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

Date of decision: 23.04.2024

+ **BAIL APPLN. 1075/2024**

BISHAMBER DAYAL GUPTA

..... Applicant

Through: Mr.Mohit Mathur, Sr. Adv.
with Mr.Tarun Garg,
Mr.R.N.Dubey, Mr.Abhilash
Mathur, Ms.Sonu Bhatnagar,
Mr.Harsh Gautam, Mr.Mayank
Sharma, Advs.

versus

THE STATE GOVT. OF NCT OF DELHI Respondent

Through: Mr.Aman Usman, APP with SI
Abhishek.
Mr.M.Mukul, Mr.Anupam
Vasisht, Mr.J.K.Pandey,
Ms.Akanksha Sharma,
Mr.Sandeep Sirohi, Advs. for
the complainant.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This application has been filed under Section 438 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for grant of anticipatory bail to the applicant in FIR No.252/2022, registered at Police Station: Jyoti Nagar, North-East, Delhi for offence under Sections 420/34 of the Indian Penal Code, 1860 (in short, 'IPC').



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2. The above FIR has been registered on a complaint made by Neeraj Rathi, stating that he is having a dispute with his brother, namely Vikas Rathi, in relation to the properties left behind by their parents, including a property bearing no.C-131 Amar Colony, *Khasra* no.423 situated at Village Saboli, East Gokalpur, Harijan Basti, Illaqa Shahdara, Delhi, admeasuring area of 105 Sq. Yards, which the complainant asserted was purchased by his mother namely Late Smt. Pushpa Rathi from one Sh.Dinesh Rathi by way of registered document on 01.11.1985. It is further stated that the applicant has prepared false documents in order to grab the possession of the said property.
3. The learned senior counsel for the applicant submits that the dispute is primarily between the complainant and his brother, namely Sh.Vikas Rathi, in which the applicant has been falsely implicated. He further submits that as far as the applicant is concerned, he had only stood witness to the two documents that were executed between one Sh.Hori Lal and Sh.Yogesh Kumar. He had also purchased a portion of the said property vide a registered document on 05.07.2023, however, later transferred the same to the co-owner Sh.Raj Kumar. He also stood witness to a document between Sh.Yogesh, another co-owner of the said property, and one Pinki. He submits that merely because the applicant stood witness to these documents, he cannot be charged for an offence under Sections 420/467/468/471/34 of the IPC. He submits that even otherwise, the ingredients of these offences have not been made out in the complaint against the applicant.



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He submits that the documents that were executed by the applicant were in relation to House No.C-131, Plot no.3, situated at Khasra no.796 of Village Saboli, therefore, showing that they pertained to a different property.

4. The learned senior counsel for the applicant further submits that the offence charged against the applicant would at best be punishable with the imprisonment of upto 7 years. He submits that therefore, there is no reason for the applicant to be arrested.
5. He further submits that though the case of the prosecution is that the applicant has acted in connivance with the brother of the complainant, namely Vikas Rathi, and as per the documents, the ultimate beneficiaries are Raj Kumar and Pinki, no steps have been taken to investigate about them or their role in this case. It is only the applicant who has been targeted.
6. On the other hand, the learned APP for the State and the learned counsel for the complainant submit that the applicant has created false and fabricated documents in order to claim title and possession of the property of Late Smt. Pushpa Rathi. They submit that the applicant is a neighbour and is in possession of the adjacent property being Plot no. C-130. They submit that he is well-aware that the owner of the said property is Late Smt. Pushpa Rathi, and that there is a dispute regarding the said property going on between the complainant and his brother, namely Sh.Vikas Rathi. It is only in order to falsely claim the title of the said property, that he has created false documents.



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7. They submit that earlier also the applicant had moved an application seeking anticipatory bail, which was dismissed by this Court vide its order dated 05.2.2024. They submit that there is no reason for this Court to revisit the said order.
8. They further submit that the applicant's claim that the documents created by him are in relation to another property, is also false inasmuch as he had in fact stood as a witness of a lease deed dated 05.09.2013, which was duly registered in the office of Sub-Registrar of Documents in relation to the property of Late Smt. Pushpa Rathi acknowledging her title to the document.
9. They submit that another FIR, being FIR No.291/2021, was also registered *inter alia* against the applicant under Sections 323/341/506/34 of the IPC. They submit that it is only thereafter that the applicant then went ahead and created false Conveyance Deeds dated 08.09.2021, 23.03.2023, and 05.07.2023.
10. They submit that though the applicant also claims that there is a registered GPA executed by Sh.Hori Lal in favour of Sh.Yogesh Kumar, on 21.06.2021, the Conveyance Deed dated 08.09.2021 has been executed on basis of an alleged unregistered GPA dated 17.07.2012.
11. They submit that the applicant is a property broker and adopts such *modus operandi* to occupy disputed properties in the area.
12. They submit that the applicant is to be confronted with all these issues and discrepancies in the documents.
13. In rejoinder, the learned senior counsel for the applicant submits that, as far as the dismissal of the earlier application filed by the



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applicant seeking anticipatory bail is concerned, the said application was dismissed as the applicant had not provided the complete chain of documents to the Investigating Officer (IO). However later, the applicant has provided a complete chain of documents to the IO which have also been verified by the IO and a status report in that regard has been filed. He submits that though the prosecution alleges creation of false documents, no offence under Sections 420/467/468/471/34 of the IPC is made out against the applicant as the complainant has not been cheated thereby.

14. I have considered the submissions made by the learned counsels for the parties.
15. At the outset, it is important to note that this Court by its order dated 05.02.2024 passed in Bail Appl. No.421/2024, has rejected the prayer of the applicant seeking anticipatory bail by observing as under:

“11. As appears from the submission of the learned counsel for the applicant, the applicant claims that the property in question stands on Khasra no. 796 of the Revenue Estate of Village Gokalpur East. However, as per the IO, who is present in person in the Court, the applicant has, in spite of repeated calls, not produced the chain of documents which would support the claim of the applicant to the said property.

12. The learned APP points out that proceedings under Section 82 of CrPC have also been initiated against the applicant.

13. The prosecution also submits that as far as the applicant is concerned, even Sh. Hori Lal from whom the chain of documents starts, as the applicant had stood witness to the GPA



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in favour of Shri Hori Lal, is also not traceable.

14. As the investigation is at crucial stage and the applicant is yet to produce the complete chain of his title in spite of demand from the IO; and Shri Hori Lal is also not traced, I find no merit in the present application.”

16. Though, the applicant has now submitted photocopies of the purported chain of documents to which either he is a witness or have been executed by him, the prosecution has highlighted certain discrepancies in these documents and states that the applicant is to be confronted with these discrepancies. I am restraining myself from giving a detailed analysis of the discrepancies that have been highlighted by the prosecution, only for the reason that it may influence the investigation and, therefore, it would not be proper for this Court to make comments on the same.
17. I am also influenced by the fact that the other executors of these documents that is, Sh.Hori Lal and Sh.Yogesh Kumar, are presently absconding. In fact, the prosecution has also initiated proceedings under Section 82 of the Cr.P.C. against the applicant.
18. While the learned senior counsel for the applicant has submitted that the maximum punishment for the charges that have been alleged against the applicant, is 7 years imprisonment, in the present case, however, the prosecution is giving reasons why they would need custodial interrogation of the applicant.



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19. This Court would only conclude that for present, this Court is of the opinion that the applicant has not been able to make out a case for grant of anticipatory bail, especially in light of the fact that the earlier application was dismissed only on 05.02.2024 and this Court does not find any material change warranting re-consideration of the said order.
20. The Bail Application is dismissed.

NAVIN CHAWLA, J

APRIL 23, 2024
RN/RP

Click here to check corrigendum, if any