

Sohan Lal @ Sohan Lal Sharma vs The State Govt. Of Nct Of Delhi on 16 November, 2022

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 1919/2022

SOHAN LAL @ SOHAN LAL SHARMA

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Through: Mr.Pramod Kr. Dubey, Sr. Advoc

with Mr.Dhan Mohan, Mr.Neeraj

Kumar Mishra, Ms.Tanu B. Mishr

Ms.Tanisha Bhatia and Mr.Ravi

Mishra, Advocates.

versus

THE STATE GOVT. OF NCT OF DELHI

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Through: Mr.Utkarsh, APP for State.

Mr.R.K. Tarun, Mr.Deepak and

Mr.Rohit Shukla, Advocates f

complainant.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% 16.11.2022

1. This application under Section 438 of Cr.P.C. has been filed by the applicant in connection with FIR No.666/2013, for the offences under Sections 419/420/506/120B/34 IPC registered at Police Station Gokulpuri, Delhi.

2. Learned senior counsel appearing for the applicant submits that the applicant is innocent and he has been falsely implicated in the instant case. According to him, instant FIR has been registered on an application filed under Section 156(3) of Cr.P.C. by the complainant, namely, Nirmala Devi. He states that the applicant is aged about 51 years and has been cooperating with the investigation as and when he was called for.

3. While referring to various dates, learned senior counsel pointed out that earlier applicant had given his thumb impressions, however, in terms of the subsequent order passed by the concerned court, again, the applicant appeared before Finger Print Bureau, Kamla Market, New Delhi on 02.03.2022 and has given his fingerprint impressions etc.

4. While relying on the decision of the Hon'ble Supreme Court in the case of Satender Kumar Anti v. Central Bureau of Investigation & Anr1., he points out that the offence in the instant case is under Sections 419/420/506/120B/34 IPC and the extent of punishment is maximum up to 7 years. He,

therefore, states that the custodial interrogation of the applicant is not necessary, when the applicant remained cooperative with the investigating agency and further undertakes to cooperate with the further course of investigation.

5. Sh. Utkarsh, learned APP appearing on behalf of the State opposes the application and states that earlier non-bailable warrants were issued against the applicant and keeping in mind the facts of the present case, he should not be enlarged on anticipatory bail.

6. Shri R.K. Tarun, learned counsel appearing on behalf of the complainant also vehemently opposes the application and submits that the applicant in the instant case is misusing the liberty granted by this court. According to him, on 24.06.2022, the applicant had undertaken that he would deposit a sum of Rs.15 lakh with the learned trial court and if the amount is released in favour of the complainant that should be subject to the outcome of the case. According to him, such a statement was made to avail the benefit of the anticipatory bail and to give an impression as if the applicant is cooperating with the investigation of the case and shows his bona fides. He further points out that although the amount has been deposited by the applicant, however, the same has not been released in favour of the (2021) 10 SCC 773 complainant. He further points out that fingerprints of the applicant, obtained in the year 2008, clearly match with the signatures of the applicant, which prima facie shows commission of the offence. According to him, accused No. 2 in the FIR is the nephew of the present applicant and is evading his arrest. He further submits that more than Rs.30 lakh have been paid to the applicant in terms of the agreement to sell dated 08.09.2008 entered between the applicant and the complainant for sale of a property which ultimately was not belonging to the applicant. He, therefore, points out that the applicant has wrongly quoted himself to be the owner of the property and cheated the complainant for her hard-earned money. While referring to the notice issued by the Investigating Officer, he points out that the Investigating Officer clearly emphasised on the custodial interrogation in his notice dated 06.06.2022.

7. According to him, to unearth the entire conspiracy, the custodial interrogation of the applicant is necessary and unless the applicant is taken into custody, the investigation of the case would not be completed. He, therefore, states that under the facts of the present case, the conduct of the applicant warrants that he should be sent to jail and interrogated in custody.

8. I have heard learned counsel for the parties and perused the record.

9. This court vide order dated 24.06.2022 recorded the undertaking given by the applicant to the effect that he would deposit a sum of Rs.15 lakh with the learned trial court and if the amount is released to the complainant, the same should be subject to the outcome of the case.

10. While recording the aforesaid submissions, this court directed for release of the applicant in the event of arrest on anticipatory bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount and to the satisfaction of the concerned investigating officer/SHO.

11. The interim protection granted by this court has been extended on 08.07.2022, 28.07.2022, 08.09.2022, 16.09.2022 and lastly on 19.10.2022. It is also seen that the applicant has deposited a

sum of Rs.15 lakh in terms of the order dated 24.06.2022, after some delay. However, the delay has been condoned by this court.

12. The applicant filed an application being CRL.M.A.12855/2022, wherein certain modifications in the order dated 24.06.2022 were sought for. However, the averments made in that application and the prayer therein was confined to the extension of time for deposition of the amount of Rs.15 lakh directed vide order dated 24.06.2022. It is thus seen that the application being CRL.M.A.12855/2022 stands disposed of by this court and as on date, the direction and undertaking given by this court on 24.06.2022 remained intact. Meaning thereby that as per the undertaking of the applicant himself, a sum of Rs.15 lakh has been deposited by him, has to be released in favour of the complainant, in case.

13. Coming back to the merits of the case, the status report filed by the State would indicate that the present applicant introduced himself as the owner of the property bearing No. 213-214, C-Block, Main 30 Feet Road, Ganga Vihar, Delhi and on 08.09.2009, agreement to sell was entered into. Total agreement amount is stated to be Rs.80 lakh.

14. According to the complainant, a sum of Rs.25 lakh was paid in cash at the time of signing of the agreement to sell, whereas remaining amount, as mentioned in the status report, was paid by transaction in different account. When the complainant realised that property does not belong to the present applicant, she filed a complaint under Section 156(3) of Cr.P.C. before the concerned Magistrate and in terms of the order dated 25.11.2013, the FIR in question got registered on 30.11.2013 for the aforesaid offences.

15. Non-bailable warrants were issued against the applicant and the proceedings under Section 82 of Cr.P.C. were initiated. However, in a petition filed by the applicant, being CRL.M.C. 74/2015, initially the operation of the orders initiating the proceedings were stayed and finally on 03.03.2015, this court quashed the non-bailable warrants dated 22.08.2014 and proceedings dated 18.09.2014 initiated under Section 82 of the Cr.P.C.

16. The facts of the case would further show that closure report was filed on 16.05.2017 by the concerned IO. However, when the closure report remained pending for its acceptance, the IO of the case issued notice dated 16.02.2022 under Section 160/91 Cr.P.C. and directed the applicant to appear before the concerned MM on 18.02.2022 to give his specimen signature and thumb impression for further investigation.

17. On 18.02.2022, the IO moved an application before the concerned MM for issuance of notice to the applicant for obtaining specimen signature and thumb impressions and on the same day, the concerned MM allowed the said application.

18. It is thus seen that after 2017, in the year 2022 again, the concerned IO wanted to further investigate the matter. Finally, the applicant on 02.03.2022 appeared before the Finger Print Bureau, Kamla Market, New Delhi and has given his fingerprint impressions etc. There is no allegation in the entire status report with respect to non-cooperation of the applicant with the

further course of the investigation. The FIR is of the year 2013 and the allegations against the applicant, as to whether there was a cheating at his instance or not, are yet to be proved. The extent of the punishment, which the concerned court can award against the applicant, is maximum up to 7 years.

19. Having considered the submissions made by learned counsel for the parties and under the facts of the present case, this court finds it appropriate to accept the application for anticipatory bail of the present applicant.

20. Accordingly, the same is accepted with the following directions:

- i) The amount deposited by the applicant in terms of order dated 24.06.2022, as has already been undertaken by him, be released in favour of the complainant within 15 days, subject to the final outcome of the trial against indemnity bond by the complainant..
- ii) The applicant to furnish a fresh personal bond of the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the Arresting Officer. Earlier personal bond and surety stand cancelled;
- iii) In case of change of residential address/contact details, the applicant shall promptly inform the same to the concerned Investigating Officer/SHO.
- iv) The applicant while cooperating with the further course of investigation shall appear before the concerned IO, as and when he is called for; and
- v) The applicant shall abide by the conditions under Section 437(3) of the Cr.P.C.

21. The bail application is disposed of in the above terms. Order dasti.

PURUSHAINDRA KUMAR KAURAV, J.

NOVEMBER 16, 2022/R Click here to check corrigendum, if any