



2024:DHG:4349



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 28th May, 2024

+ **BAIL APPLN. 4175/2023**

PAWAN GUPTA

..... Applicant

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Lalit Valecha, Adv. through V.C.

For the Respondent : Mr. Utkarsh, APP for the State.
SI Mohit Malik, PS Saket.
Mr. Amit Gupta, Adv. through V.C. for the complainant.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of Code of Criminal Procedure, 1973 ('Cr.P.C.') seeking grant of regular bail in FIR No.272/2022, dated 23.07.2022, registered at Police Station Saket for offences under Sections 420/467/468/471/201/201/120B/34 of the Indian Penal Code, 1860 ('IPC').

2. The FIR was registered at the instance of the brother of the applicant alleging that the applicant had transferred some property in his favour by forging the complainant's signature on the documents.

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3. It is alleged that the complainant filed a suit for partition of a shop bearing no. A-17, Central Market, Madangir, New Delhi (hereafter '**the property**') against the applicant. It is alleged that, in the said partition suit, the applicant filed a written statement including a photocopy of a document titled as s"*Aapsi Samjhota*" (Memorandum of settlement) dated 25.02.2021, claiming it was an agreement between him and the complainant.

4. It is alleged that the applicant in connivance with co-accused persons namely, Puran Chand and Vikas, created alleged "*Aapsi Samjhota*" and mechanically lifted the complainant's signature from his partition suit, and the complainant got the same verified by experts *vide* report dated 21.10.2021. It is alleged that co-accused Puran Chand and Vikas signed as witnesses on the forged document to assist the applicant in illegally acquiring the complainant's property.

5. It is alleged that the accused are habitual offenders having criminal antecedents and various FIRs are registered against them at police stations –Ambedkar Nagar and Saket, New Delhi.

6. It is alleged that FIR No. 160/2012 under Sections 307/34 of the IPC was registered against the applicant and Vikas Kanojia at police station Saket and FIR No. 98/2012 under Sections 376/366 of the IPC was registered against the applicant at PS Ambedkar Nagar. It is alleged that an FIR is also registered against co-accused Puran Chand at police station Ambedkar Nagar.



7. The learned counsel for the applicant submitted that the allegations against the applicant are false, frivolous, baseless, and concocted and that he is falsely implicated in the present case.

8. He submitted that the applicant's brother, the complainant, got the present FIR registered only with the motive to grab the ancestral property and attempted to create a ruckus in the applicant's matrimonial life due to some caste differences with the family of the applicant's wife.

9. He submitted that the applicant and his brother were running an ancestral jewelry shop, and a significant amount of money was allegedly stolen from the complainant's house, which the applicant later realized was false.

10. He submitted that the alleged document – “Aapsi Samjhota”, which was filed by the applicant with his written statement in civil suit was a photocopy, since the original document is with the complainant.

11. He submitted that the FSL report in the absence of original document cannot definitively determine if the signatures were mechanically lifted or were forged.

12. He submitted that the applicant is the sole bread earner of his family having two minor daughters and his wife and is in custody since 10.07.2023. He submitted that the entire evidence in the case is documentary in nature, which is in possession of the investigating agency and there is no possibility of tampering.

13. *Per contra*, the Additional Public Prosecutor for the State alongwith learned counsel for the complainant opposed the bail



application on the grounds that the offences alleged against the applicant are serious in nature. They submitted that the applicant has been previously involved in the various criminal cases and in the present case he has conspired with his accomplice to grab the property and is also in possession of the property.

14. It is submitted that during the course of investigation the alleged documents were sent to FSL and *vide* FSL report dated 24.01.2022 and 23.05.2022 both the reports opined that the alleged signature could have been superimposed on each other through various methods but it could not be ascertained as regards to the authorship since it did not have any standard signatures of the complainant, of the relevant time. Also, the documents were not original and were Xerox photocopy in which the Line Quality characteristics could not be studied in detail and therefore it was not possible to express any opinion regarding the genuineness or otherwise of questioned signatures/documents.

15. It is also submitted that during the course of investigation the notary, whose stamp was present on the alleged document, stated that the stamp appears to be his but on the said date, that is on 25.02.2021, he was not present in Delhi.

16. It is also submitted that the applicant has criminal antecedents and there is a possibility of him threatening the witnesses or might try to tamper with the evidence.

Analysis



17. It is admitted that the both the applicant and complainant are real brothers and both have filed multiple complaints against each other.

18. From the very nature of the offence and the allegations made, the entire incriminating material seems to be documentary in nature and is already available with the investigating agency. Therefore, it cannot be alleged that the applicant will influence the witnesses and tamper with the evidence if released on bail.

19. It is not in dispute that the chargesheet in the present case has already been filed and the original alleged document is not yet recovered. It is the applicant's case that the original document was in custody of the complainant and the applicant only had a photocopy of the same, which he had already produced before the learned Trial Court in the partition case. The allegations of forgery and any involvement of the applicant will be proved in trial.

20. It is stated that there is also a dispute with respect to a shop bearing no. B-35, Central Market, Madangir, New Delhi 110062, which is in the name of the wife of the complainant. In this regard, the applicant has stated that though it is in her own name, but same was bought from the income of the family business and the applicant is also entitled to claim a share in the same. The FIR, it is claimed was registered to disentitle the applicant of the share in the said shop.



21. The learned Counsel for the applicant had also stated with regards to his involvement in the other FIRs that the FIR under Section 376 of the IPC was registered at the instance of the wife of the applicant before their marriage since the applicant was not marrying her; the other FIR under Section 307 of the IPC was registered due to a scuffle between the applicant and their neighbours. None of the FIRs relates to present issue. It is also admitted that the both the complainant and the applicant had filed multiple complaints and cases against each other. They are admittedly fighting for properties.

22. The Hon'ble Apex Court, in the case of ***Prabhakar Tewari v. State of Uttar Pradesh and Another: 2020 SCC OnLine SC 75***, held that the mere pendency of several cases against the accused cannot be factor in itself for refusal of prayer for bail.

23. In the present case the chargesheet has been filed and the applicant was arrested on 10.07.2023 and the speedy trial in the present case does not seem to be a possibility. Keeping the applicant in further incarceration would cause deprivation of his right to legal defense. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.



24. The applicant is 39 years of age, father of two minor daughters and has a wife to take care of. Considering the aforesaid facts and circumstances, this Court is of the opinion that the applicants have established a *prima facie* case for grant of bail.

25. However, appropriate conditions ought to be put to allay the apprehension of the applicant's tampering with the evidence or evading the trial.

26. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount respectively, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. The applicant shall appear before the learned Trial Court on every date of hearing and shall not take any unwarranted adjournment;
- b. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- c. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;



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- d. The applicant shall appear before the learned Trial Court as and when directed;
- e. The applicant shall, upon release provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

27. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by way of filing an application seeking cancellation of bail.

28. 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 not be taken as an expression of opinion on the merits of the case.

29. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 28, 2024

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