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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 738/2025 & CRL.M.A. 5327/2025**

RAKESH KUMAR

.....Applicant

Through: Mr. Shiv Kumar Gautam,
Mr. Gopal Agonia, Mr.
Shanu Ansari, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Aashneet Singh, APP
for the State.
SI Bajrang, PS DIU/C,
Dariyaganj.
Mr Anand Duggal, Adv.
through V.C. for

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

16.04.2025

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1. The present application is filed seeking grant of pre-arrest bail in FIR No. 379/2024 dated 22.09.2024, registered at Police Station Nabi Karim for offences under Sections 318(4)/338/336(3)/340(2) of the Bharatiya Nyaya Sanhita, 2023.
2. The FIR was registered pursuant to the complaint filed by the complainant alleging that the accused persons fraudulently prepared false and fabricated documents in respect of the property bearing No. 10402/1A, (back side), Bagichi, Allauddin, Motia Khan, Sadar Thana Road, Paharganj, New Delhi ('**subject property**').
3. It was alleged that the accused persons had trespassed into the subject property and fabricated the documents to create false ownership and had also initiated unauthorized construction. The



beneficiary of the fabricated documents was stated to be co-accused Smt. Billo.

4. The learned counsel for the applicant submits that the applicant only stood as an attesting witness to the execution of the sale deed which is stated to be forged. He submits that the witness is not required to verify the authenticity of the chained documents and the only purpose is to verify that the parties have signed in front of him.

5. The law in regard to the grant of pre-arrest bail is well-settled. 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 dealing with 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 ~~common~~ 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...”

6. The status report indicates that the beneficiary of the forged documents was Smt. Billo, who was arrested on 19.01.2025. It is stated that she was admitted on bail by order dated 07.04.2025 passed by the learned Trial Court. The status report also mentions that the applicant only stood as a witness in the registered sale deed and has joined the investigation.

7. This Court, by order dated 19.02.2025, noting that the applicant *prima facie* is only an attesting witness to the sale deed, had directed the State not to take any coercive steps against the applicant on him joining and cooperating with the investigation.

8. Undisputedly the applicant has since joined the investigation on numerous occasions. The allegations against the accused persons, including the applicant herein, in regard to their involvement, if any, would be tested during the course of the trial after the evidence is led by the parties. However, in the opinion of this Court, the custodial interrogation of the applicant is not required.

9. It is not in doubt that order for grant of pre-arrest 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.

10. The purpose of custodial interrogation is to aid the investigation and is not punitive. In the opinion of this Court, the custodial interrogation of the applicant is not required in the facts of the present case.

11. No apprehension has been expressed that the applicant will evade the trial. Even otherwise, any apprehension regarding the applicant fleeing from justice, tampering with evidence or not cooperating with the investigation can be taken care of by putting appropriate conditions.

12. In view of the above, it is directed that in the event of arrest, 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, subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicant shall join and cooperate with the investigation, if required, as and when directed by the IO;
- b. The applicant shall not leave the country without the prior permission of the learned Trial Court;
- c. 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;
- d. The applicant shall appear before the learned Trial Court as and when directed;
- e. The applicant shall 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 give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
13. The present bail application is allowed in the aforesaid terms.
14. It is clarified that the observations made in the present order are only for the purpose of considering the present application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.
15. The bail application is allowed in the aforementioned terms. Pending application stands disposed of.

AMIT MAHAJAN, J

APRIL 16, 2025
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