

Sushil Kumar Sharma Vs. State

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Court : Delhi

Decided On : Aug-26-1998

Reported in : 1998VIIAD(Delhi)686; 75(1998)DLT195

Judge : J.B. Goel, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438; [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B, 420, 467, 468 and 471

Appeal No. : Crl. M. (M) No. 1346 of 1998

Appellant : Sushil Kumar Sharma

Respondent : State

Advocate for Def. : Ms. Mukta Gupta and ; Mr. K.K. Bakshi, Adv.

Advocate for Pet/Ap. : Ms. Neelam Grover,; Mr. H.K. Jaggi and; Mr. B.P. Sharma

Judgement :

J.B. Goel, J.

1. This is an application for anticipatory bail filed by one Sushil Kumar Sharma in FIR No. 115/98 registered at Police Station Dabri under Sections 420/467/468/471/120-B, IPC.

2. Facts giving rise to the case are that Dr. P.N. Srivastava and his wife Dr. Maya Srivastava are NRIs and employed at UAE since March, 1992. Dr. P.N. Srivastava lodged an FIR on 3.2.1998 alleging that he and his wife were owners of House No. RZ-64-65, Vaishali, Dabri, Delhi and while living abroad, he had allowed his brother-in-law Sanjay Srivastava and his wife Kalpana Srivastava to live in a part of the house as care-taker during their absence without paying any rent. During their vacations every year they used to visit India and stayed in the said house. They are also owners of Plot No. A-2/19, Qutab Enclave, Gurgaon which they had purchased from DLF. They had come to India on 20.1.1998 and when he went to DLF to take possession on 3.2.1998 he was told there that the said plot of land had been sold by Kundan Srivastava on the basis of their registered Power of Attorney dated 11.8.1995 in favor of (i) Sushil Sharma, (ii) Smt. Tripta Sharma, and (iii) Ram Saran Dass.

3. He has also lodged another report that on 3.2.1998 when he returned to house from market he found that Sanjay Srivastava had committed theft in his house and had stolen the original documents of title pertaining to the said plot and also other articles including their passports by breaking open of the lock of the almirah.

4. He has alleged that Kundan Srivastava in collusion with his brother Chandan Srivastava, his brother-in-law Sanjay Kumar Srivastava and his sister Kalpana Srivastava; and others had forged documents of sale of his property; they had not executed the said Power of Attorney dated 11.8.1995 and they were even not present in India on that day and it was forged one. Kundan Srivastava, Chandan Srivastava and Sanjay Srivastava have been arrested. The petitioner and other persons are suspected to have conspired in committing forgery and fraud. The investigation is in progress. The present petitioner has not been arrested and has sought anticipatory bail.

5. Investigations are in progress which show that the complainant and his wife are the owners of property bearing No. RZ-64-65, Vaishali, Dabri and they are also owners of property No. A-2/19, Qutab Enclave, Gurgaon. They are NRIs and during their stay abroad they had allowed Kundan Srivastava, brother-in-law of the complainant to live in the said house. The Power of Attorney dated 11.8.1995 and

also the endorsement of its registration have been forged and fabricated. They were not in India on 11.8.1995. On the basis of the said Power of Attorney and acting as Attorney of Mrs. and Dr. P.N. Srivastava, Kundan Srivastava has executed a sale deed dated 27.6.1996 in favor of (i) Sushil Kumar Sharma (the present petitioner); (ii) Mrs. Tripta Sharma, and (iii) Ram Saran Dass (parents of Sushil Kumar Sharma) for an apparent consideration of Rs. 13.2 lakhs. The sale consideration is shown to have been paid as under:

(1) Rs. 4,40,000/- Vide two cheques No.0017991 and 0017992 dated 15.7.96 and 20.7.96 drawn on Gurgaon Gramin Bank, Gurgaon as already received.

(2) Rs. 4,40,000/- Vide cheque Nos.662693 and 662694 dated 15.7.96 drawn on New Bank of India, Gurgaon, already received.

(3) Rs. 2,00,000/- Vide cheque No.409615 dated 5.7.1996 drawn on Scotiabank, The Bank of Nova Scotia, New Delhi already received.

(4) Rs. 2,40,000/- In cash already received.

6. These three vendees have further sold this plot of land by means of three separate sale deeds, in respect of 1/3rd share each on 15.4.1997 to one Mr. Sumant Kakkar for an apparent consideration of Rs. 8 lakhs each (i.e. in all Rs. 24 lakhs) purporting to have been paid by the latter as under:

Vendor Payment Mode

1. Sushil Rs. 5,00,000 Cheque No. 739423

Kumar dated 21.1.97 drawn on

Sharma Indian Overseas Bank,

Pusa Road, New Delhi.

Rs. 3,00,000 Bank Draft No. 784434 dated

11.4.97 drawn on Indian

Overseas Bank, Pusa Road, New

Delhi.

2. Sushil Rs. 5,00,000 Cheque No.739423 dated 21.1.97

Sharma drawn on Indian Overseas Bank,

Pusa Road, New Delhi.

Rs. 3,00,000 Bank Draft No. 366018 dated

11.4.97 drawn on Indian

Overseas Bank, Gurgaon

3. Ram Saran Rs. 5,00,000 Cheque No. 739423 dated

Dass 21.1.97 drawn on Indian

Overseas Bank,

Pusa Road, New Delhi.

Rs. 3,00,000 Bank Draft No. 366017 dated

11.4.1997 drawn Indian

Overseas Bank, Gurgaon

The investigations have further revealed that the cheques issued towards consideration of sale deed dated 27.6.1996 had not been encased when the sale deed was executed and these were encased later on as under:

Cheque No.	Date of Encashment
0017991	24.1.1997
0017992	24.1.1997
662693	14.1.1997
662394	14.1.1997
409615	4.2.1997 (dated 25.8.96 and not 15.7.97)

An account in the name of Kundan Srivastava was opened on 13.1.1997 on the introduction of Ram Saran Dass; the two cheques No. 662693 and 662694 were

credited in that account on 14.1.1997; and the other cheques were encased later on, apparently after part sale consideration had been received from Sumant Kakkar.

7. The main argument of the learned Counsel for the petitioner is that the petitioner is a bona fide purchaser of the said land by means of sale deed executed in his favor on 27.6.1996 for consideration by a duly constituted Attorney of the owner and the petitioner had no reason to doubt the genuineness of the duly registered Power of Attorney dated 11.8.1995 in favor of Kundan Srivastava who had executed the sale deed as Attorney; he has joined investigation and prima facie there is no reason to doubt his bona fides and in the circumstances the petitioner is entitled to anticipatory bail.

8. Learned Counsel for the State has opposed it. She has contended that the petitioner is not a bona fide purchaser. He is a co-conspirator in the conspiracy hatched by a number of persons, some of whom are absconding, the General Power of Attorney was fabricated; thereafter a bogus sale deed was executed in favor of the petitioner and his parents on 27.6.1996 without making any payments; and again they have executed another sale deed dated 15.4.1997 to dupe the subsequent purchaser Mr. Sumant Kakkar from whom a consideration of Rs. 24 lakhs appears to have been taken fraudulently; original documents of title were not given to the petitioner and his co-vendees, they had not verified that the General Power of Attorney dated 11.8.1995 was not duly registered in the office of the Sub-Registrar concerned; obviously they had knowledge that it was a fabricated document; in fact the investigations so far made have revealed that the petitioner is a party to the forgery committed in fabricating this Power of Attorney and in conveying the property on forged documents. She has further pointed out that the petitioner has been absconding and avoiding joining investigation inspite of several notices sent by the IO and also directions given by this Court on several dates. In the circumstances, the grant of anticipatory bail would be wholly unjustified and will prejudice the investigation and amount to interference in the proper investigation of the case.

9. The petitioner's similar application before the Sessions Court was dismissed on 25.4.1998.

10. He approached this Court and on 6.5.1998 an ex parte interim anticipatory bail till the next date was granted. It was continued on 28.5.1998 and 14.7.1998. On 14.7.1998 an objection had been taken by the learned Counsel for the State that the petitioner had not appeared before the IO on 18.5.1998, 3.6.1998 and 3.7.1998 and 4.7.1998 in spite of notices sent to him. It was submitted on behalf of the petitioner that he had gone for Mansarovar Yatra on 2nd June, 1998 and returned on 7th July, 1998. No material to this effect has been placed on record nor he had informed this Court or the IO. No Explanation has also been given for not appearing on 18.5.1998. On 14.7.1998 I directed the petitioner to appear before the IO on 15.7.1998 and also to appear if required further. It was specifically mentioned that if he fails to so appear his interim bail shall be deemed to be cancelled. He did not so appear and on the other hand on 23.7.1998 filed an application (Crl. M. 4268/98) with an Explanation that he suddenly in the night of 14.7.1998 got acute pain and was rushed to the Civil Hospital from where he was shifted to Kalyani Hospital, Mehrauli Road, Gurgaon for treatment and was discharged from that hospital on 16.7.1998 and so could not appear before the IO on 15.7.1998. There is no Explanation as to why he did not appear before the IO after his discharge from the hospital. The petitioner again on July 24, 1998 was directed to appear before the IO on 28th July, 1998 at 2.00 p.m. He again did not appear and there is no Explanation available for not doing so. In the circumstances there are reasons to believe that he had been evading to join the investigation.

11. The petitioner claims to be bona fide purchaser. This is seriously contested inter alia on the ground that, (1) the petitioner and his two co-vendees were not given the original documents of title of the property at the time of sale deed dated 27.6.1996; (2) he did not verify the genuineness of the General Power of Attorney used for effecting the sale in his favor by Kundan Srivastava; (3) this was a fabricated Power of Attorney with false endorsement of its registration under Registration Act; (4) False declaration has been made in the sale deed that sale consideration had already been received/paid; (5) the 5 cheques of Rs. 2.20 lakhs

each and one of Rs. 2 lakhs were encased after over six months, two on 14.1.1997, two on 24.1.1997 and one on 5.2.1997 out of the part payments obtained from the subsequent vendor; (6) the petitioner and his two co-vendors who are his parents apparently had no funds on 27.6.1996 to finance this purchase.

12. All these circumstances need due investigation and the petitioner has evaded the same.

13. It is well settled that Section 438 of the Code is not meant to assist an accused person to avoid due process of law. In exercise of this power the Courts would not obstruct and hamper the search for truth by interfering in investigation at every stage to further interest of anti-social elements.

14. In *V. Nandan v. DIG of Police (Crime), Hyderabad and Anr.*, 1986 Cri.L.J. 1052, Kerala High Court held as under:

'Anticipatory bail is not to be granted as a matter of course in all cases where the applicant has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. Grant or refusal of such bail must depend upon variety of circumstances. The power u/Sec. 438 has to be exercised sparingly and in exceptional cases using the discretion on the facts of each case. It should not be allowed to circumvent the normal procedure of arrest and investigation or to prejudice the investigation. In exercising the judicial discretion in granting anticipatory bail the Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and also public interest likely to be affected thereby.'

15. Considering the nature and the circumstances, the grant of benefit of anticipatory bail will not be proper and justified. In my view, this application is a misuse of the process of the Court adopted by the petitioner. He has evaded to join the investigation in spite of directions given by this Court and has thereby delayed the investigation.

16. This application is accordingly dismissed with costs. Costs Rs.10,000/-. The, same shall be deposited within one week. If this amount is not paid he will be proceeded in accordance with law.

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