh. R.S. Malik.
4. That if any of my moveable and immoveable property is not covered by the above mentioned Will, it will also be inherited by my husband Sh. R.S. Malik.

Witnesses:

1- Kavita Thakur
1718, Sector-26
Panchkula

2- [Signature]
50, Sector 17,
Panchkula

ATTESTED

Notary, Panchkula (Hry) India

1-1 AUG 2015

Doc No-26/2015

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Doc No-26/2015

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8. Although, this Court is not examining the legality and validity of the aforesaid Will, but there is no hesitation to observe that certain cuttings/over-writings are quite visible with the naked eyes; however, the impact of the same would be considered by the Court of competent jurisdiction. At the same time, it is noteworthy that in order to verify the signature of Smt. Nirmala Devi affixed on the alleged Will, same were sent for scientific examination and report dated 12.04.2023 has already been received in this regard. A perusal of the above report reveals that the Examiner after giving detailed reasons categorically opined that “*person who wrote the enclosed signatures stamped and marked A1 to A11 & A13 did not write the enclosed signatures stamped and marked Q1*”. For reference, the relevant part of the CFSL report reads as under:-

“Questioned (Exhibit)	<i>Q1 – Enclosed questioned signatures of Smt. Nirmla Malik on a will dated August, 2015.</i>
Admitted (Exhibit)	<i>A1 to A11 & A13 – Enclosed admitted signatures on stamp papers, letter of arrangement, terms and conditions, confirmatory letter etc. purported to be written by Smt. Nirmla Malik. A12 – encircled signature is not found to be of Smt. Nirmla Malik hence not considered in the opinion.</i>

Report No.: - CFSL/(C)-277/2023/DOC/CX-26/2023
RESULT OF EXAMINATION

I have examined the documents of this case and I am of the opinion that:

- 1. The person who wrote the enclosed signatures stamped and marked A1 to A11 & A13 did not write the enclosed signatures stamped and marked Q1.”*

Also noteworthy that the Examiner, after recording detailed reasons in support of the above opinion, ultimately concluded as under:-

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“The aforesaid divergences between the questioned and standard signatures are significant and sufficient. The individual differences are fundamental and cannot be attributed to the natural variations or intended disguise and when considered collectively lead me to the aforesaid opinion of different authorship.”

Needless to say that in view of the provisions of Section 293 Cr.P.C., the above report received from the CFSL is *per se* admissible as an evidence.

9. In view of the above, *prima facie*, the element of fraudulent act cannot be ruled out completely in this case. *A fortiori* it is no longer *res integra* that fraud vitiates everything and plea in this regard, can be raised at any point of time; including, during the collateral proceedings.

10. Hence, in such a scenario, the contentions raised on behalf of the petitioners for delay in lodging the FIR; pendency of civil suit as well as furnishing of affidavit dated 16.06.2016 by the complainant and getting of some share by son of complainant would not debar the complainant from initiating the criminal action in the matter; nor the same are helpful to the petitioners for seeking pre-arrest bail in any manner. On the contrary, in the opinion of this Court, thorough investigation is desired to find out the truth behind the alleged Will and for that purpose, custodial interrogation of both the petitioners would be the only way out.

11. As a result thereof, there is no option except to dismiss the petition.

12. Ordered accordingly.

13. It is clarified that observations made above shall not be construed as an expression of opinion on merits of the controversy, in any

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14. Original official records be returned to learned State counsel
forthwith for onward transmission to the quarter concerned.
15. Pending application(s), if any, shall also stand disposed off.

30.01.2024
adhikari

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No