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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2835/2022**

SUBHASH BASAIYA Applicant
Through: Mr. Kapil Verma, Adv.

versus

THE STATE GOVT. OF NCT OF DELHI Respondent
Through: Mr. Utkarsh, APP for the
State with SI Sumit, PS
Begampur.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
28.02.2024

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 (**CrPC**), seeking pre-arrest bail in FIR No. 439/2021 dated 28.09.2021, registered at Police Station Begum Pur, for offences under Sections 420/468/471 of the Indian Penal Code, 1860 (**IPC**).
2. The FIR was registered on a complaint given by the complainant, namely, Ajit Bharduwaj. He claimed to be the owner of Plot No. 21, Block No. A-2, Katyani Vihar, Village Karala, Khasra No. 52/22/2, Delhi ('**subject property**'). He claimed that the property in dispute was purchased by him from Sh. Kailash Narayan by General Power of Attorney (**GPA**).
3. He alleged that certain land grabbers are trying to take illegal possession of his property and are also threatening him. On the said complaint, the present FIR was registered.
4. Pursuant to the investigation, the prosecution claimed that a person, namely, Om Prakash, has also claimed to have



purchased the subject property from the applicant.

5. The learned Additional Public Prosecutor (**APP**) for the State submits that the subject property came into hands of the applicant pursuant to certain interpolations done in the original sale deed dated 05.01.1990.

6. The learned counsel for the applicant submits that the property was originally purchased by one, Rajesh Narayan Sharma, pursuant to the sale deed dated 05.01.1990, which was thereafter, sold to various persons and was ultimately purchased by the applicant by GPA and Agreement to Sell on 17.05.2016. The applicant, thereafter, sold the property to Om Prakash on 28.02.2019.

7. The learned counsel has brought to Court, certified copy of the original sale deed dated 05.01.1990, evidencing that the land admeasuring 12 bighas and 3 biswas situated at Village Karala Delhi out of Kh. No. 51/20(4-16) was purchased by Rajesh Narayan Sharma.

8. The learned APP for the State submits that the sale deed does not refer to Kh. No. 52/22/2A where the property of the complainant is situated.

9. He submits that any claim over the said plot by the successor in interest of the applicant, therefore, is fallacious.

10. It is apparent that there is claim and counterclaim over the ownership of the said property. The complainant states that he owns the said property pursuant to a series of transactions as narrated whereas the applicant says that he had owned the said property pursuant to the series of documents executed by its owners.

11. The Investigating Officer, who is present in Court, submits that the possession of the property at present is with the

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complainant.

12. The said fact is disputed by the learned counsel for the applicant.

13. It is not denied that the applicant has since joined the investigation, the allegation as made originally was in relation to allegations of threat and the attempt of dispossession.

14. The learned counsel for the applicant, on instructions, submits that the applicant undertakes not to dispossess the complainant without following the due process of law. He further undertakes that he will not try to contact the complainant in any manner whatsoever.

15. In the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694***, the Hon'ble Supreme Court dealt with the issue of pre-arrest bail, and the balance that needs to be maintained while granting the same to an accused and further laid down the factors that must be taken into consideration while granting pre-arrest bail and held as under:

“...112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*



- vi. *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Penal Code, 1860, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail...”*

16. It is not in doubt that order for grant of bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined investigation, cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

17. The purpose of custodial interrogation is to aid the investigation and is not punitive. From the perusal of the Status Report, it appears that the investigation is complete to a large extent and does not require the applicant to be in custodial

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interrogation for the purpose of Investigating Agency to complete the remaining investigation, if any.

18. The claim and counter claim in regard to ownership of the subject property would be tested during the course of trial and, at this stage, cannot be said to be totally true or untrue. The allegation, at this stage, is attempt to dispossess the complainant from the subject property and alleged threats by the applicant to the complainant. As noted above, the applicant undertakes not to dispossess the complainant without following the due process of law and that he will not try to contact the complainant in any manner.

19. Learned Additional Public Prosecutor for the State has not expressed any apprehension of the applicant fleeing from justice or tampering with evidence.

20. The apprehension, even otherwise, can be taken care of by putting appropriate conditions.

21. In view of the above, this Court is of the opinion that the custodial interrogation of the applicant is not required. It is directed that in the event of arrest, the applicant be released on bail on furnishing a personal bond of ₹25,000/- 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 will not leave the boundaries of the National Capital Region without informing the IO/ SHO concerned;
- c. The applicant shall not contact the complainant / witnesses or tamper with the evidence in any manner;



d. The applicant shall give their mobile numbers to the concerned IO/SHO and shall keep their mobile phones switched on at all times.

22. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial and should not be taken, as an expression of opinion, on the merits of the case.

23. The bail application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

FEBRUARY 28, 2024/‘KDK’