(2016) 05 DEL CK 0216

In the Delhi High Court

Case No : Bail Application. 2782 of 2015

Bijender Singh @ Raju Parcha APPELLANT

Vs

State (Govt of NCT Delhi) RESPONDENT

Date of Decision : 10-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 34, 420, 427, 448, 468, 471, 506, 511

Citation : (2016) 3 JCC 2116

Hon'ble Judges : Ms. Sunita Gupta, J.

Bench : Single Bench

Advocate : Mr. Rambir Chauhan, Advocate, for the Petitioner; Mr. Hirein Sharma, Additional Public Prosecutor for S.I. Vijay Kumar, Police Station Burari, for the State; Mr. Shiv Charan Garg, Advocate, for the Complainant

Final Decision : Dismissed

Judgement

Ms. Sunita Gupta, J.—This is the third application under Section 438 Cr.P.C moved by the petitioner for grant of anticipatory bail in case FIR No.441/14 under Section 448/511/427/420/468/506/471/34 IPC registered with Police Station, Burari.

2. FIR in the instant case was filed on the basis of a complaint made by Shri Shreekesh Morya in respect of property/plot measuring 850 sq. yards out of khasra No.122/15/12 min (Old Khasra No.1052) situated in the area of village Burari, Delhi against Bhushan Verma, H.S. Rawat and two more unknown persons.

3. Counsel for the petitioner submits that petitioner is bona fide joint purchaser of property which has been sold by co-accused Bhushan Verma on 25.05.2014 and possession was handed over on the very same date and petitioner is in possession of the property in question. The petitioner also lodged a complaint on 04.06.2014 that some persons are trying to take forcible possession of the property in question but instead of taking action against those persons, the

police registered FIR against the petitioner and other co-accused H.S. Rawat and Bhushan Verma. In fact, the so-called complainant Vinod Kumar Garg who is the main conspirator and cheater on the one hand is fighting with V.K. Electrical and V.K. Electrical filed a petition for cancellation of mutation before the DC in 2012. A civil suit was filed by the petitioner in this Court and order of maintenance of status quo was passed. That Vinod Kumar Garg entered into a settlement with V.K. Electrical. The property was transferred despite passing of the status quo order. A petition for quashing of FIR was moved. Vide order dated 19.10.2015 this Court granted liberty to the petitioner to move application for anticipatory bail which was filed before the learned Additional Sessions Judge, however, the same has been dismissed vide order dated 19.12.2015. Petitioner is the bona fide purchaser of the property. Vinod Kumar Garg is neither the owner nor in possession of the property in question. Co-accused Bhushan Verma and H.S.Rawat have already been released on bail, as such, petitioner is also entitled to the same relief.

4. Application is vehemently opposed by learned Public Prosecutor for the State duly assisted by Mr. Shiv Charan Garg, Advocate for the complainant by submitting that the earlier applications for grant of anticipatory bail moved by the petitioner were dismissed by this Court. Without there being any change in circumstance, the present application does not lie. Moreover, after the filing of this application, the petitioner was granted interim protection. Although he joined the investigation but did not gave satisfactory reply as to how payment of Rs.80 lacs was made by him to Bhushan Verma. As per the accused himself, the market value of the property was Rs.4.25 crores then how the deal was finalised for Rs.2 crores. Even if the deal between Bhushan Verma and accused was finalised for Rs.2 crores, why Bhushan Verma transferred the registered documents in the name of the petitioner and H.S. Rawat after receipt of only Rs.80 lacs. The petitioner has hatched a criminal conspiracy along with co-accused H.S.Rawat and others to grab the property of the complainant. There are two plots in Khasra No.122/15/1/2 adjacent to each other measuring around 850 sq. Yards each. As per the documents one of the plot belongs to Shri Vineet Kumar Rohtagi, owner of M/s V.K. Electronics and another one which is subject matter of this case belongs to Shri Vinod Kumar Garg. The mutation of the plot that belongs to Vineet Kumar Rohtagi got registered in the name of Vinod Kumar Garg by mistake and the same has now been corrected, however, petitioner is trying to take advantage by misleading the Court that Vinod Kumar Garg has surrendered the only property that he had in this khasra. It is further submitted that the petitioner is still concealing many important facts regarding the forged documents. It is not clear as to who forged the papers and who signed for Vinod Kumar Garg on those papers. He is the mastermind of the conspiracy. Source of the forged documents is yet to be ascertained. Custodial interrogation of the accused is required to unearth the whole controversy and to find out the source of forged documents. During the course of enquiry, Vinod Kumar Garg has stated that he never sold the property to any Bhushan Verma and he also showed the

chain of original documents. Bhushan Verma also gave a written statement alleging that he never purchased the property from complainant Vinod Kumar Garg and never sold it to H.S. Rawat and Bijender Singh, however, they took advantage of his ill health and poor financial condition and got the forged documents prepared from Vinod Kumar Garg in his name and promised him 10% of the total share and got the property transferred in their names, as such, it is submitted that the petitioner is not entitled to be released on bail.

5. Perusal of record reveals that the earlier application for grant of anticipatory bail being Bail Application No. 885/2015 was dismissed by this Court vide order dated 21.05.2015. Thereafter another application bearing Bail Application No.1725/2015 was moved which was also dismissed vide order dated 24.08.2015. Against this order SLP was preferred and the same was dismissed by Hon''ble Supreme Court vide order dated 05.10.2015. Thereafter Crl. M.C.4395/2015 was filed by the petitioner for quashing of the FIR which was withdrawn on 19.10.2015 and petitioner was granted liberty to approach the Trial Court for anticipatory bail. Thereafter Bail Application No.8363/2015 was moved which was also dismissed on 19.12.2015.

6. The question regarding successive bail applications moved by the accused came up for consideration before Hon''ble Supreme Court in Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Another (2005) 1 BLJR 194 (SC) and the relevant observations as appearing in Para 17 to 19 are extracted as under:-

"17. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so.

18. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our

country. The findings of a higher court or a coordinate bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

19. The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by courts earlier including the Apex Court of the country.

The view was reiterated in Prasanta Kumar Sarkar v. Ashis Chatterjee and Another AIR 2011 SC 274 where it was observed that in regard to cases where earlier bail applications has been rejected there is a further onus on the Court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the Court is of the opinion that bail has to be granted then the said Court will have to give specific reasons why instead of such earlier rejection, the subsequent application for bail should be granted.

7. The question, therefore, is whether there is any such change of circumstance appearing in favour of the petitioner which warrants his release on bail. Perusal of order dated 21.05.2015 vide which the earlier application was dismissed goes to show that at that time also it was pointed out by the learned Public Prosecutor for the State that the investigation revealed that the plot in question is owned by one Vinod Kumar Garg who had purchased the plot from Chanderpal vide agreement to sell, GPA, receipt, etc. all dated 23.04.2003. The whole chain of title documents were produced by Vinod Kumar Garg. Statements of Vinod Kumar Garg and his sons were also recorded wherein they categorically stated that they never sold the property to Bhushan Verma. Bhushan Verma did not come forward to join the investigation, however, he sent a legal notice through his lawyer stating therein that he never sold the property to the petitioner and that the petitioner had fabricated the documents dated 25.03.2014 and also got registered a bogus Will. It was further pointed out that handwriting and

subsequent signatures are also required to be obtained to unearth the true facts and forgery of documents. The subsequent application also met the same fate as the applicant did not made himself available to the Investigating Officer and was evading arrest. The SLP was also dismissed. The only change in circumstance now alleged by the petitioner is that a suit was filed by Vineet Kumar Rohtagi proprietor of M/s V.K. Electrical Company against Vinod Kumar Garg for a declaration and permanent injunction in respect of the suit property and the parties settled the matter whereby the two sale deeds were cancelled. Even if that is so, the petitioner fails to show as to how he is claiming title to the property because he claimed to have become the owner of the property having purchased it from Bhushan Verma who, as stated above, denied having sold the property to the petitioner. Moreover, it is alleged that although the market value of the property was Rs.4.25 crores but according to the accused, deal was done for Rs.2 crores. Even if that was so, how the documents were registered in his name by Bhushan Verma after receiving only Rs.80 lacs. The source of payment of this Rs.80 lacs is also required to be ascertained. Moreover, who forged the papers and who signed for Vinod Kumar Garg are also required to be ascertained. The learned Public Prosecutor for the State has also placed on record the complete chain of documents for showing the title of the complainant, electricity and telephone bills in the name of the complainant, notice sent by Bhushan Verma denying that he had purchased or sold the said plot and the copy of settlement between the complainant and M/s V.K. Electronics for showing that the property was wrongly mutated in favour of the complainant.

8. Keeping in view the aforesaid circumstances, there is no substantial change in the circumstances, moreover, as alleged, custodial interrogation of the petitioner is required to unearth the whole conspiracy and to find out the source of forged documents, I do not deem it appropriate to release the petitioner on bail.

9. Application is accordingly dismissed.

