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

\+ **BAIL APPLN. 23/2024**

NARESH JAIN ..... Applicant

Through: Mr. Kanhaiya Singhal, Advocate, Mr. Ujwal Ghai, Mr. Teeksh Singhal, Mr. Prasanna, Ms. Vani Singhal, Mr. Udit Bakshi, Mr. Ajay Kumar, Mr. Anmol Chopra & Ms. Deepali Pawar, Advocates.

versus

STATE NCT OF DELHI ..... Respondent

Through: Mr. Utkarsh, APP for the State alongwith SI Lalit Kumar (P.S. Sadar Bazar) Mr. Rohan Wadhwa & Mr. Ankit Rana, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **19.03.2024**

1. The present application is filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 for grant of regular bail in FIR No.277 dated 27.11.2018 under Sections 419/420/467/468/471/120B of the Indian Penal Code, 1860 registered at Police Station Sadar Bazar.

Brief Facts

2. The FIR was registered on a complaint made by Ms. Shashi Aggrawal (hereafter the '**complainant**'), against the applicant alongwith co-accused namely, Simmi Jain, Shreya Jain, Kashish Jain and M/s NH International, alleging that a property

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located at No. 3815, with an area of 33.68 square meters, in Gali Barna Sadar Bazar, Delhi (hereafter '**the property**'), was unlawfully acquired by the accused persons.

3. It is stated that the complainant is a 67 years old widow. It is stated that the property was owned by her late husband. The applicant alongwith the co-accused, Simmi Jain, had approached her late husband for renting the property. The property was rented in the name of accused Shreya Jain *vide* rent agreement dated 11.07.2007, and the physical possession of the said property was handed over to the accused persons. The rent agreement was subsequently extended from time to time between the late husband of the complainant and the accused persons with an increase of 10% rent every year.

4. It is the further stated that the complainant's husband expired in the year 2015, thereafter the complainant became the owner of the property by way of relinquishment deed dated 11.08.2017.

5. It is alleged that the accused persons after the demise of the complainant's husband had requested the complainant to extend the tenancy, and were regularly paying rent till May 2017. It is stated that the said tenancy was terminated through notice dated 22.07.2017 and thereafter, no rent was paid. A suit for eviction was also filed before the District and Sessions Judge, Tis Hazari Court, New Delhi.

6. In the year 2018, the complainant came to know about the alleged loan when the property was sealed, by M/s Cholamandalam Investment and Finance Company Ltd. It is alleged that a forged and fabricated sale deed dated 18.03.2015, was executed with respect to the property between the deceased

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husband of the complainant and Simmi Garg (wife of the applicant).

7. It is alleged that a loan was obtained on the basis of the alleged sale deed from M/s Cholamandalam Investment and Finance Company Ltd, with respect to the freehold basement and ground floor, without roof rights of the property. It is also alleged that the signatures of the deceased husband on the alleged forged sale deed does not match with the signatures of the deceased husband on any other registered document. It is further stated that the alleged sale deed bears the address of the complainant's husband, which was left by the family almost thirty years ago.

Submissions

8. The learned Counsel for the applicant submits that the applicant has falsely been implicated in the present case. He submits that the applicant is in custody since 01.02.2022, and the investigation is complete and the chargesheet has already been filed.

9. He submits that the present case arises out of a civil dispute between the complainant and the applicant and that the instant case is an attempt to give a criminal nature to an entirely civil dispute. A civil suit bearing number CS 1358/2018 is already pending between the complainant and the applicant, with respect to the property.

10. He submits that the applicant's wife had bought the property in good faith from the complainant's husband and thereafter mortgaged with the bank for securing a loan.

11. The learned Trial Court while dismissing the bail application had noted that the applicant is a flight risk since proceedings under section 82 of the Cr.P.C., were initiated

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against the applicant. He submits that applicant was granted interim protection, during the proceedings for his anticipatory bail, by this court *vide* order dated 25.04.2019, subsequently the anticipatory bail was dismissed by this Court *vide* order dated 02.09.2021. He submits that the applicant was already in judicial custody in another FIR 341/2018, and was arrested in the present FIR only on 01.02.2022 from Rohini Jail Complex *vide* arrest memo dated 01.02.2022.

12. He further submits that various evaluations inspection with respect to the property were conducted, before the loan was sanctioned to the applicant.

13. Lastly, he submits that the trail is getting delayed and its, been more than five years the trial has not proceeded.

14. The learned Additional Public Prosecutor for the state has opposed the grant the present bail application. He submits that the applicant is involved in other criminal cases of similar nature. FIR Nos. 341/2018, and 76/2009 under Sections 420/467/468/471/34 and 420/467/468/471/120B of the IPC respectively, were registered against the applicant.

15. He submits that during the course of investigation it is revealed that both the accused persons the applicant & Simmi Jain along with their son namely Kashish Jain in a deep conspiracy prepared two forged sale deed dated 20.02.2015 and 18.03.2015 respectively of the property in question. In alleged sale deed accused Simmi Jain is buyer and accused applicant/ Naresh Jain is witness, while the seller has been shown as Rajender Aggarwal. He submits that someone impersonated as Rajender Aggarwal.

16. He submits that accused persons obtained a loan of Rs 83 lacs from Allahabad bank Kishan Ganj, Delhi by keeping the sale

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deed dated 20-02-2015 of the property in question as collateral security. Further, the accused persons obtained another loan of Rs.3,04,70,411/- from M/s Cholamandalam Investment and Finance Company Ltd. Karol Bagh by depositing the Sale Deed dated 18-03-2015 of the property in question and one other property of Model Town.

17. He submits that on 11-05-15 the loan amount from M/s Cholamandalam Investment & Finance Company Ltd., that is, Rs. 2,94,22,705/- was credited in A/C No. 0124001800000017 of Shreya International in which accused Simmi Jain is the proprietor. On 31.05.2015 the Over draft loan amount of Rs. 83,00,000/- sanctioned by the Allahabad bank was transferred to bank account of 50287497262, belonging to accused Simmi Jain.

18. He submits that on 12.05.2015, the amount of Rs. 95,00,000/- was transferred in the account of Kashish International, owned by the accused Kashish Jain, who is the son of the applicant. Thereafter the said amount was transferred from the account of Kashish International to account NH International which is jointly owned by Kashish Jain and Naresh Jain. On the same day Rs.75,00,000/- was transferred in the account of Shreya International, ICICI Bank, Shalimar Bagh owned by the accused Simmi Jain.

19. He submits that accused Naresh Jain, Simmi Jain & Kashish Jain were borrowers of the loan taken from M/s Cholamandalam Investment & Finance Company Ltd. Karol Bagh, Delhi, while the overdraft loan was taken from Allahabad Bank by accused Simmi Jain and the applicant was the guarantor. That accused Kashish Jain was arrested on 11-01-19, while accused applicant / Naresh Jain & Simmi Jain both were absconding.

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20. He submits that during the further course of investigation it was revealed that the cheques bearing number 257828, 257829 & 257830 mentioned in the sale deed against the payment, were never encashed from the Bank.

21. He submits that during the scrutiny of documents of NH International, in which Rs. 95,00,000/- from the cheated amount was credited, it was revealed that it is a joint account of accused Naresh Jain and Kashish Jain.

Analysis

22. I have heard learned Counsel for the parties.

23. It is not disputed that the one of the FIR being FIR 76/2009, was quashed being a Intra family dispute.

24. The chargesheet in the present case was filed way back on 27.11.2018 and the trial has not yet proceeded.

25. 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. Even though it is alleged that the applicant will influence the witnesses and tamper with the evidence if released on bail but the same is only a bald assertion.

26. The co-accused Kashish Jain and Simmi Jain have already granted bail by the learned Trail Court by orders dated 21.09.2019, and 22.06.2023 respectively.

27. The State has not challenged the orders granting bail to co accused persons. The allegations of forgery and any involvement of the applicant will be proved in trial. Once majority of the co accused are out on Bail it cannot be argued that it is only the applicant against whom there is an apprehension that he will tamper with the evidence and influence the witnesses.

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28. It cannot be alleged that further incarceration of the applicant is required to carry out further investigation and that the applicant will hamper the investigation in case he is released on bail.

29. The undertrial prisoners cannot be detained in custody for an indefinite period. It is a settled principle of law that bail is the rule and jail is an exception. The right to speedy trial and justice has been recognised as a Fundamental Right by the Hon'ble Supreme Court. In ***Sanjay Chandra v. CBI***: **2012 1 SCC 40**, it was held as under:

> *"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.*
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> *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 un convicted 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."*

30. The speedy trial in the present case does not seem a possibility. 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

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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.

31. Considering the above and the fact that the applicant is in custody since 01.02.2022, and that the trial is likely to take a considerable amount of time, this Court feels that no useful purpose would be served by keeping the applicant in further incarceration.

32. Without commenting further on the merits of the present case and keeping in mind the facts and circumstances of the case, I am satisfied that the applicant has made out a case for grant of regular bail. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹1,00,000 with two sureties of the like amount to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, subject to the following conditions:

a. He 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;
b. He shall under no circumstance leave the Country without the permission of the learned Trial Court;
c. He shall appear before the learned Trial Court as and when directed;
d. He shall, upon his release, provide the address where he would be residing after his release and shall not change the address without informing the Investigating Officer/ SHO concerned; and

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e. He shall, upon his release, provide his mobile number to the Investigating Officer/ SHO concerned, and shall keep it switched on at all times.

33. 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 filing an application seeking cancellation of bail.

34. 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.

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

AMIT MAHAJAN, J

MARCH 19, 2024
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