

K.K. Mehra Vs. State

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SooperKanoon Citation : sooperkanoon.com/689518

Court : Delhi

Decided On : Apr-03-1989

Reported in : 1989(16)DRJ377

Judge : P.K. Bahri, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 220, 223 and 288 of 1989

Appellant : K.K. Mehra

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; P.S. Sharma and; R.P. Lao, Advs

Judgement :

P.K. Bahri, J.

(1) These three petitions have been filed seeking anticipatory bail which have been strongly opposed by the State.

(2) On a complaint made by Shri P.K. Tripathi, Commissioner (Land) of D.D.A., a case under Section 420, 468, 471 and 120B, T.P.C.has been registered. It has been alleged in this complaint that on the basis of wills and nominations, certain mutations of the plots have been obtained from the D.D.A. by practicing fraud by

certain Management Committees of the co-operative societies in complicity with certain officials of the D.D.A. which have deprived the D.D.A. of huge amount which the D.D.A. was entitled to get as 50% of the unearned increase in the value of the plot on the plot being sold or transferred by the original allottee in favor of other persons who are neither blood relations nor actual heirs of the original allottee. Then certain specific instances of such fraud having been practiced were quoted and request was made that a complete and through investigation be made to book the offenders who had played such fraud in causing huge losses to the D.D.A.

(3) During the course of the investigation, the Investigating Officer had seized a number of files from the New Friends Co-operative House Building Society Limited. It is not necessary to refer to the facts in detail because I find that there are sufficient grounds for the Investigating Officer to have proceeded in the matter with a view to collect the evidence in support of the allegations made in the complaint. One Waryam Singh was an original allottee and member of the aforesaid society. It is alleged that in the original application form for seeking membership Waryam Singh had shown name of his own relation as nominee. The said application form was dated May 20, 1957 but the same was substituted in the record of the Society with a fictitious and forged form in which Pushpa and Anirudh have been shown as nominees without disclosing their relationship if any, with Waryam Singh. Ultimately the mutation of this plot had taken place in the names Statements of Gangadhar Aggarwal, husband of Pushpa and father of Anirudh has been recorded under Section 161 Criminal Procedure Code . in which it has come out that M L. Jaggi, Secretary of the Society, K.K. .Mehta, an official of the Society and Gulshan Rai, the property broker had brought about this transaction and they had undertaken that with the influence which M L. Jaggi has over certain officials of the D.D A, the plot would be got mutated in favour of his wife and son and he had agreed to pay Rs, 35 000.00 to them for this purpose and later on the plot was got mutated in the record of the D.D. A. in favor of his wife and the son. He has also made a statement that his son was aged 20 years. That mean that his son was born sometime in the year 1967 or 1968 but the application form which appears in the record of the Society purporting to bear the signatures of Waryam Singh the age of Anirudh has been mentioned as two years meaning thereby that

he was born in the year 1965 which prima facie is a false statement. In the evidence already collected it has been brought out that Waryam Singh was not in any manner related to Pushpa and Anirudh. A photo copy of the will allegedly of Waryam Singh which also appears in the record of the Society shows that Waryam Singh had executed the will on January 6, 1974 which was registered on January 24, 1979 bequeathing the plot in question in favor of Pushpa and Anirudh whereas the Investigating Officer had collected a photo copy of the registered will dated December 12, 1978, registered on January 24, 1979 showing that Waryam Singh had bequeathed the plot in question in favor of his two sons Harbhajan Singh and Narender Pal Singh. So, prima facie evidence has been collected showing the implication of all these petitioners for their having entered into conspiracy to forge the documents in the record of the Society and with the help of the said forged documents in complicity with certain officials of the D.D.A. to get the mutation done in favor of persons who were not blood relations of the original allottee with the object of depriving the D.D.A. of its dues because under the terms of the Sub-Lease issued by the D D.A. the D.D.A. is entitled to have 50% of unearned increase in the pries of the plot. it is only where the transfer takes place by devolution in favor of blood relation that D.D.A. charges less amount for allowing mutation. It is apparent that very serious offences appear to have been committed by the petitioners in complicity with some other persons.

(4) Shri D.R. Sethi, counsel for Mr. ML. Jaggi, Shri D.C. Mathur, counsel for Mr. K.K. Mehta and Shri P.S. Sharma, counsel for Gulshan Rai have vehemently argued that these petitioners have been joining the police for investigation purpose and they have been already interrogated on some occasions and thus no useful purpose would be served by allowing the police to arrest them in the said case It has also been contended that the real beneficiaries of the transactions were the transferees and as yet the police had not cared to arrest any of the said beneficiaries. It has also been argued that whatever documents were needed by the police for investigation have already been seized and no useful purpose would be served by merely allowing the police to arrest the petitioners in order to humiliate them.

(5) Reference has been made to Shri Gurbaksh Singh Sibbia and others v. State of Punjab', : 1980 CriLJ1125 . In this judgment scope of the power under Section 438 Criminal Procedure Code . for allowing the anticipatory bail was thoroughly examined. It has been held that there are no limitations for the exercise of discretionary power conferred under the said provision. It was held that in regard to anticipatory bail, if the proposed acquisition appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest. would generally be made and if on the other hand it appears likely considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee From justice, such an order would not be made. Further it was observed in this judgment that there are numerous considerations, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail and those numerous circumstances are the nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charge, a reasonable possibilities of the applicant's presence not being secured at the trial, a reasonable apprehension that witness will be tampered with and the larger interests of the public or the State are some of such considerations which the Court has to keep in mind while deciding an application for anticipatory bail. In Pokhar Rom v. State of Rajasthan and others; : 1985 CriLJ1175 , the Supreme Court had held that when a person is accused of an offence of murder by the use of fire arm, the Court has to be careful and circumscribed in entertaining an application for anticipatory bail. It was also laid down in this very judgment that grant of an anticipatory bail to some extent intrudes in the sphere of investigation of crime and the Court must be cautious and circumspect in exercising such power of a discretionary nature.

(6) Prima facie the offences in which the police is investigating in the present case are quite grave and serious inasmuch as the D.D.A. is alleged to have been deprived of huge amounts which the D.D.A. was entitled to obtain as unearned profits resulting from transfer of the plots by the original lessees. In Prem Kumar v. State 1989 (1) DL 216 this Court had declined the bail to the accused lacing serious offences covered by Section 467 Indian Penal Code etc.

(7) So, keeping in view the above facts I do not think that it is a fit case for exercising discretion in favor of the petitioner for grant of anticipatory bail. The contention of the learned counsel for the petitioners that documents for getting the mutation done from the D.D.A. have not been shown to be routed through the petitioners and so they are not in any manner concerned with the forged documents having been given to the D.D.A. on the basis of which mutation have been made. The counsel for the petitioner forgets that it is shown prima facie that certain original documents in the records of the Society have been substituted with some forged documents which could not have been possible without the complicity of the Secretary and other officials of the Society. The mere fact that K.K. Mehta is no longer employed with the said Society does not minimise his role when these alleged transactions took place. The evidence has already been collected by the Police showing that these three petitioners had conspired for committing the said offences. So, they do not deserve to be released on anticipatory bail.

(8) The learned counsel for Gulshan Rai had argued that Gulshan Rai was mere a broker and the role of the broker is to bring about agreement between the vendor and the vendee. He only negotiate and bring on the contract for sale and purchase and is mere an intervenor. He is not actually concerned with the actual fulfillment of the contract nor does he incur any personal liability in that behalf. It is mentioned that broker's function is over when he once brings two parties together and receives his commission for it and has nothing to do with the transactions of the parties. There is no dispute about the said principles pertaining to the brokers but this Court cannot rule out the allegations made in the present case with regard to this broker being also party to the said conspiracy as is given out in the statements of some of the witnesses already examined by the investigating agency.

(9) The counsel for the petitioner also referred to Raj Kumar and others v. The State of Punjab 1974 (2) Cha LR 454. In the said case after the lodging of the first information report and after collecting the evidence, the investigating agency did not try to arrest the accused for about four months. The Court thought it fit to grant anticipatory bail to the accused. In the present case the names of the culprits were not known when the Fir was registered. It is only during the course of investigation

that investigating officer has been able to collect some evidence which implicates the present petitioners. So, it cannot be held that there has been taken place any delay on the part of the investigating officer in taking steps for arresting the petitioners. Unless and until the investigating officer has some evidence, the Investigating officer could not have possibly taken steps to arrest anyone. Reference is also made to Anil Nanda v. State; 1988 CCC 409. In the cited case the Fir was lodged after about 6 years of the transaction and it was found to be a fit case for grant of anticipatory bail. This judgment is not applicable to the facts of the present case. In the present case transaction took place earlier and unless and until the offences were detected, there can be no question of the authorities being inactive in taking any steps in the matter. It is only when Shri Tripathi had made a complaint in writing and the case was registered and investigation was carried on that the crimes allegedly committed earlier have come to light.

(10) So, in view of the above discussion I find that it is not a fit case for grant of anticipatory bail. The grant of anticipatory bail in the present case would, in my opinion hamper the investigation of very serious economic offences. Hence, the petitions are dismissed.