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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 1257/2024, CRL.M.A. 10966/2024 &
CRL.M.A. 22146/2024

NIRMALA SHARMA

.....Applicant

Through: Mr. R.K. Tarun, Mr.
Deepak Kumar, Ms. Aditi
Shivadhatri & Ms.
Subedita Rani, Advs.

versus

STATE

.....Respondent

Through: Mr. Naresh Kumar
Chahar, APP for the State.
SI Ravi, PS Dayalpur.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

08.10.2024

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1. The present petition is filed seeking grant of pre-arrest bail in FIR No. 229/2024 dated 30.03.2024 registered at Police Station Dayal Pur for offences under Sections 380/448/457/506/120B/34 of the Indian Penal Code, 1860 ('IPC').

2. The FIR was registered on a complaint given by Ms. Pratibha Arora. It is alleged that the complainant, in the year 2007, purchased a 59 sq. yard plot, property No. 387, Khasra No. 13, Street no. 19, Brijpuri, Delhi on Power of Attorney from the applicant on a notarized document, and possessed all original documents of the subject property. It is averred that Mr. Sunil Sharma signed as a witness to the transaction.

3. It is alleged that the late husband of the complainant had constructed a boundary wall and installed a gate on the plot, and



had also left some construction material in the plot. It is alleged that even after the demise of her husband in the year 2015, the complainant regularly visited the plot. It is alleged that when the complainant wanted to sell the plot to one Mr. Zakir through a property dealer Ram Krishna Lodhi, the applicant not only objected to the sale of the property, she also later threatened and abused the complainant. It is alleged that the applicant also offered the complainant some money, and asked the complainant to resell the property back to the applicant. It is alleged that the applicant removed the construction material lying on the subject property belonging to the complainant. It is alleged that on 09.03.2024, the complainant was informed that the applicant had installed another gate from the back of the complainant's house, raised the level of the gate, and had also constructed a floor on the subject property.

4. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the complaint is nothing but an attempt by the complainant to grab the property of the applicant. He submits that the applicant had purchased the property bearing no. 386/387, Khasra No. 13, Brijpuri, Delhi measuring 141 sq. yards from the erstwhile owner on 17.04.2006, and since then the applicant and her daughters have been in continuous possession of the property.

5. He submits that the applicant in the year 2008 had constructed 90 sq. yards in the said property, and the remainder 51 sq. yards was left unconstructed. He submits that the same is still in possession of the applicant.

6. He submits that the applicant in the month of November 2023, had given a complaint to the SHO, Dayal Pur, Delhi



complaining about the present complainant, Ms. Pratibha Arora, that she is trying to grab the property of the applicant. He submits that the present FIR was registered on a complaint given by the present complainant, Ms. Pratibha Arora, in the month of March 2024, and the same is clearly an afterthought.

7. The learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the statement of the applicant's neighbor Mr. Ramkrishna Lodhi has been recorded who stated that on 26.09.2023, a person with a tractor trolley was called by the applicant at night to remove the construction material of the complainant from the subject property. He submits that the witness of the GPA, Mr. Sunil Sharma, in his statement, has also stated that the deal of the property was made between the applicant and the complainant, in his presence.

8. He submits that two notices under Section 41A of the Code of Criminal Procedure, 1973 ('CrPC') were served on the applicant, however, the applicant failed to give answers to questions. He submits that the CDR of the applicant and the complainant has been procured which shows that the applicant had made a call to the complainant on 11.08.2023, 12.10.2023, and 15.10.2023. He submits that as per the statement of the complainant, the first call was made by the applicant to offer a deal in regard to the subject property in attempt to buy the same back from the complainant.

9. He submits that while the applicant joined investigation on 12.09.2024, she did not cooperate in the investigation. He submits that the applicant continuously changed her statements and gave vague and contradictory replies to the questions.

10. From a perusal of the Status Report, it is apparent that the



applicant is not fully cooperating with the investigation. It is seen that on 16.04.2024, and 25.04.2024, notices under Section 41A of the CrPC were sent to the applicant to join investigation. On both the dates while the applicant came to the police station in compliance with the said notices, she failed to provide written answers to the questions in the presence of a female officer at that time. On both the occasions, she sought 2-3 days time to answer the questions, however, despite the same, she failed to provide answers to the questions. It is the case of the prosecution that during interrogation the applicant attempted to change her handwriting and signature. It is further the case of the prosecution that the applicant while writing the answers, gripped the pen from the top, and while providing her signature on that day, she provided a different signature than how the applicant generally signed.

11. The status report also provides that in reply to the notice under Section 91 of the CrPC, which was to produce the original documents of the property, the applicant stated that she had purchased 400 yards in 2004, and had sold it in parts, however, the documents that the applicant produced were only in respect of 141 yards of the property which was purchased in the year 2006. It is the case of the prosecution that while the applicant admitted that she had called the complainant prior to the incident; she failed to provide any plausible reason for the call.

12. From a perusal of the status report, and the allegations made by the complainant against the applicant, it *prima facie* appears that the applicant is attempting to usurp the property that she sold to the complainant on an earlier occasion.

13. It is the case of the prosecution that while the applicant joined investigation on 12.09.2024, the applicant did not



cooperate in the investigation. It is further the case of the prosecution that the applicant continuously changed her statements and gave vague or contradictory replies and concealed multiple facts. This Court, upon a perusal of the status report, finds some merit in the contention of the prosecution that the applicant is not fully cooperating with the investigation. However, it cannot be denied that the applicant has joined investigation.

14. This Court *vide* order dated 09.04.2024 had granted interim protection to the applicant. The applicant is a woman and is stated to be a widow aged about 59 years. The applicant, being a woman, is also undeniably entitled to special consideration while dealing with the question of bail, in terms of the proviso to Section 437 (1) of the CrPC. In such circumstances, it is not apposite to subject the applicant to custodial interrogation.

15. For this reason, even though the applicant has not been able to make a *prima facie* case, considering that the applicant was granted interim protection by this Court on an earlier occasion, and the fact that applicant is a widow lady, this Court deems it fit to grant the relief of pre-arrest bail to the applicant.

16. In view of the above, the present application is allowed and the applicant in the event of arrest, is directed to be admitted on bail on furnishing a bail bond for a sum of ₹50,000/- with two sureties of the like amount subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicant shall join and cooperate with the investigation as and when directed by the IO;
- b. The applicant shall not leave the boundaries of the country without informing the IO/ SHO concerned;
- c. The applicant shall not contact the witnesses or



tamper with the evidence in any manner;

- d. The applicant shall give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times;
- e. The applicant shall provide the address of her residence to the concerned IO/SHO and shall not change the same without informing the IO/SHO.

17. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

18. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

19. The application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 8, 2024