



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 08.02.2024

+ BAIL APPLN. 4210/2023
OMA RAM

..... Petitioner

Through: Mr. Varun Bhati, Advocate.

versus

STATE OF GNCTD

..... Respondent

Through: Mr. Ajay Vikram Singh, APP with
PSI Vikas Kasana, PS: Mayur Vihar
Phase-I, Delhi.

Mr. Hemant Gulati, Advocate for
Complainant.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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J U D G M E N T

ANOOP KUMAR MENDIRATTA, J (ORAL)

1. An application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for bail in FIR No.208/2016, under Sections 454/380/420/468/471/120B IPC, registered at PS: Mayur Vihar Phase-I, Delhi.

2. In brief, complainant Rashmi Gulati (a practicing Advocate) alleged that while she along with her family were abroad, someone trespassed in Flat No.7-A, Pocket-1, Mayur Vihar Phase-I, Delhi which is owned by her. The said flat is stated to have been allotted to one Narinder Kumar Minocha @ N. K. Minocha by DDA which was purchased by her on the basis of registered Power of Attorney in 1989.

3. On the other hand, the said property is claimed by Naresh Kumar



Jindal and Subhash Kumar Bansal, having purchased the same from Rakesh Kumar S/o Rajkumar on 02.01.2016. It may be appropriate to notice at this stage itself that as per case of the prosecution, said Rakesh Kumar is the applicant / petitioner Oma Ram, who is known by different names, including Ram Marwari as per Aadhaar Card found in his possession. Further, Naresh Kumar Jindal and Subhash Kumar Bansal had identified the petitioner/applicant as Rakesh Kumar, who had executed the documents in their favour for the transfer of said flat. The ownership of the flat is claimed by them on the basis of chain of documents handed over to them by Rakesh Kumar @ Oma Ram @ Ram Marwari. Accordingly, the original allottee Narinder Kumar Minocha @ N. K. Minocha is stated to have executed documents in favour of Harikishan Dua on 18.05.1982, who in turn conveyed the property in favour of Sushil Kumar Garg on 26.11.1997. Finally, the same is stated to have been purchased by Rakesh Kumar (petitioner) for consideration of Rs.3,25,000/-.

4. It is pertinent to note that said transfer of property in favour of Rakesh Kumar is claimed on the basis of notarized Power of Attorney while the complainant Rashmi Gulati purchased the property on the basis of registered GPA supported by part payment by way of pay order, which has been verified by the prosecution.

5. Learned counsel for the petitioner contends that prosecution case is full of gaps and inconsistencies, since the signature of Narinder Kumar Minocha (original allottee) were not collected during the course of investigation, for the purpose of comparing the signatures with the documents on which the property was initially conveyed in favour of Harkishan Dua on 18.05.1982. A communication is stated to have been



made to the office of original allottee Narinder Kumar Minocha for procuring his original signatures by IO but the same were not finally obtained since present whereabouts of Narinder Kumar Minocha are unknown. It is further submitted that petitioner Oma Ram is not Rakesh Kumar as alleged by the prosecution since no identification proceedings were held. It is contended that identification made by Naresh Kumar Jindal and Subhash Kumar Bansal, who purchased the property from Rakesh Kumar is of no consequence since the identification was made at the Police Station during course of investigation. Further, no verification regarding payment of amount by pay order by Sushil Kumar Garg in favour of Harikishan Dua is stated to have been made.

Learned counsel for the petitioner also submits that an incomplete charge-sheet was presented at the time of investigation and as such the petitioner is liable to be admitted to statutory bail though the same was filed within time on the 90th day. In support of the aforesaid contention it is submitted that some original documents were to be collected by the IO during the course of investigation but no steps were taken in this regard despite filing an application before the concerned Court. Reliance is placed upon *Taj Singh vs. State (Delhi Admn.)* CrI. Misc. (M) 208/1987 decided by Delhi High Court on 17.07.1987.

6. On the other hand, application has been vehemently opposed by learned APP for the State assisted by learned counsel for the complainant and it is pointed out that cheating and forgery is manifest from the documents placed on record, since the petitioner has claimed ownership only on the basis of fabricated notarized documents. It is further submitted that different names used by the petitioner as Rakesh Kumar and Ram Marwari in



the Aadhar Card and EC Card reflect that he had an intention to cheat. Petitioner is also stated to be involved in 46 other cases under different Sections in different FIRs related to different Police Stations in different States.

7. *Prima facie* this court is of the opinion that no TIP proceedings for identification of the petitioner were required to be conducted. The execution of the documents by the petitioner impersonating as Rakesh Kumar in favour of Naresh Kumar Jindal and Subhash Kumar Bansal must have been carried over several meetings and as such his identification by Naresh Kumar Jindal and Subhash Kumar Bansal cannot be disputed.

8. Merely because the signatures of Narinder Kumar Minocha could not be collected during investigation, does not cast any doubt on the authenticity of registered GPA executed in favour of the complainant, who has been in possession of the property since 1989.

9. The contention raised on behalf of the petitioner that default bail is to be granted under Section 167(2) of Cr.P.C. being a statutory right, since incomplete charge-sheet has been filed, is also without any merit.

Admittedly, in the present case, the charge-sheet has been filed within the stipulated period of 90 days and cognizance of the offences has been taken. The statutory requirement of the report under Section 173(2) of Cr.P.C. is complied with, if various details prescribed therein are included in the report. The report is an intimation to the Magistrate that upon investigation into a cognizable offence, the Investigating Officer has been able to procure sufficient evidence for the Court to inquire into the offence and necessary information is being sent to the Court. The report is complete, if it is accompanied with all the documents and statement of witnesses as



required by Section 175(5) of Cr.P.C. as held in ***K. Veeraswami v. Union of India and Others, (1991) 3 SCC 655.***

It may further be noticed that right of the Investigating Officer for further investigation in terms of sub-section 8 of Section 173 of Cr.P.C. is not taken away only because the charge-sheet is filed under sub-section (2) of Section 173 of Cr.P.C. against the accused. Ordinarily though, all the documents relied upon by the prosecution should accompany the charge-sheet, nonetheless, if for some plausible reasons, all the documents are not filed along with the charge-sheet, this itself, would not invalidate or vitiate the charge-sheet. If upon the material produced along with the charge-sheet, the Court is satisfied about commission of an offence and thereupon takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) of Cr.P.C. is pending or not, *qua* other accused or for production of some documents not available at the time of filing of the charge-sheet as held in ***Central Bureau of Investigation v. Kapil Wadhawan and Another, 2024 SCC OnLine SC 66.*** The same would not entitle the accused to claim right to get default bail on the ground that the charge-sheet was an incomplete charge-sheet or that the charge-sheet was not filed in terms of Section 173(2) of Cr.P.C.

10. In the facts and circumstances of the present case, this Court is of the opinion that the charge-sheet having been filed against the petitioner within the prescribed limit and cognizance having been taken by the concerned Court, the petitioner cannot claim the statutory right of default bail under Section 167(2) of Cr.P.C. merely because some investigation under Section 173(8) of Cr.P.C. may be required. The authority cited by learned counsel



2024:DHC:970



for the petitioner is distinguishable on facts.

Application is accordingly dismissed. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to learned Trial Court for information.

(ANOOP KUMAR MENDIRATTA)
JUDGE

FEBRUARY 08, 2024/R/sd