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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****RESERVED ON – 05.03.2024**

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PRONOUNCED ON – 09.04.2024+ **BAIL APPLN. 4176/2021, CRL.M.A. 18806/2021, CRL.M.A. 32693/2023****JASPAL SINGH REYATT**

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with Mr. Jaspreet Singh Rai, Mr. Rohit Nagpal, Ms. Bhawna Pandey, Mr. Shekhar Kumar, Mr. Aditya Raj, Advocates.
Ms. Jia Kapur, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the State with SI Amit Tyagi and SI Lalit Kumar, PS DIU/Central.
Ms. Rebacca M. John, Sr. Adv. with Mr. Anurag Jain, Mr. Pravir Singh, Advocates for complainant.**CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J.:**

1. The present application has been filed under section 438 of the Code of Criminal Procedure, 1973 seeking anticipatory bail in case FIR No.0259/2020 registered on 17/12/2020 under section



420/467/468/471 IPC at PS Darya Ganj (Earlier at Rajinder Nagar).

A. Brief Facts

2. Briefly stated facts of the present case as per the status report are that property bearing No. 3B/4, Gangaram Hospital Road, Rajinder Nagar, New Delhi measuring about 666 Sq. Yds. was equally owned by two brothers namely Late Sadhu Singh Reyatt and Late Prakash Singh Reyatt from 1954 onwards. Sadhu Singh Rayatt died on 19.11.2002 leaving behind three sons namely Bhupinder Singh, Hardyal Singh, and present applicant/accused Jaspal Singh Reyatt, and four daughters. Late Sadhu Singh Rayatt executed a WILL dated 28.10.1988 and bequeathed his undivided half portion of the above-mentioned property as well as two other immovable properties in Punjab, to his three sons equally. As per the mandate of the said WILL, two brothers of the applicant/accused i.e., Hardyal Singh and Bhupinder Singh sold their share of the said property to the complainant in the years 2010 and 2011 through two separate GPA/Agreement to Sale/WILL, etc. as the property was not a freehold property at that time. The uninterrupted and peaceful possession of the portions of two brothers was also handed over to the complainant company at the time of execution of the GPA, Agreement to Sale, WILL, etc. by the brothers of the present applicant/accused.
3. The present applicant/accused kept his share with himself in accordance with the above said WILL dated 28.10.1988, however, soon after the execution of the documents with the complainant, the present applicant/accused Jaspal Singh surfaced with another WILL



dated 28.08.2002 of Late Sadhu Singh Rayatt. According to this will, all the immovable properties of Late Sadhu Singh Rayatt including the property in dispute in the present matter were devolved to Applicant/Accused. Further, this WILL also declared the earlier WILL dated 28.10.1988 to be null and void.

4. Thereafter, it is stated that the present applicant/accused in the year 2020 informed the DDA regarding the death of his father and concealed the existence of the WILLS of his late father from the DDA and pleaded formulation/distribution of the said property equally among all 07 legal heirs. DDA mutated the questioned portion of the said property equally among all 07 legal heirs of late Sadhu Singh Rayatt, thereby 5/7th portion of the property in dispute was mutated in favour of the applicant/accused & four sisters and 2/7th share of the property was left for other two brothers of the applicant/accused.
5. Further it is stated in the report that the fact of death of the sibling namely Hardy Singh was not disclosed before the DDA therefore, a portion of the said property was got mutated in the name of a deceased sibling. On the basis of the mutation done by the DDA, the applicant/accused obtained NoCs from four sisters (who have no share in the said property as per WILLS) in his favour. Applicant/accused sold the property to Mr. Surender Kumar through Registered Sale Deed dated 26.06.2020.
6. It is stated that this act on the part of the applicant/accused effectively reduced the share of his two brothers from 2/3rd to 2/7th and increased his own share from 1/3rd to 5/7th in the said property and thereby caused prejudice to the interests of the complainant in the said



property. Accordingly, the present case FIR No.0259/2020 was registered on 17/12/2020 under section 420 IPC at PS Darya Ganj (Earlier at Rajinder Nagar).

B. Submissions of the Applicant

7. Sh. Kirti Uppal, learned senior counsel for the applicant/accused submitted that on the basis of an unregistered and un-probated WILL dated 28.10.1988, the complainant bought a part of the disputed property in the years 2010 and 2011. It was further submitted that the existence of the subsequent WILL dated 28.08.2002 came to the knowledge of the complainant in the year 2011 and even then the complainant never filed a probate petition *qua* WILL dated 18.10.1988.
8. Learned senior counsel submitted that the Ground Floor of the Entire Property in 1987 was tenanted to Dr. Rakesh Chopra and his wife Dr. Venoo Chopra. These tenants did not vacate the Ground Floor of the property despite the fact that the lease was determined. The father of the Applicant filed a suit seeking eviction and possession of the Ground Floor of the Property. The father of the Applicant died in 2002 and subsequently, all three sons of Late Sadhu Singh Reyatt were impleaded.
9. It was also submitted that during the pendency of the eviction suit filed against the Tenants, Mr. Hardayal Singh Reyatt in conspiracy with the Complainant and the tenants took possession of the Ground Floor of the property and simultaneously executed ATS, WILL, GPA, SPA and Possession Letter on 03.11.2010 in favour of Complainant's Company i.e., M/s Clark Construction Private Limited. Further, Mr.



Bhupinder Singh Reyatt, in the same manner, sold his 1/3rd share of the half property to the Complainant by executing ATS, WILL, GPA, SPA and Possession Letter dated 03.06.2011, 08.06.2011, and 10.06.2011 in favour of M/s Clark Construction Private Limited for a meager consideration of Rs 40,00,000/- whereas the value of the property was way higher than the same.

10. Learned senior counsel submitted that vide WILL dated 28.08.2002, the testator Mr. Sadhu Singh Reyatt (since deceased) revoked/cancelled and set aside his earlier WILL dated 28.10.1988. The WILL dated 28.08.2002 was duly attested by Dr. R. K. Singh and Mr. Daljit Singh. Learned counsel also submitted that the Applicant filed a declaratory suit seeking cancellation of ATS, Will, GPA, SPA, and Possession Letter dated 03.06.2017, 08.06.2011, and 10.06.2011 against Bhupinder Singh and the Complainant herein in Suit No. 95750 /2016 (Old Suit No. 11 66/2011). Bhupinder Singh in suit No 612588 / 2016 admitted the fact that his father had left a subsequent WILL (i.e., a Will dated 28.08.2002) vide letter dated 13.06 2006 addressed to the Ld. Court.

11. Learned senior counsel for the applicant/accused submitted that the entire case set up by the prosecution is based upon documents and till date, the prosecution is unable to show the requirement of custodial interrogation of the applicant/accused. The FIR No 259/2020 initially was registered on 17.12.2020 only under 420 IPC. The investigating officer only added 467/468/471 IPC to over-reach the order dated 26.10.2021, whereby Ld. ASJ, Tis Hazari Courts, Delhi was pleased to grant the interim order in favor of the applicant and IO was directed



to serve a notice under Section 41-A in terms of ‘Arnesh Kumar Vs State of Bihar’.

12. Learned senior counsel for the applicant/accused submitted that the factum of WILL dated 28.08.2002 has always been in the knowledge of the complainant since 2011 but no complaint was made by the complainant in this regard. Furthermore, the police have already verified all the documents that have been used in the execution of Sale Deed 26.06.2020 in relation to the sale of a partial share in the subject property.
13. Lastly, learned counsel for the applicant/accused submitted that sections 467 IPC is not made out on the face of it as WILL dated 28.10.1988 and WILL dated 28.08.2002 have not been used by the applicant for selling its share in the property vide sale deed dated 26.06.2020 in favour of Surender Kumar. Further, the applicant accused is a person of around 76 years of age and is suffering from various issues pertaining to his age.

C. Submissions of the Complainant/Respondent No. 2

14. Ms. Rebecca John, learned senior counsel for Respondent No. 2 submitted that after the death of Sadhu Singh Reyatt on 19. 11.2002, an application U/O 22 Rule 3 CPC dated 13.02.2003 was filed in the court by the applicant/accused, and on the basis of WILL dated 28.10.1988, his three sons namely Sh. Jaspal Singh Reyatt, Sh. Bhupinder Singh Reyatt and Sh. Hardayal Singh Reyatt became LRs in the aforesaid suit. The said application was duly allowed.
15. Learned senior counsel submitted that in the year 2005, the applicant/accused filed a civil suit bearing no.3712005 (New Number



61258812016) before the Ld. District Judge, Tis Hazari Courts, Delhi against the tenants for recovery of user and occupation charges while relying upon the WILL dated 28.10.1988 executed by Late Sh. Sandhu Singh Reyatt. He also filed an affidavit dated 27.01.2011 admitting the contents of the WILL dated 28.10.1988 as true and correct.

16. Learned senior counsel submitted that the complainant purchased share ($1/3^{\text{rd}}$ of $1/2$) from Hardy Singh Reyatt (brother of applicant/accused) on 03.11.2010. Thereafter, the brother of the complainant namely Bhupender Singh Reyatt also sold his share to the complainant on 08.06.2011, and the complainant became the owner of $2/3^{\text{rd}}$ of $1/2$ share in the entire property.
17. Learned senior counsel further submitted that during the pendency of the Civil suit bearing No. 1166111 (New Number 95750116) before the Ld. District Judge, Central District, Tis Hazari Courts, filed by the applicant/accused to fraudulently grab the property purchased by the complainant, the applicant/accused entered into a criminal conspiracy with other accused persons and prepared a forged and fabricated will dated 28.08.2002 along with a letter dated 21.04.2011 written by one Dr. R. K. Singh and filed it in the court.
18. Learned senior counsel submitted that after concealing all the previous Wills, Litigations, Factum of death of his brother, and the fact that the complainant has already purchased $2/3^{\text{rd}}$ of $1/2$ share of the property, the applicant applied for the mutation before the DDA by stating that his father died intestate and his 4 sisters have given their respective NOCs in his favour, got fraudulently mutated $5/7^{\text{th}}$



share of the 1/2 properly in his favour. Lastly, Learned senior counsel submitted that thereafter applicant fraudulently sold the property to one Surrender Kumar by sale deed dated 26.06.2020.

19.Ld. Senior counsel submitted that primarily the applicant/ himself relied on WILL dated 28.10.1988 and used in various legal proceedings, thereafter he created another forged WILL dated 28.08.2002 and also relied upon the same in legal proceedings. Thereafter before DDA applicant/accused stated that his father died Intestate.

20. It was further submitted that Dr. R. K Singh who is a Witness to the forged Will dated 28.08.2002 has stated he has signed the WILL after the death of the executor at the behest of the applicant. The other attesting witness Daljeet Singh is not joining the investigation but he is in touch with applicant /Jaspal Singh Reyatt as per the police status report.

21.Learned Public Prosecutor has adopted the arguments advanced by the learned senior counsel for the complainant and has further submitted that it is a serious case and custodial interrogation of the petitioner is necessary. It has further been submitted that the petitioner has not co-operating in the investigation and even tried to flee away from the country during the interrogation.

D. Conclusion

22.The facts in the present case revolves around the allegations that there was a Will dated 28.10.1988 by Late Sh. Sadhu Singh Reyatt in favour of the applicant/petitioner, complainant and another brother late Sh. Hardayal Singh. Vide this Will, late Sh.Sadhu Singh Reyatt



bequeath his undivided half portion of the property as well as two other immovable properties in Punjab to his three sons equally. The complainant bought the shares of late Hardayal Singh and late Bhupinder Singh in the year 2010-11. Therefore, allegedly, the petitioner came out with another Will of 28.08.2002.

23. The case of the petitioner is that the Will dated 28.10.1988 was revoked by late Sh. Sadhu Singh Reyatt by virtue of his Will dated 28.08.2002. The plea of the petitioner is that the present case is revolves around the documents and there is no need of custodial interrogation. However, the case of the complainant is that the petitioner has forged the Will dated 28.08.2002, it was also pointed out that earlier a Civil litigation, the Will dated 28.10.1988 was accepted by the petitioner. It has further been submitted that the petitioner had also concealing the factum of the Will got the property mutated in favour of all the legal heirs of the late Sadhu Singh Reyatt.
24. It is settled proposition the anticipatory bail can only be granted in exceptional cases, the Court has to take into account, the nature of the offence, the gravity of the offence and the role of the accused likelihood of influencing the course of the investigation and tampering with the evidence. The factors like likelihood of fleeing justice has also been taken into account.
25. The granting of bail to someone who has been "arrested" or is in "custody" is governed by Sections 437 and 439 of the Cr.P.C. In contrast, the Cr.P.C.'s Section 438 authorizes the Court to grant Anticipatory Bail to an individual who has yet not been "arrested" or placed under "custody." The Supreme Court explained court's power



under Section 438 of the Cr.P.C. in *Gurbaksh Singh Sibbia v. State of Punjab* (1980) 2 SCC 565.

26. Recently, in *Sushila Aggarwal and others v. State (NCT of Delhi)*; AIR 2020 SUPREME COURT 831, it was inter-alia held that though the grant of anticipatory bail is a matter of discretion. However, such discretion is to be exercised in a judicious manner taking into account the nature and gravity of the offence, the role attributed to the applicant and the facts of the case. In *Sushila Aggarwal* (Supra) it has been further inter alia held as under;

78. (g) The observations in Sibbia regarding “limited custody” or “deemed custody” to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia (supra) had observed that “if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v Deoman Upadhyaya.”

(h) It is open to the police or the investigating agency to move the court concerned, which granted anticipatory bail, in the first instance, for a direction under Section 439 (2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc. The court – in this context is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

27. In the present case, the dispute in between the applicant/accused and complainant primarily seems to be of civil nature and the evidence



which is recovered or is further to be recovered is totally based on documents. Further there is an apprehension of the prosecution that the applicant/accused may abscond if pre-arrest bail is granted to him. Keeping in mind the above settled principles of law, at the time of considering an anticipatory bail, this court must take into account a number of factors, including the seriousness and nature of the offence, the applicant's antecedents, and the possibility that the applicant may flee or tamper with the evidence. Mere assumption of the prosecution that the accused person may abscond/flee away cannot be the sole ground for curtailing the right to freedom of a citizen of India. This court has the power to impose certain restrictions on the accused person to curtail the possibility of fleeing away or tempering with the evidence. And in an event of the restrictions being flouted by the applicant accused/ or any discovery of the evidence which requires the accused person to surrender, in such an event the prosecution can avail the appropriate remedy available in Cr.P.C.

28. Further, the contention of the prosecution that the custody of the applicant/accused is required for the recovery of the documents from the applicant/accused is also not reasonable enough for this court to hamper with the fundamental rights of the applicant/accused i.e., protection of life and personal liberty granted under Article 21 of the constitution of India. This court is conscious of the fact that the applicant/accused is a person of around 76 years of age and have no criminal antecedents. In such circumstances, the rights of the applicant/accused cannot be prejudiced.

29. The present bail application is allowed, and it is ordered that in case



of arrest, the Applicant/accused shall be released on bail in case FIR No.0259/2020 registered on 17/12/2020 under section 420/467/468/471 IPC at PS Darya Ganj (Earlier at Rajinder Nagar), subject to furnishing a personal bond in the sum of Rs.1,00,000/-, with two sureties of the like amount to the satisfaction of the I.O., and further subject to the following conditions:

- a) the petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
- b) the petitioner shall not obstruct or hamper the police investigation and not to tamper with the evidence collected or yet to be collected by the police; and
- c) Shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case; and
- d) the petitioner shall provide his/her mobile number(s) to the Investigating Officer; and
- e) In case of change of residential address and/or mobile number, the petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
- f) the petitioner shall also inform the investigation officer about any change in their address; and
- g) The petitioner shall not leave India without the prior permission of the trial court.

30.The present bail application disposed of in the above terms along with the pending application(s), if any.

DINESH KUMAR SHARMA, J

APRIL 9, 2024

Pallavi/ht