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

+ **CRL.M.C. 2667/2022**

**KAILASH TULI**

..... Petitioner

Through: Mr. Sunil K. Mittal, Mr. Anshul Mittal, Mr. Sarthak Tagra and Mr. Harshit Vashisht, Advs.

versus

**THE STATE & ANR.**

..... Respondents

Through: Mr. Amit Sahni, APP and SI Shubham Saini, PS Pandav Nagar. Mr. Vivek Sood, Sr. Adv. with Mr. Pawan Sharma, Ms. Rasneet Kaur, Mr. Saurabh Aggarwal and Mr. Raunak Gupta, Advs. for R-2.

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*Date of Decision:04.09.2023.*

**CORAM:**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

### **J U D G M E N T**

**DINESH KUMAR SHARMA, J. (Oral)**

**CRL.M.A. 20188/2023 in CRL.M.C. 2667/2022**

1. This is an application for early hearing.
2. In view of heavy board early hearing is not possible. Hence, dismissed.

**CRL.M.C. 2667/2022**

3. The present petition has been filed under section 439 (2) read with 482 Cr P.C. on behalf of the petitioner seeking for cancellation of anticipatory bail granted by the learned Trial Court vide order dated 18.04.2022 passed by learned ASJ, arising out of FIR No. 431/2018



dated 20.12.2018 registered at PS. Pandav Nagar under section 420/IPC.

4. Petitioner and Respondent No 2 are brothers and the present complaint in question was filed by the complainant (Petitioner) alleging that the father of the parties Sh. Madan Tuli was allotted a flat bearing No. 1 Category B, Ground floor in Delhi Police Cooperative Housing society at Mayur Vihar, Phase - 1 and in lieu of the same a share certificate was also issued in the name of him (father of the petitioner and the respondent 2). Subsequently, Sh. Madan Tuli expired leaving behind his 5 legal heirs comprising of 3 daughters and 2 sons including the Petitioner and the respondent No. 2.
5. In 2018, the petitioner discovered that his younger brother, Tarun Tuli, had illicitly transferred the alleged flat in Delhi Police Employees Co-operative Group Housing Society, using forged documents including a fabricated nomination form. This fraudulent transfer was allegedly carried out in collusion with society management and two other residents. Subsequently, an FIR No. 431/2018 was registered u/s sections 420 IPC, at PS Pandav Nagar.
6. Further investigation revealed that Tarun Tuli had also purportedly forged their father's signature on the will dated 14/12/2010, in order to obtain the probate certificate which was later seized. Additionally, a Form of Nomination dated 24/01/2012, with allegedly forged signatures of their late father, was also seized from the office of Delhi Police Employees Co-operative Group Housing Society. Thereafter, admitted signatures of the deceased were acquired from the Canara Bank, Delhi and were admitted signature and thumb impressions.



7. It has been stated that a recovery proceeding was initiated against the petitioner and his wife by the Punjab and Sindh Bank for a credit facility in the name of the firm M/s Reflector in which the complainant was the proprietor and his wife was one of the guarantors. The complainant's father also stood as a guarantor at the request of the complainant and his wife. When the recovery proceedings were initiated the will of his father had to be filed along with other documents. The complainant thereafter filed a complaint seeking direction for the registration of an FIR against the respondent.
8. Learned counsel for the petitioner submits that the impugned order dated 18.04.2022 suffers from serious infirmity as the learned Trial Court did not take into account the serious allegations of forgery of nomination form as well as registered will by the accused persons.
9. Learned counsel has invited the attention of the court to the observation made by the learned Trial Court in Para-7 of the order wherein it was noted that as per the FSL report in respect of the signature, that the signature on the admitted documents and questioned documents are different:-

*“As per FSL report, in respect of the signature, it was noted that signature appearing on admitted documents and questioned documents are different whereas no opinion in respect of the thumb impression was given as same was found to be partial, faint and smudged.”*

10. Learned counsel submits that the learned Trial Court ignored the FSL report merely on the ground that the nature of material against the



applicant is documentary in nature based on the opinion of an expert and the said opinion shall be tested at an appropriate stage of the criminal proceedings. Learned counsel further submits that it was a very serious case in which the learned trial court ignored all the cardinal principles for granting anticipatory bail to the Respondent.

- 11.** Learned counsel for the petitioner buttressed his contentions of cancellation of bail placing reliance on the judgements of the Hon'ble Supreme court in *Padmakar Tukaram Bhavnagore (2012) 13 SCC 720; CBI V Anil Sharma 1997 (7) SCC 187, Adri Dharan Das v. State of West Bengal, 2005 (4) SCC 303*; and on the judgement of Supreme Court in *P. Chidambaram v. ED AIR 2019 SC 4198*.
- 12.** Learned counsel for the respondent, per contra, objecting to the contentions of the learned counsel for the petitioner has vehemently opposed the arguments advanced. It has been submitted that the petitioner always used to demand money and has also compelled his father to become a guarantor while taking a loan from Punjab and Sindh bank in the name of his firm. The petitioner defaulted in the repayment of the loan, in furtherance of which the bank initiated recovery proceedings against him. It has been submitted that the respondent has even helped him with Rs. 50 Lakhs for the repayment of the said loan advanced to him by the creditor bank. It was upon asking for the money back paid by the respondent, that the petitioner started challenging the validity of the nomination certificate which was rather duly executed during the lifetime of the father. It has also been submitted that it was worthwhile to mention here that since the date of transfer of the flat from December 2010 till May 2018, the petitioner



never questioned the correctness of the will nor the transfer of the flat in the name of the respondent.

13. Learned counsel for the respondent submits that the petitioner challenged the transfer of membership of the flat by addressing an application to the secretary of the society which was forwarded to the Registrar Co-operative Group Housing Society which conducted an inquiry. The petitioner had hands in gloves with the then assistant registrar and obtained a letter dated 19.11.2018 containing the averments qua the correctness of the document.
14. It has been further submitted that the respondent acquired an absolute right to the suit property through a registered will dated 14.12.2010 executed by the father of the respondent and the petitioner was well aware of the same. It is submitted that the petitioner was also a beneficiary of the will and enjoyed a plot booked by their father in the name of the petitioner of which he never challenged the validity.
15. Furthermore, it was submitted that upon the perusal of the judgements and authorities cited by the petitioner have no application upon present case.
16. I have considered the submissions made by the learned counsel for both parties.
17. Perusal of the impugned order indicated that the ASJ granted bail to the accused on the grounds that the respondent was aware of the existence of the will dated 14.10.2010 and the respondent had even made a payment of Rs. 50 lakhs when the recovery proceedings were initiated against the petitioner by the creditor bank. There is also no explanation as to why the complainant did not oppose the same in the period of six



years between 2012 and 2018. The opinion of the expert has also to be tested at an appropriate stage of the criminal proceedings and the case is based only on the documentary pieces of evidence.

18. I consider that the jurisdiction of cancellation of bail is very limited in nature. The bail can be cancelled only if there are supervening circumstances or if the court finds any perversity or serious flaw or illegality in the orders of the learned Trial Court. The supervening circumstances can be in the form of subsequent circumstances, the accused might have violated the condition of the bail or might have involved himself in threatening or intimidating the witnesses. The perversity in the order of the bail can be found wherein there is a complete misapplication of mind or misinterpretation of the facts.
19. In the present case, the learned counsel has submitted that the learned trial court has ignored the FSL report and casually brushed it aside which is actually a piece of vital evidence and has left it to be tested during the course of the trial and has also wrongly appreciated the DRT proceedings.
20. The Apex Court in ***R. Nagender Yadav v. State of Telangana, (2023) 2 SCC 195***, the Hon'ble Apex Court propounded the law on 482 Cr.P.C. and inter alia held:

*“While exercising its jurisdiction under Section 482CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act*



*alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court”*

21. I consider that in the present case, all the contention or the material on record is still to be tested by the learned Trial court during the course of the trial.
22. I do not find any perversity, illegality or infirmity in the order of the learned Trial Court. Hence the present petition stands dismissed.
23. However, no expression made herein shall be tantamount to be an expression made on the merits of the case and this court decided the present petition for cancellation of bail merely on the limited question of the jurisdiction to be exercised at the stage of grant of bail.

**DINESH KUMAR SHARMA, J**

**SEPTEMBER 4, 2023/AR..**