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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4344/2023**
SADHNA SAINI Applicant

Through: Mr. Sudhir Naagar, Mr.
Manohar Naagar and Mr.
Bhanu Sanoriya, Advs.

versus

STATE Respondent

Through: Mr. Utkarsh, APP for the
State with Insp. Uttam
Kumar, PS Karawal
Nagar.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
21.02.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of regular bail in FIR No. 146/2020 dated 04.03.2020, registered at Police Station Karawal Nagar, for offences under Sections 419/420/406/468/471/506/120B/34 of the Indian Penal Code, 1860.

2. The FIR was registered on a complaint given by one Jagpal Saini, alleging that General Power of Attorney (GPA) has been forged by the applicant, pursuant to which it is claimed by the applicant that she is living in the property being No. A-21, Ankur Enclave-I, Karawal Nagar, Shahdara, Delhi -110094, on being permitted by the complainant.

3. It is alleged that the applicant, by forging the said General Power of Attorney, is trying to take illegal possession of the property of the complainant.

4. The learned counsel for the applicant submits that the complainant is the husband of the applicant. He submits that admittedly, the applicant and the complainant have been staying



together for the last almost twenty five years in the subject property.

5. He submits that the complainant now wants to dispossess the applicant and has also filed a suit for possession / declaration and injunction against the applicant.

6. He submits that a written statement has been filed by the applicant, wherein the applicant has specifically claimed that she is in lawful possession of the property, being the legally wedded wife of the complainant. In order to show that the applicant is in lawful possession of the property, he has relied upon a photocopy of the alleged forged GPA, and also the Aadhaar Card which reflects the name of the complainant as the husband of the applicant.

7. The learned counsel for the complainant submits that the applicant, by forging a document, is trying to possess the property which belongs to the complainant. He submits that the applicant was allowed to stay in the property as a licensee in order to help the complainant in the daily chores since the complainant is a handicap.

8. The learned counsel for the applicant submits that the applicant is in incarceration since 28.06.2023. He submits that the investigation is already complete, the chargesheet has already been filed and the applicant is no longer required for custodial interrogation.

9. He submits that the applicant has two minor children to take care of.

10. The alleged GPA is undeniably an unregistered document. Whether any right to possession over the subject property on the basis of the alleged forged GPA can be claimed, is admittedly, subject matter of trial in civil suit filed by the complainant. It is



also an admitted fact that the applicant had been staying in the subject property for the last more than 20 years, and has two minor children. The applicant claims that the GPA was issued by the complainant himself, and she is in possession of only a photocopy of the same. It is claimed that the original of the alleged forged GPA is in the possession of the applicant himself.

11. The allegation that the alleged GPA is forged by the applicant and the defence as noted above, is a subject matter of trial.

12. At the time of considering bail application, this Court is not required to dwell upon the minute details of the merits of the case, since the same, as stated above, are a matter of trial.

13. The applicant, being a woman, is undeniably entitled to special consideration while dealing with the question of bail, in terms of the proviso to Section 437(1) of the CrPC. The applicant is also a mother of three children and has to take care of them.

14. It is to be borne in mind that at the pre-conviction stage, there is a presumption of innocence. Detention is not supposed to be punitive or preventive.

15. It is also apposite to refer to the observations made by the Hon'ble Supreme Court in the case of ***Sanjay Chandra v. CBI* : (2012) 1 SCC 40**. The relevant paragraph is reproduced as below:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.



22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances."

16. It is not disputed by the Prosecution that the investigation in the present case is complete and charge sheet has been filed. Evidently, the custody of the applicant is no longer required.

17. Considering the aforesaid facts, the fact that the applicant has two minor children to take care of and the fact that the investigation in the present case is complete, this Court is of the opinion that no purpose would be served by keeping the applicant in further incarceration.

18. In view of the above, the applicant is directed to be released on bail in FIR No. 146/2020 on furnishing a bail bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of Trial Court/Duty Metropolitan Magistrate on the following conditions:

- a. The applicant shall provide the address where she would be residing after the release and shall not change the address without informing the concerned IO/ SHO;
- b. The applicant shall appear before the learned Trial Court as and when directed;
- c. The applicant shall under no circumstance leave National Capital Region without the permission of the Trial Court;



d. The applicant shall, upon her release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.

19. 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.

20. The present application is allowed in the aforesaid terms.

21. It is clarified that the observations made hereinabove are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

FEBRUARY 21, 2024

'KD/SK'