



\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 3951/2024, CRL.M.A. 32635/2024 & CRL.M.A.
32636/2024
SHEKHARPetitioner

Through: Mr. Rajesh Kumar Tarun and Ms.
Aditi Shivadhatri, Advocates.

versus

STATE NCT OF DELHIRespondent
Through: Mr. Satish Kumar, APP for the State

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER
09.12.2024

%

1. The instant application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed on behalf of the applicant/petitioner seeking anticipatory bail in FIR bearing No. 561/2024 registered at Police Station Burari for the offences punishable under Sections 454/380/448/120B/341 of Indian Penal Code ("IPC" hereinafter).
2. The brief facts that led to the filing of the instant application are that the applicant is stated to have purchased property bearing Khasra No. 75/8/1/3 and 13/2, Old Khasra No. 443, adm. 300 sq. yards (out of 500 sq. yards) situated in Village Burari, Delhi, which he purchased from its erstwhile owner namely one Naresh Kumar in the year 2023 vide General Power of Attorney dated 26th May, 2023.



3. The applicant states that pursuant to the above, one Sub – Inspector namely Mohan Singh started extending threats to the applicant to forcefully dispossess him following which the applicant approached the concerned Civil Court by filing a civil suit bearing no. CS SCJ No 2019/2023, thereby, seeking permanent injunction against Mohan Singh, and the same is pending for adjudication.

4. During the pendency of the aforesaid civil suit, one Maya Devi (complainant herein) approached the concerned police station, thereby, seeking registration of the FIR against the applicant, and the same was refused. Thereafter, the complainant filed an application under Section 156 (3) of the Code of Criminal Procedure, 1973, before the Magistrate Court, thereby, seeking registration of the FIR. During the pendency of the said application, the instant FIR was registered by the concerned police station, wherein, it has been alleged that the applicant and one other person have wrongfully entered the property in question and have illegally disposed her from the said property. Hence, the applicant has approached this Court apprehending his arrest in the said FIR.

5. Learned counsel appearing on behalf of the applicant submitted that there is no incriminating evidence against the applicant to connect him with the commission of the offences alleged against him.

6. It is submitted that the complainant Maya Devi is acting at the instance of one Mohan Singh with whom the applicant is contesting a civil case bearing no. CS SCJ No 2019/2023 concerning the same property.

7. It is submitted that as per the settled position of law, to constitute an offence of house trespass, the complainant has to be in exclusive possession of the said property, however, if the exclusive possession is not with the



complainant, then the offence of house trespass can hardly be alleged, and thus, in the present case as well, if the possession of the property itself is in doubt, the entire complaint of the complainant becomes doubtful.

8. It is submitted that in the present case, the police initially refused to register an FIR, stating that no cognizable offence had been committed and that the matter was a civil dispute, however, while the complainant's application under Section 156(3) of the Code of Criminal Procedure, 1973 was still pending before the concerned Magistrate, the police, without waiting for the Magistrate's directions or providing any justification, suddenly registered an FIR, which demonstrates the *mala fide* intentions of both the concerned police officials and the complainant, who are acting in collusion, at the behest of the said Mohan Singh, thus, revealing a coordinated effort to misuse legal processes and give the civil offense colour of criminality.

9. It is submitted that it is significant to mention herein that the factum of a civil suit pending with respect to the same property was ignored by the police while registering the present FIR as well as by the learned Court below while dismissing the applicant's bail, and without appreciating this aspect in the present case, the respondent no 1/State erroneously proceeded to register the FIR, at the instance of the complainant by ignoring the material fact on record that the present FIR is arising out of an alleged civil dispute.

10. It is submitted that the instant FIR is nothing but an afterthought of the complainant to wreck vengeance against the applicant and illegally take possession of the said property, and thus, the complainant is misusing the



state machinery for her own ulterior motives, instead of contesting her alleged title over the said property before the competent court of law.

11. Learned counsel for the applicant submitted that he is an innocent person and has not committed any offence as alleged in the FIR. It is further submitted that applicant undertakes to abide by any condition imposed by this Court while granting anticipatory bail. There is no history of previous involvement of the applicant in any criminal case and has clean antecedent. It is also submitted that the applicant is a permanent resident of Delhi.

12. Therefore, it is submitted that in view of the above facts and circumstances, the instant applicant may be enlarged on anticipatory bail.

13. *Per contra*, learned APP appearing on behalf of the State vehemently opposed the present application, *inter alia*, on the ground that the applicant was actively involved in the planning and commission of the offences for which he is charged and the said offences are grave in nature.

14. It is also submitted that in case bail is granted to the applicant, there are chances of the applicant absconding and evading trial considering the gravity of offence/charges leveled against him. It is further submitted that that the applicant has forcefully taken the possession of the property in question and removed the earlier electricity connection and installed a new connection in his name and further stole the belongings of the complainant.

15. It is submitted that taking into consideration the gravity of the offences against the applicant, there are no cogent reasons for granting the anticipatory bail as prayed by the learned counsel appearing on behalf of the applicant. Therefore, in view of the foregoing submissions, it is prayed that the instant application may be dismissed.



16. Heard learned counsel for the applicant as well as learned APP for the State and perused the record.

17. It is an admitted fact that the applicant has clean antecedents and he has deep roots in the society. Further, the maximum sentence for offences punishable under Sections 454/380/448/120B/341 of the IPC which are alleged against the applicant is less than 7 years.

18. It is also an admitted fact that for the purpose of the dispute between the complainant and applicant herein with regard to the property in question, a civil suit is already pending before the learned Civil Judge for adjudication.

19. Moreover, the applicant has given an undertaking that he will cooperate in the trial and with the investigation agency. However, in the event the applicant fails to cooperate with the investigation agency, the State has the liberty to file an application for cancellation of bail.

20. Therefore, after considering the aforesaid facts and circumstances, as well as the fact that the entire investigation depends on the documentary evidence, this Court is inclined to grant the anticipatory bail to the applicant.

21. Keeping in view the above contentions advanced by the learned counsel for the parties, this Court is inclined to grant protection to the applicant. Accordingly, it is directed that in the event of arrest, the applicant be released on bail on his furnishing personal bond in the sum of **Rs.50,000/-** (Rupees Fifty Thousand only) with two sureties of like amount to the satisfaction of the Investigating Officer/Court concerned subject to the conditions as follows:-

- a) The applicant shall surrender his passport, if any, to the Investigating Officer and shall under no circumstances



leave India without prior permission of the Court concerned;

- b) The applicant shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
- c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and/or attempt to tamper with the evidence;
- d) The applicant shall provide his mobile number(s) to the Investigating Officer and keep it operational at all times;
- e) In case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/Court concerned by way of an affidavit.

22. With the aforesaid directions, the instant bail application stands disposed of.

23. Pending applications, if any, stand disposed of.

24. It is made clear that the observations made by this Court shall not be construed as an expression on the merits of the case before the learned Trial Court.

CHANDRA DHARI SINGH, J

DECEMBER 9, 2024

rk/ryp

Click here to check corrigendum, if any