



2024:DHC:4843



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 01.07.2024

+ **BAIL APPLN. 3691/2023**

GEETANJALI BEHL

..... Applicant

versus

STATE OF NCT OF DELHI

..... Respondent

+ **BAIL APPLN. 3692/2023**

KABIR SABLOK

..... Applicant

versus

STATE OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicants : Mr. Viraj R. Datar, Sr. Advocate with Mr. Kapil Yadav, Mr. Pratyush Prasanna & Mr. Saurav Joon, Advocate.

For the Respondent : Mr. Pradeep Gahalot, APP for the State along with Inspector Manish Chaudhary (P.S. Maidan Garhi) & SI Sandeep (P.S. Narcotics Squad- South District)
Ms. Nandita Rao, ASC (CRL) with Mr. Jasraj Singh Chabra & Mr. Amit Peswani, Advocates.

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Mr. Vierat K. Anand, Mr. Kumar Shashank,
Mr. Harish Nadda, Mr. Vikalp Singh, Mr.
Rishab Singh, Mr. Anant Singh & Mr.
Abhishek Sharma, Advocates for
complainant.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present applications are filed under Section 438 of the Code of Criminal Procedure, 1973 seeking pre-arrest bail in FIR No.91/2023 dated 02.03.2023, registered at Police Station Maidangarhi, for offences under Sections 406/34 of the Indian Penal Code, 1860 ('IPC').

2. It is alleged by the complainant, namely, Meena Chawla, that she had given the property bearing No.E-3, Ansal Villas, Village Satbari, Delhi (hereafter '**the property**') on rent to M/s. Srdeen Pvt. Ltd. *vide* Lease Deed dated 19.06.2019 (hereafter '**Lease Deed**'). The Lease Deed was signed by co-accused Sikander Behl as the Authorised Signatory of M/s. Srdeen Pvt. Ltd. (authorised through Board Resolution dated 27.05.2019). It is alleged that the Lease Deed expired on 31.05.2022 despite which the property was not vacated. It is alleged that various articles attached with the subject property, as listed in Schedule 1 enclosed with the Lease Deed, were missing.

3. It is alleged that the complainant apprehended that the articles were not present in the property as she was not allowed to enter when

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she visited the property to inspect the same on 24.06.2022. Due to the same, the complainant filed OMP (I) (COMM) No.266/2022 before this Court under Section 9 of the Arbitration and Conciliation Act, 1996. This Court *vide* order dated 09.09.2022 appointed a Local Commissioner and permitted to inspect the property 17.09.2022. It is alleged that the property was inspected in the presence of the applicants and the complainant and her son. It is alleged that various articles had been stolen which were also detailed in the report of the Local Commissioner dated 02.10.2022. It is alleged that the applicants along with the other co-accused persons had committed theft by removing the articles from the property.

4. The applicant Geetanjali Behl is the mother of co-accused Sikander Behl and the applicant Kabir Sablok is the nephew of co-accused Sikander Behl.

5. The learned senior counsel for the applicants submitted that the applicants have been falsely implicated in the present case. He submitted that no specific role has been alleged against the applicants. He submitted that the name of the applicants was not even mentioned in the FIR by the complainant.

6. He submitted that the accused Sikander Behl has been harassed by the police officials in custody to vacate the property and a complaint has been made by the applicant Geetanjali Behl against the previous Investigating Officer and other male officers for physically and sexually

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abusing her daughter as well. It is submitted that a vigilance enquiry was initiated against the said IO as well.

7. He submitted that the present FIR is based on misleading facts and another FIR, that is, FIR No.326/2022, was already pending between the parties, despite which a fresh FIR was registered.

8. He submitted that the allegations levelled in the FIR, even if accepted at their face value, do not disclose commission of any offence by the applicants. He submitted that the present case at best is one of breach of conditions of the Lease Deed which does not satisfy the ingredients of Sections 406/34 of the IPC.

9. He submitted that the FIR is based upon the report prepared by the learned Local Commissioner. He submitted that the complainant has already filed a claim to the tune of ₹52,61,000/- which is pending before the learned Arbitrator for its due adjudication as per law on the basis of the contentions of the parties under the Lease Deed. He submitted that the present FIR is a pre-emptory measure to defeat/influence the arbitration proceedings.

10. He submitted that the very initiation of the criminal proceedings along with multiple other proceedings by the complainant is clearly an abuse of the due process of law. He submitted that it is trite law that Courts must be wary of being used as tools by civil litigants looking to settle scores by using the criminal law machinery.

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11. He submitted that the applicant Geetanjali Behl is not a director in the companies, namely, M/s. Srdeen Pvt. Ltd. and M/s. Durga Softelcom and Besto Electronics Pvt. Ltd. He submitted that while the applicant Kabir is a director in Srdeen Pvt. Ltd. , however, he was not a party to the Lease Deed. He submitted that there is no requirement for them to be detained in respect of the dispute.

12. He submitted that the dispute between the parties is evidently of civil nature but has been given a criminal color by the Complainant in order to harass the applicants to give in to the illegal demands.

13. The learned counsel for the complainant has opposed the present applications and filed a detailed reply through the son of the complainant as well. It is submitted that the accused persons run a syndicate where they take a farm house on rent and then intentionally refuse to vacate the same as per schedule to pressurise the farm owners to heed to their demands. It is alleged that the same *modus operandi* was used by them to cheat the owners of Farm No.7, Daffodil Lane, Satbari, where they took ₹2.60 Crores to vacate the property.

14. It is submitted that during the course of investigation, the police authorities found that M/s. Srdeen Pvt. Ltd. is a shell company with no real business or assets. The only purpose for the incorporation of the said company was to get the Lease Deed of the property executed.

15. It is submitted that the applicants played an active part in the offences as they are the shareholders in M/s. Durga Softelcom and

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Besto Electronics Pvt. Ltd. which are the main source of funds for the rent paid to the complainant through M/s. Srdeen Pvt. Ltd.

16. It is submitted that the accused persons, including the applicants, have multiple shell companies to carry out numerous illegal transactions. One such company is RDS Reserva Pvt. Ltd., which has unaccounted transactions of approximately ₹30,00,00,000/-, wherein the applicant Kabir and co-accused Krishan Kumar Singhal are the directors.

17. It is submitted that the report of the Local Commissioner clearly states that various articles mentioned in the Lease Deed are missing from the property. Further, major alteration in construction work was also pointed out. Moreover, the exit/entry register also clearly indicates that 32 trucks have entered and exited the property which shows that the said trucks were used to transport large items worth ₹52,00,000/-.

18. It is submitted that the applicants are still in possession of the property which shows that they are the prime suspects for having stolen the lost items and the direct beneficiaries of the same as well.

19. The learned Additional Standing Counsel ('ASC') for the State and learned Additional Public Prosecutor for the State have echoed the submissions of the learned counsel for the complainant and vehemently contested the grant of any relief to the applicants.

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ANALYSIS

20. 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 considering the application for 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..."*

21. In the present case, it is alleged that the applicants and other co-accused persons took the property owned by the complainant on lease through a shell company, that is, M/s. Srdeen Pvt. Ltd., and then refused to vacate the same after the lease expired. It is also alleged that the accused persons misappropriated the articles attached with the tenanted property. It is alleged that the accused persons run a syndicate where they lease farms and then pressurise the owners to pay huge sums to vacate the same.

22. It is the case of the applicants that 99% of the shares of M/s. Srdeen Pvt. Ltd. are held by co-accused Sikander. It is their case that the applicant Geetanjali is not a director of the said company and while the applicant Kabir is a director of the same, neither of the applicants is the signatory to the Lease Deed.



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23. It is pertinent to note that co-accused Sikander Behl has already been enlarged on bail. This Court, by order dated 06.05.2024, in BAIL APPLN. 822/2024, had set aside the order dated 01.03.2024, passed by the learned ASJ, whereby the regular bail granted to the co-accused Sikander Behl had been cancelled. This Court had restored the order dated 17.10.2023, passed by the learned Trial Court granting bail to the applicant on the same terms and conditions as well.

24. It is stated that the Lease Deed was executed with the understanding that the property was being sold to M/s. Srdeen Pvt. Ltd. due to which the said company had also heavily invested in renovation of the property. It is stated that the amount of ₹2.60 Crores paid to Besto Electronics Pvt. Ltd. pursuant to a mutual and voluntary settlement between the parties and is not connected to the facts of the present case.

25. The dispute in the present case is primarily in relation to the alleged stolen articles of the complainant and the nature of possession of the property.

26. While granting pre-arrest bail to an accused, no doubt the Court must consider nature and gravity of the alleged offence, the likelihood of the applicant influencing the witnesses or tampering with the evidence however, the Court is also to consider the role of the accused.

27. It is not disputed that the complainant has already initiated arbitration seeking possession of the premises and claiming an amount of ₹52,61,000/- as compensation towards damages/ loss of

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furniture/fixtures attached to the tenanted premises. A number of cases are pending between the parties in relation to the said property as well.

28. It is also not the case of the prosecution that either of the applicants is signatory to the Lease Deed. The nature of the possession of the tenanted property as well as whether the applicants were beneficiaries of the allegedly stolen articles will be seen during the course of the trial.

29. It is argued that the accused persons run a syndicate through a network of companies. It is further argued that the applicants are shareholders in the companies which were the main source of funds for the rental paid to the complainant through M/s. Srdeen Pvt. Ltd. The evidence in this regard, at this stage, seems to be documentary in nature, which is already in possession of the Investigating Agency.

30. It is pertinent to note that applicants were granted interim protection by this Court by separate orders dated 03.11.2023 subject to them joining the investigation and providing necessary information.

31. This Court had taken note of the objection of the learned ASC that the applicants had not cooperated in the investigation. The same was disputed by the learned counsel for the applicants who stated that the applicants had joined the investigation on a number of occasions. It was also submitted that merely because the answers are not to the satisfaction of the Investigating Officer, it will not make this a case of non-cooperation. Interim protection was extended thereafter on the basis of

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the submission of the learned counsel for the applicants that the applicants will join the investigation on notice by the Investigating Officer.

32. The latest status reports dated 10.02.2024 mentions that the applicants have joined the investigation. It is however also mentioned that the applicants allegedly avoided questions and that their replies were contrary to those of co-accused Krishan Kumar. It is also mentioned that the Board Resolution dated 27.05.2019 bears signatures of co-accused Sikander Behl although the signature of co-accused Kishan Kumar did not match the specimen.

33. It is not the case of the prosecution that the board resolution dated 27.05.2019 bears the signatures of the applicants. Merely because the replies tendered by the applicants differ from those of co-accused Kishan Kumar or that they have not confessed to their involvement in the alleged crime, in the opinion of this Court, would not amount to non-cooperation.

34. The applicants have admittedly joined the investigation.

35. 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 the investigation, cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

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36. The purpose of custodial interrogation is to aid the investigation and is not punitive.

37. Any apprehension regarding the applicants fleeing from justice, tampering with evidence or not cooperating with the investigation can be taken care of by putting appropriate conditions.

38. In view of the above, this Court is of the opinion that the custodial interrogation of the applicant is not required. In view of the above, the applicants, in the event of arrest, are directed to be released on bail on furnishing a personal bond for a sum of ₹1,00,000/- each with two sureties of the like amount each, subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicants shall join and cooperate with the investigation, if required, as and when directed by the IO;
- b. The applicants shall not leave the Country without the prior permission of the learned Trial Court;
- c. The applicants shall not contact the complainant / witnesses or tamper with the evidence in any manner;
- d. The applicants shall appear before the learned Trial Court on every date of hearing;
- e. The applicants shall give their mobile number to the concerned IO/SHO and shall keep their mobile phones switched on at all times.

39. The present bail applications are allowed in the aforesaid terms. It is clarified that the observations made in the present order are only for the purpose of considering the bail applications and should not

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influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

40. A copy of this judgment be placed in both the matters.

AMIT MAHAJAN, J

JULY 01, 2024