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

\+ **BAIL APPLN. 2309/2024 & CRL.M.A. 25759/2024**

AAKASH .....Applicant

Through: Mr. H.M. Gauracharya, Adv.

versus

THE STATE NCT OF DELHI .....Respondent

Through: Mr.Naresh Kumar Chahar, APP for the State with ASI Sanjeev Kumar, PS Aman Vihar.

Mr. Lalit Sharma, Adv. for the complainant (through VC)

\+ **BAIL APPLN. 2319/2024**

SURAJ KUMAR @ SURAJ NARAYAN .....Applicant

Through: Mr. H.M. Gauracharya, Adv.

versus

THE STATE NCT OF DELHI .....Respondent

Through: Mr.Naresh Kumar Chahar, APP for the State with ASI Sanjeev Kumar, PS Aman Vihar.

Mr. Lalit Sharma, Adv. for the complainant (through VC)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **30.09.2024**

1. The present applications are filed seeking grant of pre-arrest bail in FIR No. 1227/2018 dated 08.12.2018, registered at Police Station Aman Vihar for offences under Sections 380/448 of the Indian Penal Code,1860 (‘**IPC**’).

2. The FIR was lodged based on a complaint by the complainant – Indal Singh, who alleged that he had purchased property being Plot No. 42, Khasra No. 1180, Kirari Village Colony, Prem Nagar-II, Delhi (hereafter '**the property**'), in the year 2010, in the name of his wife - Usha Devi. He alleged that the documents in respect of the property were kept by him with his relative, namely, Vishnu Dayal, who is his daughter's father-in-law.

3. According to the complainant, possession of the property was unauthorizedly taken by his relative, Vishnu Dayal, who subsequently transferred the possession to another accused – Ruby. The applicants allegedly acquired possession of the property from Ruby and claimed lawful ownership of the property, supported by documents that they assert are duly registered.

4. The learned counsel for the applicants submits that the applicants are rightful owners of the property, having purchased it through a series of lawful transactions. He submits that the documents in their possession are registered with the concerned Registrar.

5. Further, the applicants have expressed their willingness to cooperate with the investigation and claimed that they have been falsely implicated in the case.

6. The Additional Public Prosecutor for the State submits that the documents produced by the applicants in their defence were found to be forged. He submits that the status report has been filed, indicating that the stamp papers and other documents in support of the applicants' claim of ownership are allegedly forged and not genuine.

7. He further submits that despite several opportunities, the applicants have failed to produce original documents during the investigation.

8. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation has been carried out by the investigating agency.

9. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, adverting to its previous precedents, has discussed the parameters to be considered while considering pre-arrest bail applications, in the case of ***State of A.P. v. Bimal Krishna Kundu*** **: (1997) 8 SCC 104**, has held as under:

> *"**8.** A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)*
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> *"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal."*
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> ***9.** Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)*
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> *"The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest."*
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> *xxxx xxxx xxxx*

__12.__ We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order."

10. It is pertinent to note that the status report filed by the Investigating Officer clearly indicates that the documents relied upon by the applicants to claim ownership of the property are forged. The alleged use of forged documents to establish ownership over immovable property is a serious offence, which warrants a thorough investigation.

11. This Court, by order dated 15.07.2024 had granted interim protection to the applicants to show their bona fides. However, the additional status report filed by the Investigating Officer reveals discrepancies in the stamp paper used in the chain of documents. Specifically, the report from the office of the Divisional Commissioner, Treasury Branch, Delhi, indicates that the stamp paper, purportedly executed on 12.06.2008 between Bechan Pandey and co-accused Ruby was, in fact, issued from the treasury office on 13.01.2011 and 29.09.2010. Furthermore, it is alleged that these stamp papers were issued to stamp vendors

I.K. Kapoor and Sudhir Kumar Jain, while the stamp paper used in the execution of the documents bears the stamp of vendor Vinod Kumar, Pitampura, Delhi. This significant discrepancy in the use of the ante-dated stamp papers raises serious concerns about the authenticity of the documents and warrants a thorough investigation.

12. The additional status report further shows that the documents in favour of the applicant - Suraj Kumar were executed on 07.03.2019, several months after the registration of the present case, and five months after the alleged transaction occurred. This significant delay in the execution of the documents casts serious doubt on their authenticity and the applicants' claim of legitimate ownership.

13. Moreover, the consideration amount for the property transaction — ₹18.5 lakhs — was purportedly paid in cash. However, this transaction has been denied by the accused – Ruby, who has categorically stated that she never received such an amount. She further asserted that she had been misled into signing a document that she believed to be a rental agreement, not a sale deed. These discrepancies further diminish the credibility of the applicants' defence and point toward a fraudulent scheme aimed at taking illegal possession of the property.

14. The applicants have not adequately cooperated with the investigation. Despite being given ample opportunities, they have failed to produce the original documents, which raises doubts about the veracity of their claims. It is well-settled that an accused seeking pre-arrest bail must demonstrate *bona fide* cooperation with the investigating authorities, which the applicants have clearly failed to do in this case. Their conduct

indicates a deliberate attempt to evade accountability and obstruct the investigation.

15. As pointed out by the Investigating Officer, several critical aspects of the present case need to be investigated. Apart from the alleged forged documents that are yet to be recovered from the applicants, the source of the ante-dated stamp papers used in these forged documents needs to be ascertained and the witness in the alleged forged documents is yet to be identified.

16. Considering the status report, in the opinion of this Court, it cannot be held, at this stage, that the investigation is being carried out with the intention to injure or humiliate the applicants. The nature and the gravity of the allegations are serious. It is settled law that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [Ref. ***State v. Anil Sharma*** **: (1997) 7 SCC 187**].

17. The investigating agency needs to be given a fair play in the joints to investigate the matter in the manner they feel appropriate.

18. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. It plays a crucial tool in preventing harassment and unjust detention of innocent persons. However, the Court must carefully balance the individual's right to liberty with the interest of justice. The legal system must uphold the integrity of public records and ensure that individuals who attempt to manipulate these records for personal gain are held accountable.

19. In view of the above, in the present circumstances, this Court is of the opinion that custodial interrogation of the applicants ought not to be denied to the investigating authority.

20. Considering the aforesaid discussion, this Court is of the opinion that the applicant has not made out a *prima facie* case for grant of pre-arrest bail.

21. The present application is accordingly dismissed.

22. 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.

23. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

SEPTEMBER 30, 2024