

Nanak Chand Sharma vs The State on 20 February, 2024

Author: Amit Sharma

Bench: Amit Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 277/2024

NANAK CHAND SHARMA

..... Petitioner

Through: Mr. Ramesh Gupta, Senior Advocate w
Mr. Krishan Kumar, Mr. Shivam Bedi,
Gargi Singh, Mr. Shailendra Singh,
Choudhary and Mr. Mukesh Anand,
Advocates.

versus

THE STATE

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% 20.02.2024

1. The present application under 438 of Cr.P.C. seeks anticipatory bail in the case FIR No. 837/2023, under Sections 420/467/468/471/120B of the IPC registered at P.S. New Ashok Nagar.

2. The case of the prosecution, as per the status report dated 06.02.2024, authored by SHO, PS New Ashok Nagar, is as under:

"1. That complainant Ms. Abha Pahadia w/o Mr. Sanjay Pahadia R/o S- 30 Shyam Nagar Jaipur (Raj) had filed a complaint against accused persons Veer Singh, Gauri Shankar, Hemlata, Ashok, Dinesh Kumar, Manoj Kumar, Arun Kumar, Jugal Rai, Sachin Yadav, Nikhil and Santram for cheating and forgery to grab her two plots of 200 Sq. yards and 130 Sq. yards, situated at property No. B-1/43 New Ashok Nagar Delhi. She alleged that on 19.03.1981 her sister-in-law Ms. Sunita Pahadia had purchased this This is a digitally signed order.

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Server on 22/02/2024 at 21:20:50 property which was earlier measuring of 1200 square yards. Later on this property was transferred to her husband Sanjay Pahadia vide a gift deed dated 16.01.2003. Earlier her husband used to run an automobile work shop and had also got constructed two ramps at the property for car washing and service but later on due to the construction of the metro line and as per the prevailing pollution norms, the workshop had to be closed. Her husband further sold the part of property measuring 866.6 sq yds out of the total 1200 sq yds to six other persons during the period from 25.01.2014 to 10.10.2018 and a total land of 330.4 sq yds (approx.) was left in the his ownership and possession.

2. That her husband Sanjay Pahadia was expired on 31.12.2018 and after his death, she transferred her share in the property to both of her children Varun Pahadia and Vaibhav Pahadia vide a gift deed dated 05.12.2019. The property measuring 330.4 sq yds is presently in the ownership and physical possession of her children, Varun Pahadia and Vaibhav Pahadia. On this property piece, there are two shops and one office of her husband. Out of two shops, one shop was given on rent to one Dinesh Kumar who is part of the conspiracy and other shop was given on rent to one Mohd. Aftab S/o Late Mohd Mazar r/o 32/63 Trilok puri Delhi, who had already vacated the property and shop is in her possession.

3. That every month her husband had used to visit his office at this property and collect the rent from one Veer Singh who was deputed as a caretaker. After the death of her husband, Veer Singh used to send me the rent. The rental amount Rs. 30,000/- was monthly deposited in accounts of both her children. Veer Singh had also assisted her husband in selling of the properties. After the death of her husband, the accused persons hatched a conspiracy to claim false ownership over the land measuring 330.4 sq yds, by preparing false and fabricated documents and filing the same in Karkardooma Courts. Veer Singh in collusion with all the accused have filed a Civil suit No 283 of 2022 claiming ownership over 130 sq yards of land and has filed forged and fabricated documents in Karkaduma Court. It has been falsely claimed that Veer Singh had purchased 130 sq yds from her husband Mr.Sanjay Pahadia vide unregistered sale deed dated 17.11.2010. She has filed an appropriate reply in the suit. It is submitted that no such sale had ever happened and the documents filed by him showing her husband transferring the property in his name are forged and fabricated.

4. That suddenly in the month of August 2022 her tenant Dinesh stopped paying rent of shop to her and there after he filed a suit for permanent injunction vide No 953 of 2022 at Karkardooma Court. During the hearing of said suit in furtherance of the conspiracy to acquire our land, one Ashok has filed an interlocutory petition in which he has claimed that he is the actual owner of the remaining land of 200 sq yds. In the petition, it is This is a digitally signed order.

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Server on 22/02/2024 at 21:20:50 falsely claimed that on 18.01.2005 the property measuring 200 sq. yards was purchased by one Gauri Shankar R/o Dabri Delhi from Sanjay Pahadia, on 09.12.2010 Gouri Shankar sold the property to one Hemlata r/o Gurugram (HR) and on 25.08.2022 the property was sold by Hemlata to Ashok r/o Noida (UP). Further she stated that presently the entire property measuring 330 sa yd is physically under her and her children's possession except one shop occupied by Dinesh. Hence on 29.11.2023 present case vide FIR No. 837/23 u/s 420/467/468/471/120-B/34 IPC was registered."

3. Learned Senior Counsel for the applicant submits that as per the case of the prosecution, the only material available against the present applicant are the statement of the other co-accused persons. It is submitted that the present applicant is not a beneficiary of any of the forged documents alleged to have been prepared by him. It is further submitted that the ground of the custodial interrogation is the requirement of recovery of the original documents, copy of which has already been placed in the civil suits filed by the co-accused persons. It is the case of the applicant that if the original documents are not placed before the concerned Court, then their respective claims would not stand and the complaint would derive benefit from the same. Learned Senior Counsel placed reliance on para 39 of the judgment of the Hon ble Supreme Court in Mahabir Mandal and Ors. v. State of Bihar, AIR 1972 SC 1331, wherein it has been held that as under:

"39. Coming to the case of Kasim, we find that there is no reliable evidence as may show that Kasim was present at the house of Mahabir on the night of occurrence and took part in the disposal of the dead body of Indira. Reliance was placed by the prosecution upon the statement alleged to have been made by Kasim and Mahadeo accused at the police station in the presence of Baijnath PW after Baijnath had lodged report at the police station. Such statements are legally not admissible in evidence and cannot be used as substantive evidence. According to Section 162 of the Code of Criminal Procedure, no statement made by any person to a police officer in the course of an investigation shall be signed by the person making it or used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. The only exception to the above rule is mentioned in the proviso to that section. According to the proviso, when any witness is called for the prosecution in This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/02/2024 at 21:20:50 the enquiry or trial, any part of his statement, if duly proved, may be used by the accused and with the permission of the court by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination. The above rule is, however, not applicable to statements falling within the provisions of Clause 1 of Section 32 of the Indian Evidence Act or to affect the provisions of Section 27 of that

Act. It is also well established that the bar of inadmissibility operates not only on statements of witnesses but also on those of the accused (see *Narayan Swami v. Emperor* [AIR 1939 PC 47]). Lord Atkin, in that case, while dealing with Section 162 of the Code of Criminal Procedure observed:

"Then follows the section in question which is drawn in the same general way relating to „any person. That the words in their ordinary meaning would include any person though he may thereafter be accused seems plain. Investigation into crime often includes the examination of a number or persons none of whom or all of whom may be suspected at the time. The first words of the section prohibiting the statement if recorded from being signed must apply to all the statements made at the time and must therefore apply to a statement made by a person possibly not then even suspected but eventually accused."

Reference may also be made to Section 26 of the Indian Evidence Act, according to which no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved against such person. There is nothing in the present case to show that the statements which were made by Kasim and Mahadeo accused on September 18, 1963, at the police station in the presence of Baijnath resulted in the discovery of any incriminating material as may make them admissible under Section 27 of the Indian Evidence Act. As such, the aforesaid statements must be excluded from consideration."

Reliance is further placed on *Pancho v. State of Bihar*, AIR 2012 SC 523, wherein it has been held as under:

"16. In *Haricharan Kurmi v. State of Bihar* [AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] the Constitution Bench of this Court was again considering the same question. The Constitution Bench referred to Section 3 of the Evidence Act, 1872 and observed that confession of a co-accused is not evidence within the meaning of Section 3 of the Evidence Act. It is neither oral statement which the court permits or requires to be made before it as This is a digitally signed order.

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(1964) 2 Cri LJ 344] , AIR p. 1188, para 11a.). This Court in Haricharan case [AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] further observed that Section 30 merely enables the court to take the confession into account. It is not obligatory on the court to take the confession into account. This Court reiterated that a confession cannot be treated as substantive evidence against a co-accused. Where the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw from the other evidence is right. This Court in Haricharan case [AIR 1964 SC 1184 : (1964) 2 Cri LJ 344] clarified that though confession may be regarded as evidence in generic sense because of the provisions of Section 30 of the Evidence Act, the fact remains that it is not evidence as defined in Section 3 of the Evidence Act. Therefore, in dealing with a case against an accused, the court cannot start with the confession of a co-accused; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence."

4. Per contra, learned APP for the State and learned Senior Counsel for the complainant relied upon the following portions of the status report dated 06.02.2024 is as under:-

"INVESTIGATION:-

(A) Regarding the plot of 130 Sq. yards:-

1. During the verification of GPA dated 17.11.2010, therein a plot of 130 sq. yards was sold by Shri Sanjay Pahadia to Veer Singh for a sum of Rs. 5,00,000/- (five lacs) cash, alleged Veer Singh 5/o Late Shri Bharat This is a digitally signed order.

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(B) Regarding the plot of 200 Sq. Yards:

1. As per the civil petition filed by one accused Ashok Kumar vide CS No. 953/2022 In Karkardooma Court, he claimed that he purchased the plot of 200 sq. yards on the property No. 3-1/43 New Ashok Nagar vide a registered GPA dated 25.08.2022 for a sum of Rs. 40 Lacs cash from one Ms. Hemlata r/o Gurugram (HR). On 09.12.2010 Ms. Hemlata had purchased this property vide a notarized GPA from one Gouri Shankar r/o Dabdi Delhi for a sum of Rs. 5 lacs and prior it. on 18.01.2005 this plot was purchased by Gauri Shankar from Sanjay Pahadia vide a notarized GPA for a sum of Rs. 4 Lacs cash.

2. During verification, on 19.11.2023 IO visited at the H No. RZ C-19 Sitapuri Dabri Delhi where daughter of Gauri Shankar, Ms. Shama was found present. She told that her father had expired on 17.10.2019. She was shown signatures of her father on GPA & other sale deed documents dated 18.01.2005. She clearly denied to has any property of her father Gauri Shankar in New Ashok Nagar. Further she told that signatures of her father on GPA & sale deed documents are forged as he used his signature in Hindi language only but these are in English.

3. On 19.11.2023 IO visited at H No. 23 Gali No. 4 Shiv Vihar Gurugram and Interrogated to Ms. Hemlata. Firstly she tried to hide the facts but ultimately she also admitted that the GPA and sale deed documents dated 09.12.2010 therein plot of 200 sq. yards was shown purchased by her from Gauri Shankar for a sum of Rs. 5 lacs and GPA are forged. Further she admitted that the conspiracy was plotted by her with her sister Shusma and petitioner Nanak Chand Sharma and prepared forged documents of this property. Initially, she obtained only 40 thousand cash from Nanak Sharma but he had promised to give total 10 lacs rupees later on. Further with her consent, petitioner Nanak Chand Sharma prepared false documents to further sale this property to one Ashok Kumar for a sum of 40 lacs vide false GPA and other sale deed documents dated 25.08.2022. In this regard, on 01.12.2023 accused Hemlata confessed u/s 164 CrPC before the Hon'ble Court.

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4. Another accused persons Ms. Hemlata, Sushma, Veer Singh, Ashok and Niknil have been separately interrogated. They all admitted that main role for preparing the forged property documents is of petitioner Nanak Chand Sharma. Further they all stated that original copy of forged documents are in the possession of Nanak Chand Sharma.

5. During interrogation, petitioner Nanak Chand Sharma has admitted his role to sale and purchase of plot measuring 200 Sq. yards, which was purchased by Ashok from Hemlata on 25.05.2022

6. Moreover Nanak Chand Sharma admitted that he is familiar with accused Hemlata, Sushma, Arun Singh, Santram and Ashok but further he stated that he does not know accused Veer Singh whereas CDR details of his mobile Number 9899465125 proves that he remained in his contact during the month of March-2022 when accused Veer Singh and other persons had tried to grab the property in question by putting a lock and PCR calls were made on 28.03.2022 for forcefully grabbing the property.

7. CDR details of his mobile number shows that petitioner Nanak Chand Sharma continuously remained in contact with accused persons Hemlata, Veer Singh, Ashok, Santram and Sushma, Moreover, it is pertinent to mention here that he remained in contact with the Advocate Mr. Ramesh Kumar Sharma on his M No. 8178297176 & 9811366574 from 19.05.2023 to till date. Mr. Ramesh Kumar Sharma is advocate of Dinesh Kumar who had filed a civil suit No. 953/22 against complainant of case Ms. Abha Pahadia and her two sons for possession of a shop at property in question.

The details of telephonically conversation are as under:-

Mob no. Nanak Chand:- 9899465126 S.No. Telephonically contacted with Time
period No. of calls 23.03.2022 23.09.2022 19.11.2023 4 Santram, 9319206371
01.01.2022 to 1330 05.12.2023 This is a digitally signed order.

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06.12.2023 18.11.2023 9811366574, 8178297176 24.11.2023

8. During the hearing of anticipatory bail application, Hon'ble Session Court directed petitioner Nanak Chand Sharma to join the investigation. He joined investigation but neither he provided the original copy of forged documents not give satisfactory response.

9. Thereafter on 25.01.2024, a search warrant was got issued from the Hon'ble Court to recover the original copy of forged documents from the home of petitioner Nanak Chand Sharma and search was conducted on 25.01.2024 at his H No. B-1269 New Ashok Nagar Delhi. During searching, coloured copy of GPA and other sale deed papers dated 17.11.2010 (total pages 08) were recovered from his home. The same were taken on reeud thugli seizure memo. Video grapy of searching process was also got conducted through a private videographer.

10. Further on 26.01.2024 two accused namely Ashok and Santram were arrested in the present case and sent in JC remand. Custodial interrogation of petitioner Nanak Chand Sharma is require to recover the original copy of forged documents and other investigation. However answering respondent is abide by any direction passed by Hon'ble Court in this regard."

(emphasis supplied)

5. Heard learned counsel for the parties and perused the record.

6. A perusal of the record reflects that the present FIR relates to 02 plots of land of 130 sq. yards and 200 sq. yards. As per the case of the prosecution, both the aforesaid plots were alleged to be bought by different persons namely Veer Singh (100 Sq. Yards) and Ashok (200 Sq. Yards). It is further the case of the prosecution that the aforesaid Veer Singh filed a civil suit claiming ownership of the 130 sq. yards by filing alleged forged and fabricated documents, showing that he purchased the said land from the complainant's husband. Similarly, co-accused This is a digitally signed order.

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7. During the course of the interrogation, while being on interim protection, the present applicant completely denied knowing co-accused Veer Singh. It is further pertinent to note that during the course of his interrogation, the present applicant also admitted that he had facilitated the sale between Hem Lata and Ashok. Further, the disclosure statement of co-accused Sant Ram (signatory to the deed between Ashok and Hem Lata) reflects that the present applicant had received a sum of Rs. 1.5 lakhs for the entire transaction. Hem Lata, in her statement recorded under Section 164 of the CrPC had stated that she has received only Rs. 40,000/- of the amount in pursuance of her signing the documents on behalf of the present applicant and other co-accused persons. As noted hereinabove, on 25.01.2024 on a search warrant issued by the Court of competent jurisdiction, from the search of the house of the present applicant coloured copy of the GPA and other sale deed papers pertaining to the present case were recovered. It is pertinent to note that during the period of interim protection granted to the present applicant, during the pendency of the application seeking anticipatory bail before the learned ASJ, the applicant had joined the investigation but as pointed out hereinabove, he did not cooperate and tried to mislead the Investigating Officer by denying to know the co-accused Veer Singh. The CDR analysis placed on record by the Investigating Officer clearly reflects that the present applicant was in touch with all the co-

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8. The proposition of law relied upon by learned Senior Counsel for the applicant is well settled. The present application seeks anticipatory bail on behalf of the applicant. At this stage of investigation, enough material has come on record to prima facie show the involvement of the present applicant in preparation of the forged documents and is required for custodial interrogation.

9. Hon ble Supreme Court, in State Rep. by the C.B.I. v. Anil Sharma, (1997) 7 SCC 187, while dealing with a plea for anticipatory bail, observed and held as under:

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

10. In the facts and circumstances of the case, the custodial interrogation of the present applicant is required to unearth the entire conspiracy with regard to the creation of forged documents.

11. In totality of the facts and circumstances of the case, no grounds for anticipatory bail are made out.

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12. The application is dismissed and disposed of accordingly.

13. Pending application, if any, also stand disposed of.

14. Needless to state that nothing stated hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present application.

15. Order be uploaded on the website of this court forthwith.

AMIT SHARMA, J FEBRUARY 20, 2024/sn This is a digitally signed order.

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