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

+ CRL.M.C. 7150/2023, CRL.M.A. 26658/2023

RAHUL TYAGI & ANR.

.....Petitioners

Through: Mr. Surinder Singh and Mr. Rishabh
Chawla, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Aashneet Singh, APP for State.
Ms. Seema Singh, Mr. Dayanand
Sharma, Mr. Bharat Brobota and Mr.
Shabhit Jaiswal, Advs. for R-2.

+ CRL.M.C. 7159/2023, CRL.M.As. 26685-26686/2023

RAHUL TYAGI & ANR.

.....Petitioners

Through: Mr. Surinder Singh and Mr. Rishabh
Chawla, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Aashneet Singh, APP for State.

+ CRL.M.C. 7260/2023 & CRL.M.A. 27082/2023

RAHUL TYAGI & ANR.

.....Petitioners

Through: Mr. Surinder Singh and Mr. Rishabh
Chawla, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Aashneet Singh, APP for State.



CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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05.09.2024

CRL. M.C. 7150/2023, CRL. M.C. 7159/2023 & CRL. M.C. 7260/2023

1. By way of the present petitions, the petitioners, who are the complainants in the FIR No. 311/2023 registered under Sections 420/406/466/467/468/471/120B IPC at P.S. Uttam Nagar, Delhi, seek to assail the orders dated 21.08.2023 passed by learned ASJ, South West, Dwarka Courts, Delhi, vide which the accused *Mukhtiar Singh* has been granted regular bail and co-accused persons, *Renu Devi* and *Rashmi Yadav*, have been granted anticipatory bail, respectively.

2. Learned counsel for the petitioners submits that the accused persons sold the property bearing *Khasra No. 17/18 Hastal Village, Vikas Vihar, Vikas Nagar (Area 4 Bigga 16 Biswa)* to the petitioners by impersonating themselves as the owners of the aforesaid property. To this effect, a bayana receipt of Rs.1,00,00,000/- was signed on 26.12.2021 in the name of co-accused, *Renu Devi*. Thereafter, on 12.01.2022, an Agreement to Sell was executed between *Renu Devi* and *M/s Hari Associates*, through its proprietor (petitioner No.2 herein) and *M/s Preeti Buildtech*, through its proprietor (petitioner No.1 herein), for a total consideration amount of Rs.13,40,00,000/-, which was also signed by all the other accused persons as witnesses to the said agreement. Subsequently, the petitioners paid further sums of Rs.36,00,000/- and Rs.15,00,000/- by cheque, whereafter, the developmental work started, spending another sum of Rs.55,00,000/- on the same. Meanwhile, the petitioners came to know that *Mukhtiar Singh* had executed a gift deed in favour of his children, *Rashmi Yadav* and *Dheeraj*



Yadav on 23.07.2019. However, denying the same, the aforesaid property was misrepresented by the accused persons as being owned by *Renu Devi*. It was also stated that since the children were minors, they had transferred their power of attorney to their mother, *Renu Devi*, who was legally authorised to sell the said property.

Learned counsel further submits that subsequently, it came to the knowledge of the petitioners that the aforesaid property was the subject matter of civil litigation and resultantly, served a legal notice dated 30.01.2023 upon the accused persons. It is also contended that *Mukhtiar Singh* had fraudulently registered a Sale Deed dated 31.10.1996 in his favour from its owner, *Sukh Ram*, qua the said property, which was challenged by a civil suit for Declaration and Mandatory Injunction, wherein vide Judgement and Decree dated 04.05.2006 passed by learned Civil Judge, Tis Hazari Courts, Delhi, the said Sale Deed was declared invalid. Furthermore, a portion of the subject property measuring 200 yards had earlier been sold to one *Satish Yadav* on 26.05.2003 by the accused persons and despite that, the accused persons wrongly sold the said property including the abovestated portion of 200 yards, to the petitioners.

3. *Per contra*, learned APP for the State and the learned counsel for the respondents have opposed the petitions. It is contended that *Mukhtiar Singh* purchased the subject property vide Sale Deed dated 31.10.1996 executed in his favour by his father, *Sukh Ram*. Thereafter, subsequent to the learned Civil Judge declaring the said Sale Deed as null and void, it was challenged, wherein a settlement was arrived at between the parties to the suit on 15.02.2017 that was accepted by the learned Appellate Court. It is further contended that *Mukhtiar Singh*, being the legal owner of the said property,



rightly executed a Gift Deed on 23.07.2019 in favour of his children, *Rashmi Yadav* and *Dheeraj Yadav*. It is the case of the respondents that the petitioners have created a false and fabricated General Power of Attorney (GPA) in favour of *Renu Devi*, dated 15.06.2005, and in support of the contention, it has been pointed out that the said GPA was neither signed by *Renu Devi*, nor bears her photograph. It is also submitted that in this regard, the accused persons have preferred a complaint against the petitioners for forgery at P.S. Uttam Nagar and P.S. Ranhola, however, the same were not acted upon due to the influence of the petitioners. Furthermore, it is contended that the dispute is purely of civil nature regarding the recovery of money and the present FIR is filed merely for the purpose of pressurising the accused persons. It is also submitted that the Agreement to Sell dated 12.01.2022 has not been enforced by the petitioners as they have made only a part payment, however, have already taken possession of the subject property. As per the said Agreement to Sell, the petitioners were supposed to make the balance payment of Rs.12,40,00,000/- at the time of execution of transfer documents, on or before 31.01.2023, however, the same was not complied with. Lastly, the accused persons claim innocence on false implication.

4. I have heard learned counsels for the parties and perused the material on record.

5. As regards accused persons, *Renu Devi* and *Rashmi Yadav*, there are no allegations except that they were parties to the aforesaid Agreement to Sell and Gift Deed, respectively. Further, it is an admitted fact that the Sale Deed dated 30.10.1996 executed by *Sukh Ram* in favour of his son, *Mukhtair Singh* was declared null and void by the learned Trial Court.



However, concededly, an appeal was filed thereon and a settlement was entered into between the two sons of *Sukh Ram*, as per which, the subject property was to fall in the share of *Mukhtair Singh*. It is also not disputed that up till the Agreement to Sell dated 12.01.2022 was executed between the accused persons and the petitioners, the said property was in the possession of the accused persons. It is also noted that presently, the possession of the said property is with the petitioners, even though they have not made the part payment of Rs.12,40,00,000/- out of the total consideration amount of Rs.13,40,00,000/-. The question of title regarding the said property is pending before the Civil Court, and is not within the ambit of this matter, at this stage.

6. It is a settled position in law that Courts, while granting bail, are required to consider relevant factors such as nature of the accusation, role ascribed to the accused concerned, possibilities/chances of tampering with the evidence and/or witnesses, antecedents, flight risk etc.

7. In Prasanta Kumar Sarkar v. Ashis Chatterjee, reported as (2010) 14 SCC 496, the Supreme Court observed:

'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if*



*released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail.'*

8. As regards the factors to be considered while granting anticipatory bail, it was held in Sushila Aggarwal v. State (NCT of Delhi) reported as **(2020) 5 SCC 1**, as stated hereunder:

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

9. The scope and powers of the Court while considering a challenge to the bail granted are well delineated in Puran v. Rambilas, reported as **(2001) 6 SCC 338**:

“10.It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles



of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.”

10. Further, in regard to the Court’s power in assessing the correctness of an order granting bail and the Court’s power while considering an application for cancellation of bail, the Supreme Court has observed in Mahipal v. Rajesh Kumar alias Polia, reported as **(2020) 2 SCC 118**, as under:

‘16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted...’

11. The principles governing challenge to grant of bail were reiterated by the Supreme Court in Ajwar v. Waseem, reported as **2024 SCC OnLine SC 974**, and the same are reproduced hereinunder:

‘27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same



Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order...'

12. Recently, Supreme Court in Manik Madhukar Sarve and Others v. Vitthal Damuji Meher and Others, reported as **2024 SCC OnLine SC 2271**, observed as follows:

'29. In Jagjeet Singh (supra)¹¹, a three-Judges bench of this Court, has observed that the power to grant bail under Section 439 Cr. P.C. is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail...'

13. From the facts of the case noted hereinabove, *prima facie* it appears that the property in question was in the possession of the accused persons before the execution of the said Agreement to Sell dated 12.01.2022, and thereafter, despite making only part payment, the possession of the said property is with the petitioners. Further, the civil dispute is still pending and is likely to take time to conclude, and all the relevant documents are in the possession of the I.O. Moreover, no specific allegations have been made qua *Renu Devi* except the fact that she has entered into and signed the said Agreement to Sell and all the allegations of the offences of forgery and



cheating, *inter alia*, have been made only against the co-accused, *Mukhtiar Singh*. It is also noted that qua *Rashmi Yadav*, the only role attributed is being the beneficiary of the said Gift Deed and a witness of the said Agreement to Sell. As regards *Mukhtiar Singh*, no allegation of violating any of the bail conditions have been made and a reading of the impugned order does not indicate that it was passed on irrelevant considerations or is illegal or perverse.

14. Considering the aforesaid, no grounds are made out to entertain the present petitions and consequently, the same are dismissed, along with pending applications.

MANOJ KUMAR OHRI, J

SEPTEMBER 5, 2024

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