

Bail) Tej Singh vs State (Govt. Of Nct Of Delhi) on 8 February, 2023

Author: Amit Sharma

Bench: Amit Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 3578/2022 & CRL.M.(BAIL) 1452/2022 (Interim Bail)

TEJ SINGH

Through: Dr. L.S. Chaudhary, Dr. Chaudhary, Mr. Parambir Vishesh Kumar, M Chaudhary, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI)

Through: Mr. Utkarsh, APP for the S.I. Pawan Kumar, P.S. A Mr. Mohit Gupta, Mr. Raj Mr. Lakshya, Mr. Vishal Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA
ORDER

% 08.02.2023 The present second bail application under Section 439 of the Cr.P.C seeks grant of regular bail in FIR No. 180/2022 under Sections 420/ 465/472/474/467/468/471/120B of the IPC, registered at P.S. Alipur.

The present FIR was registered on a complaint made by Mr. Pawan Tyagi, through his GPA, Mr. Rishipal Bansal, who alleged that his father, Late Sh. Rajender Singh was accorded bhumidari rights qua the land bearing Khasra No. 12 (4-16), Village Ibrahampur, Delhi, under Section 85 of Delhi Land Reforms Act, 1985 by the order of Finance Commissioner in 1984. The said order was challenged by the Gram Sabha, however, the same was upheld by the Office of Revenue Assistant, Narela, Alipur in 2001 and subsequently, by the Court of Deputy Commissioner/Collector North vide order dated 18.05.2016. The complainant alleged that one Mr. Rajender Kumar (co-accused in the present FIR) created forged documents, including the will of his late father, pertaining to the said land and thereafter, claiming to be the owner, sold the same to the present applicant alongwith Mr. Anurag Goel and Mr. Sanjeet. It is further alleged that the said Mr. Rajender Kumar created another forged will dated 16.11.1989 and sold a piece of land to Mr. Vikram Kumar.

During the course of investigation, it was revealed that co-accused, Mr. Rajender Kumar had sold the land in question to the present applicant alongwith Mr. Anurag Goel and Mr. Sanjeet, through registered sale deed dated 06.11.2017, in which the present applicant had 3/5th of the total share and the other two accused persons, Mr. Anurag Goel and Mr. Sanjeet had 1/5th of the total share, each. It is further alleged that the present applicant used his connection at the Office of the Sub-Divisional Magistrate for registration of the documents and was the mastermind behind the entire scam.

It is further alleged in the chargesheet that a consideration of Rs. 10,60,000/- was paid by each of the purchasers, however, investigation has revealed that no such transaction for Rs. 10,60,000/- was reflected in the account of the present applicant.

The present applicant was arrested on 02.05.2022 and the chargesheet in the present case was filed on 12.11.2022.

Learned counsel for the applicant submits that the person who has alleged to have sold the property to him vide sale deed dated 06.11.2017 has already been granted bail by the learned trial Court. Learned counsel for the applicant further submitted that the present applicant has been in judicial custody since 02.05.2022. The investigation is complete, the chargesheet in the present case stands filed and the evidence is documentary in nature.

Per contra, learned APP for the State, assisted by learned counsel for the complainant submits that the present applicant is behind a huge scam relating to village Jangola, which is an evacuee property. Learned APP for the State submits that the present applicant did not cooperate with the investigation in the present FIR and while he was enlarged on interim bail, he surrendered only on directions of this Court. On a pointed query from this Court, the Investigating Officer submits that there is no evidence on record to demonstrate who created the alleged forged Will. The only evidence which has come is that the signatures of the testator and his thumb impression did not match with the admitted specimen.

Learned APP further submits that the other co-accused persons, namely, Mr. Sanjeet and Mr. Anurag Goel are still absconding and the coaccused, Mr. Rajender Kumar, was granted bail on account of a compromise between the complainant and the said co-accused. It is further pointed out that an application for cancellation of bail has been filed by the complainant with respect to Mr. Rajender Kumar and the same is pending before the learned trial Court.

The present case, in nutshell is that co-accused, Mr. Rajender Kumar, claiming to be the owner of the property belonging to Late Sh. Rajender Singh, on the basis of forged documents sold it to the present applicant and the other co-accused persons.

The Hon ble Supreme Court in Mohammed Ibrahim and Ors. v. State of Bihar and Another, (2009) 8 SCC 751, while dealing with similar situation, observed as under:

"15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

Section 420 IPC

18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

- (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;
- (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

A clarification

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

24. The term "fraud" is not defined in the Code. The dictionary definition of "fraud" is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines "fraud" with reference to a party to a contract.

25. In *Vimla (Dr.) v. Delhi Admn.* [AIR 1963 SC 1572] this Court explained the meaning of the expression "defraud" thus: (AIR pp. 1576- 77, para 14) "14. ... the expression „defraud involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

The above definition was in essence reiterated in *State of U.P. v. Ranjit Singh* [(1999) 2 SCC 617 : 1999 SCC (Cri) 293] ."

This Court had asked the State to furnish the status report with regard to the previous involvements of the present applicant. To that effect, the status report dated 07.02.2023 authored by Inspector Satender Pal Singh Tomar, SHO/PS Alipur, Delhi, has been filed wherein it is stated that there is no previous involvement of the present applicant except for in the present case. It is further stated that there is a complaint filed against the present applicant and certain officials of the revenue department with regard to cheating and forgery, which is pending enquiry.

The chargesheet in the present case stands filed on 12.11.2022 and the investigation qua the present applicant is complete. The evidence relied upon by the prosecution is documentary in nature. The applicant is in judicial custody since 02.05.2022. No useful purpose would be served by keeping the applicant in judicial custody.

In view of the facts and circumstances, the present application is allowed. The applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs. 1,00,000/- with two sureties of like amount to the satisfaction of the learned trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave the country without prior permission of the trial Court.
- ii. The applicant shall intimate the trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the Court as and when the matter is taken up for hearing.
- iv. The applicant shall join investigation as and when called by the Investigating Officer concerned.
- v. The applicant shall provide his mobile number to the Investigating Officer and intimate about any change.

Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.

The application is allowed and disposed of accordingly. Order be uploaded on the website of this court forthwith.

AMIT SHARMA, J FEBRUARY 8, 2023/ab