

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Order delivered on: 10th May, 2010

+ **BAIL APPLN. 141/2010**

KULSHRESTHA DHINGRA & ANR. ...Appellants

! Through: Mr. K.K. Sud, Sr. Advocate with
Mr. Shishir Pinaki, Mr. Anwesh Madhukar
& Mr. Kunal Malhotra, Advocates

versus

\$ **THE STATE** ...Respondent

^ Through: Mr. Pawan Behl, APP.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the Judgment? (No)
2. To be referred to the Reporter or not? (No)
3. Whether the judgment should be reported in the digest? (No)

ORDER

P.K.BHASIN,J:

The petitioners are husband and wife. Petitioner no. 1 is the brother of the complainant of this case. They are seeking anticipatory bail as they apprehend arrest by the police in connection with the criminal case got registered against them by the complainant vide FIR No. 06/2010 under Sections 327/380/506/34 IPC.

2. The petitioner no. 1 and his sister, the complainant, have inherited one

commercial property in Malviya Nagar from their deceased father. The complainant is a widow. Her deceased husband owned one residential flat in Sheikh Sarai which is in occupation of the two petitioners herein. It appears that the petitioner no. 1 and the complainant decided to sell the property in Malviya Nagar and accordingly they sold the same for Rs. 70 lacs. The complainant alleged in her complaint to the police that on 4th January, 2010 when the sale deal was struck the purchasers brought the cash payment of Rs. 50 lacs to her house in two bags containing Rs. 25 lacs each. The two petitioners were also present at that time. Balance payment of sale consideration was allegedly made by the purchasers by way of cheques. It was further alleged that after the payment of sale consideration had been made by the purchasers, the complainant, the petitioners and the purchasers then went for registration of the sale deed. After getting the sale deed registered she came back to her house along with her brother and bhabhi. At that time, her brother and her bhabhi beat her up and went away after taking away the entire cash payment of Rs. 50 lacs which had been kept by her in her house before leaving to get the sale deed registered and while going from her house the petitioners also took away another sum of Rs. 5 lacs which was also lying in the house besides some jewellery items. From the allegations made in the FIR it appears that the complainant wanted her residential flat back from her brother who was occupying the same and it also appears that some MoU was executed between the brother and the sister. Since the petitioner no. 1 apprehended that he might have to vacate the flat in Sheikh Sarai he along with his wife while leaving the complainant's house on 4th January, 2010 tore that MOU also. This is the case of the investigating agency.

3. During the pendency of this anticipatory bail application the police has recovered the amount of Rs. 25 lacs.

4. It has been claimed by the petitioners in the bail application as well as during the course of hearing of application through their learned senior counsel Sh. K.K. Sud, that the complainant has a history of lunacy and there have been many complaints not only from her own family members but from her neighbours also that she was indulging in disorderly behaviour and because of that she was once taken into custody also by the police pursuant to the orders of the Area Magistrate. It has further been claimed that she had also been declared lunatic by the Doctors of Mental Hospital in Shahdara in the year 2005. It was contended by the learned senior counsel for the petitioners that the flat in Sheikh Sarai was in fact purchased from the parental money of the petitioner no. 1 and the complainant though it stood in the name of the husband of the complainant. The complainant's husband had taken a loan against that property but had failed to re-pay the loan to the concerned bank which resulted into initiation of legal proceedings for recovery of the loan amount by the bank and passing of an ex-parte decree. The complainant being a lunatic, the petitioner no. 1 had been trying to block the sale of that property in auction. Learned senior counsel also contended that the complainant wanted petitioner no. 1 to pay his share also in property in Malviya Nagar to her and not only that the complainant did not want to pay anything to her brother for the time and money spent by him in protecting the family property in Sheikh Sarai from being sold and with that purpose only she had lodged false FIR against the petitioners on imaginary and baseless allegations. Under these circumstances and also keeping in view the fact that the investigating agency has already recovered Rs. 25 lacs from the petitioner no. 1 and which amount has now been got converted into a FDR pursuant to the

orders of the learned Metropolitan Magistrate, Mr. Sud contended, the petitioners are entitled to the relief of anticipatory bail. It was also contended by Mr. Sud that in one of the status reports filed by the police in the present proceedings it had been stated that the complainant's version that the purchasers of the property in Malviya Nagar had come to her house on 4th January, 2010 along with cash amount of Rs. 50 lacs had been found to be incorrect since the purchasers had claimed that they had made the payment of Rs. 25 lacs to petitioner no. 1 independently before their visit to the house of the complainant.

5. The bail application was opposed on behalf of the State by the learned Additional Public Prosecutor Mr. Pawan Behl primarily on the ground that custodial interrogation of both the petitioners would be required for effecting recoveries of the balance amount of Rs. 5 lacs of the complainant which also they had taken away from the house of the complainant on 4th January, 2010 as also the jewellery articles.

6. Considering all the facts and circumstances and particularly the fact that it is a case of dispute between brother and sister in respect of ownership of the flat in Sheikh Sarai which the petitioners claim to be their family property while the complainant claims that it belongs to her after the death of her husband, which dispute of title can be dealt with in civil proceedings, as also the fact that the police has already recovered Rs. 25 lacs which the complainant claims to be her share of money illegally taken away from her house by the petitioners, this application is allowed and the interim relief already granted to them now stands confirmed on the same terms and conditions. This application stands disposed of accordingly. Considering the fact that the complainant is a widow and has two

young children to look after, the amount of Rs. 25 lacs lying in bank pursuant to the orders of the learned Metropolitan Magistrate can be released to her subject to her furnishing an adequate security to the satisfaction of the Metropolitan Magistrate.

MAY 10, 2010
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P.K. BHASIN,J