

Narinder Palgotra vs State Govt Of Nct Of Delhi on 2 September, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 3270/2023 & CRL. M.A. 2637
NARINDER PALGOTRA

Through: Mr. Vibhav Suri & Mr.
Datt, Advocates

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STATE GOVT OF NCT OF DELHI

Through: Mr. Ajay Vikram Singh
the State with SI Yo
PS, K.M. Pur, Delhi.
Ms. Richa Kapoor, Mr
Kumar & Mr. Rohit Ma
Advocates for the co

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

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1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No.147/2023 dated 04.05.2023, registered at Police Station K.M.Pur, for offences under Sections 406/468/471/120B of the Indian Penal Code, 1860.

2. The present FIR was registered on a complaint filed by the complainant, namely, Anita Palgotra, against the applicant and his wife, who are her relatives. The brief facts of the case are that the complainant claimed to be the owner of the property, being, House No.568, Prem Gali (Krishna Gali), Kotla Mubarakpur, New Delhi (hereafter 'the subject property'), stating that the same was given to her by her mother-in-law Krishna Wati vide Gift Deed dated 10.01.2017. Applicant is the son of Ms. Krishna Wati and brother-in-law of the complainant.

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3. It is alleged that the applicant and his wife were debarred by their parents on 09.05.2013 through a notice in a newspaper. It is alleged that the accused persons obtained signatures of Ms. Krishna Wati on blank papers under false pretext.

4. It is alleged that after the death of Ms. Krishna Wati, the applicant started falsely asserting his right over the first floor of the subject property and fraudulently executed Gift Deed dated 05.01.2018 in favour of his wife. The said Gift Deed was in turn executed on the basis of a General Power of Attorney dated 03.03.2000 that was allegedly executed by Ms. Krishna Wati in favour of the applicant.

5. It is the case of the complainant that the applicant had misappropriated the signatures of Ms. Krishna Wati to execute the General Power of Attorney dated 03.03.2000 which was ultimately used to fraudulently transfer the first floor of the subject property in the name of his wife.

6. The learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the present case.

7. He submits that the dispute between the parties is essentially civil in nature. He submits that a civil suit in relation to the dispute is pending consideration before the learned Senior Civil Judge, Saket Courts. He submits that the complainant is misusing the criminal law machinery merely to arm twist the applicant and his wife.

8. He submits that the applicant is enjoying the possession of the first floor of the subject property since the year 1974. He submits that the complainant had waited till after the death of the applicant's mother - Ms. Krishna Wati to register the present FIR as the applicant enjoyed cordial relations with his mother.

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9. He submits that the peaceful unhindered possession of the applicant and his wife shows that there was no dispute regarding the property and it was understood that the first floor belonged to the accused persons. He submits that the relatives of the parties have tendered affidavits to the effect that there was an oral arrangement between the parties.

10. He submits that even if the prosecution's case is taken at the highest, no case of forgery is made out against the applicant as there is no allegation that the applicant had forged the signatures of Ms. Krishna Wati.

11. He submits that the wills and Gift Deed relied upon by the complainant were executed by the applicant's mother when she was in a precarious condition due to her cancer treatment and the veracity of the said documents remains in doubt.

12. He submits that the applicant is a senior citizen and he cannot be made to suffer in custody merely due to a family civil dispute.

13. Per contra, the learned counsel for the complainant vehemently opposes the grant of any relief to the applicant. She submits that the matter does not relate merely to an inter-family dispute and the same involves serious allegations regarding misappropriation of the signatures of the applicant's mother.

14. She submits that Ms. Krishna Wati in her registered Will dated 10.01.2017 has also made mention of the Gift Deed dated 10.01.2017 through which the complainant is claiming title in the subject property. She submits that Ms. Krishna Wati had also mentioned that she was apprehensive that the applicant would misuse her signatures that had been taken by him on blank pages under false pretext.

15. She submits that the accused persons are the direct This is a digitally signed order.

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16. She submits that the conduct of the applicant does not entitle him to grant of any relief. She submits that the applicant had assaulted the complainant and threatened her of dire consequences if she did not withdraw the FIR on 03.11.2023. She submits that accordingly, Section 506 of the IPC was added to the case. She submits that the applicant and his son had again threatened the complainant's family which led to issuance of a Kalandra.

17. She submits that the apprehension of the applicant tampering with the witnesses cannot be ruled out. She points out that the witness to Gift Deed dated 05.01.2018, namely, Surender Kumar, had initially denied going to the Registrar's office and witnessing execution of the said Gift Deed, however, he had later tendered a written submission to the police stating that he was present and he had signed as the witness.

18. The learned Additional Public Prosecutor for the State echoes the submissions made by the learned counsel for the complainant.

19. He submits that while the applicant had joined the investigation pursuant to the interim protection granted by this Court, he had not adduced the original copy of the relevant documents. He submits that the notary disclosed by the applicant could not be traced.

20. He, however, fairly submits that the chargesheet has been prepared and the same is in the process of being filed.

21. I have heard the counsel and perused the record.

22. In the case of Siddharam Satlingappa Mhetre v. State of 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 09/09/2024 at 20:34:55 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 a matter 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;

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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 09/09/2024 at 20:34:55 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..."

23. The parties are admittedly closely related to each other and are litigating over the property. It is alleged that the applicant has misappropriated his mother's signatures to forge a General Power of Attorney and tried to usurp the first floor of the subject property by executing a Gift Deed in relation to the same in favour of his wife.

24. It is alleged that the applicant had been debarred from the family property by his parents and he had taken some signatures of his mother on blank signed pages which was also mentioned by her in her Will dated 10.01.2017.

25. The applicant on the other hand has disputed the same and contended that he has enjoyed the uninterrupted possession of the property for more than 45 years. He has also brought forth some affidavits by the relatives of the parties in relation to an oral arrangement between the parties regarding the first floor of the subject property.

26. He has also disputed the veracity of the documents, including, the Will dated 10.01.2017, on account of his mother's precarious physical and mental condition. The applicant has also filed a Civil Suit for declaration of ownership of the first floor of the subject property and for declaration of the Will and Gift Deed dated 10.01.2017 as null and void. The allegations and defences regarding the veracity of the documents on both sides would be tested during the course of the trial and cannot be commented upon at this stage. The same as pointed out is also This is a digitally signed order.

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27. It is also pointed out that the applicant had not tendered an original copy of the documents that had been called for by the prosecution. In this regard, it is stated that the applicant had lost the folder containing the original documents at the time of executing the Gift Deed dated 05.01.2018 in favour of his wife. It is stated that the applicant had also made a complaint on the same date at Police Station Amar Colony in this regard.

28. There is a possibility that the applicant is not entitled to the property in dispute, however, at this stage, the question before the Court is whether custodial interrogation of the applicant is required when the charge sheet has admittedly been prepared.

29. It is not disputed that the present case relates to the offences under Sections 406/468/471 of the IPC and the same involves a maximum punishment of seven years.

30. While the chargesheet has not been filed yet, however, the learned APP has categorically submitted that the chargesheet is prepared and the same is in the process of being filed.

31. The police has admittedly completed the investigation without the State finding any necessity to take the applicant in custody.

32. It is pertinent to note that the Hon'ble Apex Court has laid down guidelines pertaining to cases wherein chargesheet has been filed without arrest of the accused. In *Satender Kumar Antil v. Central Bureau of Investigation* : (2021) 10 SCC 773, Hon'ble Apex Court has observed that if an accused has not been arrested during investigation and has cooperated in the investigation, then certain guidelines must be adhered to while considering the grant of bail. The guidelines have been This is a digitally signed order.

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"3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:

"Categories/Types of Offences (A) Offences punishable with imprisonment of 7 years or less not falling in Categories B and D. (B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act [Section 212(6)], etc. (D) Economic offences not covered by Special Acts.

Requisite Conditions (1) Not arrested during investigation. (2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge- sheet *Siddharth v. State of U.P.* [*Siddharth v. State of U.P.*, (2022) 1 SCC 676]) Category A After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

Category B/D On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

Category C Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section

37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POCSO, etc."

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33. The Hon'ble Apex Court in Mohd. Asfak Alam v. State of Jharkhand : (2023) 8 SCC 632 has held as under:

"15. What appears from the record is that the appellant cooperated with the investigation both before 8-8-2022, when no protection was granted to him and after 8-8-2022, when he enjoyed protection till the filing of the charge-sheet and the cognizance thereof on 1-10-2022. Thus, once the charge-sheet was filed and there was no impediment, at least on the part of the accused, the court having regard to the nature of the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail as a matter of course. However, the court did not do so but mechanically rejected and, virtually, to rub salt in the wound directed the appellant to surrender and seek regular bail before the trial court. Therefore, in the opinion of this Court, the High Court fell into error in adopting such a casual approach.

16. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the Court would direct all the courts seized of proceedings to strictly follow the law laid down in Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449 : (2014) 8 SCR 128] and reiterate the directions contained thereunder, as well as other directions."

34. It is relevant to note that both the parties have tendered a number of complaints against each other. Insofar as the apprehension of the complainant regarding threats from the applicant are concerned, it is pointed out that appropriate complaints have been made in that regard and the same will be dealt with in accordance with law.

35. Merely because one of the individuals who was called for investigation has changed his stance, the same is insufficient to deny the bail to the applicant without any cogent proof that the applicant had influenced the said person.

36. It is not in doubt that order for grant of 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. In This is a digitally signed order.

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37. The purpose of custodial interrogation is to aid the investigation and is not punitive.

38. Any apprehension regarding the applicants fleeing from justice, tampering with evidence or not cooperating with the investigation can be taken care of by putting appropriate conditions.

39. In view of the above, this Court is of the opinion that the custodial interrogation of the applicant is not required. It is directed that in the event of arrest, the applicant be released on bail on furnishing a personal bond 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 as and when directed by the IO; b. The applicant will not leave the boundaries of Delhi without informing the IO/ SHO concerned;

c. The applicant shall not contact the complainant / witnesses or tamper with the evidence in any manner; d. The applicant shall give his mobile number to the concerned IO/SHO and shall keep their mobile phones switched on at all times;

e. The applicant shall provide the address of his residence to the IO/SHO and shall not change the same without informing the concerned IO/SHO.

40. In the event of there being any violation of the stipulated conditions, it would be open to the State to seek redressal by filing an application seeking cancellation of the bail.

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41. It is clarified that the observations made in the present order are only for the purpose of considering the bail 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.

42. The present bail application is allowed in the aforesaid terms.

AMIT MAHAJAN, J SEPTEMBER 2, 2024 "hkaur"

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