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

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+ BAIL APPLN. 1590/2023, CRL.M.A. 23320/2023

BHUPENDER KUMAR

..... Petitioner

Through: Mr. Vijayendra Pratap, Mr. Deepak
Kumar Sharma, Mr. Sandeep Kumar
and Mr. Rahul Tanwar, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Kumar, APP for State
with SI Surendra Singh, PS S.B.
Dairy.
Mr. Dheeraj Singh, Advocate for
complainant.

54

+ BAIL APPLN. 1062/2024, CRL.M.A. 9316/2024

RAM PRAKASH MAHTO

..... Petitioner

Through: Mr. Aashish K. Singh, Mr. Anjali
Goswami and Mr. Abhishek, Advs.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Ajay Vikram Singh, APP for
State with SI Surendra Singh, PS S.B.
Dairy.

2

+ CRL.M.C. 1515/2024

UDAIVIR SINGH

..... Petitioner

Through: Mr. Dheeraj Singh, Adv.

versus

THE STATE GOVT.OF N.C.T. OF DELHI & ANR.

..... Respondents



Through: Ms. Kiran Bairwa, APP for State with
SI Surendra Singh, PS S.B. Dairy.
Mr. H.K. Dhariwal & Mr. R.S. Rathi,
Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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01.04.2024

CRL.M.A. 9316/2024 IN BAIL APPLN. 1062/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

BAIL APPLN. 1062/2024, BAIL APPLN. 1590/2023 & CRL.M.C. 1515/2024

1(i). BAIL APPLN. 1062/2024 under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner Ram Prakash Mahto for grant of regular bail in FIR No. 0410/2021 under Sections 420/467/471/120B/34 IPC registered at P.S. Shahbad Dairy.

Issue notice. Learned APP for the State appears on advance notice and accepts notice.

Learned APP for State points out that BAIL APPLN. 1062/2024 can be taken up alongwith BAIL APPLN. 1590/2023, preferred on behalf of co-accused Bhupender Kumar which is listed for today, as the status report has already been filed therein.

(ii). BAIL APPLN. 1590/2023 under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner Bhupender Kumar for grant of regular bail in aforesaid FIR.

(iii). CRL.M.C. 1515/2024 under Section 439(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner



Udaivir Singh for cancellation of bail granted to co-accused/respondent no.2 Vijay Laxmi, therein vide order dated 12.04.2023 passed by learned ASJ-04, North District, Rohini Courts, Delhi.

All the applications are herein taken up together since the same arise out of the same FIR.

2. In brief, as per the case of prosecution, present FIR was registered on 29.07.2021, wherein the complainant alleged that accused Bhupender Kumar alongwith his associates namely Vijay Laxmi and others created forged and fabricated chain of documents of plot admeasuring 100 sq. yds. situated in Khasra No. 56/19, Krishan Colony, Delhi. The said plot was purchased by complainant for consideration of Rs. 19,00,000/- on 26.10.2012 from Bhupender Kumar.

3. During the course of investigation, it was revealed that the plot in question, which is a two side corner plot, was originally owned by Chander Pal and was sold on 14.02.2002, on basis of registered GPA and registered will alongwith a notarized agreement to sell to Amarjeet Yadav (since deceased). In the said GPA, the property was originally described as under:

*“East - 30 Feet Gali
West - Other plot,
South - 15 Feet Gali
North - Other plot.”*

4. As per chain relied by accused, the aforesaid plot in question was transferred by Amarjeet to his wife Vijay Laxmi (accused) on 14.01.2004 on the basis of GPA, agreement, receipt and possession letter, which were notarized. It is pertinent to note that in the photocopy of GPA, allegedly executed by Amarjeet in favour of Vijay Laxmi dated 14.01.2004, a cutting was made in the location of plot reflecting **“‘East’: ‘Property of Amarjeet’**



instead of '30 Feet Gali'", thereby transferring the adjacent plot instead of original plot, which was never transferred or owned by Amarjeet. During investigation, the Notary Public denied having notarized the said documents. Thereafter, as per chain of documents, the plot was sold by Vijay Laxmi on 06.06.2008 to Ram Prakash Mahto (petitioner/accused in BAIL APPLN. 1062/2024) by execution of notarised GPA, Affidavit, Agreement to Sell and Will. However, during investigation, the concerned Notary denied having notarised or signed even the aforesaid documents. It has further come up in investigation that the address which was furnished by Ram Prakash Mahto in the said documents was incorrect, since he was not traceable at the aforesaid address.

Ram Prakash Mahto is alleged to have transferred the aforesaid plot on 17.10.2012 in favour of Bhupender Kumar on the basis of notarised documents i.e. GPA, Will, etc., who further executed bayana receipt in favour of Sombeer Singh (brother of Udaivir) on 04.08.2012 though documents were executed in his favour only on 17.10.2012. It may be noticed that aforesaid notarised documents have also been found to be forged as the Notary denied having notarised the same.

5. Learned counsel for petitioner Ram Prakash Mahto submits that the petitioner himself is a victim and Bhupender Kumar appears to be offender in case he executed the documents on the basis of bayana receipt. He further submits that the forgery, if any, in the documents had earlier taken place even prior to the plot being transferred in favour of petitioner Ram Prakash Mahto. It is further contended that Ram Prakash Mahto could not be traced during investigation as he was residing at the given address on rent and had shifted from the said premises. It is urged that petitioner is an illiterate



person and has been in custody for more than a year. It is pointed out that though initially the civil suit was filed in year 2015, but FIR has only been finally registered in the year 2021.

Similar contentions are also made on behalf of petitioner Bhupender Kumar denying his role in fabrication of documents and attention is also drawn to the contents of the FIR. It is also submitted that co-accused Vijay Laxmi has been granted bail by learned trial court.

6. Learned APP for State alongwith complainant vehemently oppose the bail applications and point out that the documents are forged in conspiracy since the Notary Public concerned during investigation stated that the said documents relied in the chain were never notarised by them and there is no corresponding entry of the documents in the register of the concerned Notary Public. It is further submitted that the property could not have been sold on the basis of aforesaid bayana receipt dated 04.08.2012 by Bhupender Kumar in favour of brother of complainant since the documents for transfer in favour of Bhupender Kumar were allegedly executed on 17.10.2012. It is also submitted that in the aforesaid set of documents/GPA relied upon by Vijay Laxmi, there is a cutting in the photocopy, wherein the location of the plot in question on the East, has been interpolated as 'Property of Amarjeet' after cutting the words '30 Feet Gali' thereby shifting the location of the plot from 'corner' to a 'middle location', which was never transferred by Chander Pal to Amarjeet vide registered GPA on 14.02.2002. The said fact is stated to be in knowledge of Vijay Laxmi, Ram Prakash Mahto and Bhupender Kumar as they were never in possession of said adjacent plot, which was sold on basis of forged chain of documents.

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



As per prosecution, a corner plot measuring 100 sq. yds. was sold by Chander Pal to Amarjeet on 14.02.2002 on basis of registered GPA, wherein the location of plot is clearly identifiable as corner plot. However, copy of GPA dated 15.01.2004 has been relied by accused in the chain of documents, whereby the location of the corner plot has been changed by carrying cutting, to an adjacent plot, which was never in possession of Vijay Laxmi w/o Amarjeet. The paper possession and transfer of the incorrect plot has been carried by execution of forged notarized documents as already noticed above (i.e. from Vijay Laxmi to Ram Prakash Mahto on 06.06.2008, followed by transfer by Ram Prakash Mahto in favour of Bhupender Kumar on 17.10.2012, who in turn executed bayana receipt in favour of Sombeer (brother of complainant on 04.08.2012), and thereafter executed documents in favour of complainant/Udaivir on 26.10.2012 even prior to execution of documents in his favour by Ram Prakash Mahto. The aforesaid documents have been found to be forged, since the notarisation has been denied by the concerned Notary Public.

8. Considering the grave nature of allegations and the evidence on record, no grounds for bail are made out. BAIL APPLN. 1062/2024 and BAIL APPLN. 1590/2023 is accordingly dismissed.

CRL.M.C. 1515/2024

9. Petition under Section 439(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of complainant/petitioner Udaivir Singh for cancellation of bail granted to respondent no. 2 Vijay Laxmi, herein vide order dated 12.04.2023 passed by learned ASJ-04, North District, Rohini Courts, Delhi.



10. Hon'ble Apex Court in *Subodh Kumar Yadav vs. State of Bihar*, (2009) 14 SCC 638, observed that if a Superior Court finds that the Subordinate Court has erred in its decision for granting bail by considering irrelevant material, or non-application of mind, or fails to take note of any statutory bar to grant bail or if there was improper conduct of proceedings i.e. failure to hear the prosecution/complainant where required, the bail may be cancelled.

Thus, where the grant of bail is not appropriate in the first place given the serious nature of charge against the accused or serious discrepancies are found in the order granting bail, thereby causing prejudice to justice or where irrelevant material has been taken into consideration while granting bail, the bail order may be cancelled. Obviously, cogent and overwhelming circumstances are necessary for cancellation of bail.

However, it may be observed that the concept of setting aside an unjustified, illegal or perverse order is totally different from the cancelling an order of bail on the ground that the accused has mis-conducted himself on account of some supervening circumstances warranting such cancellation.

11. So far as respondent no. 2 / co-accused Vijay Laxmi in CRL.M.C. 1515/2024 is concerned, the case against her is also founded on the same allegations. However, it may be observed that Vijay Laxmi is already on bail for a period of about one year and has not misused the liberty granted to her. Since the learned Additional Sessions Judge exercised the discretion also noticing that the respondent no. 2/co-accused Vijay Laxmi is an illiterate woman and the chargesheet has already been filed, this Court is not inclined to cancel the bail already granted to Vijay Laxmi.



12. It may be also observed that the benefit of bail extended to accused Vijay Laxmi by learned Additional Sessions Judge is not cancelled, only considering that Vijay Laxmi is a woman, and the ground of parity shall not be available to the co-accused, who appear to have duped the complainant and sold the plot without being in actual possession of the said plot on basis of forged documents.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

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

A copy of this order be kept in all the connected applications.

ANOOP KUMAR MENDIRATTA, J

APRIL 1, 2024/akc