

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-25589 of 2015

Date of Decision: November 9, 2015

Hem Singh Bharana

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. J.S. Bedi, Sr. Advocate with
Mr. Vineet Sehgal, Advocate
for the petitioner.

Mr. Deepak Sabharwal, Addl. A.G., Haryana.

Mr. C.K. Singla, Advocate

Mr. Ish Puneet Singh, Advocate

Mr. Yogesh Saini, Advocate for
Mr. Manoj Bajaj, Advocate.

Ms. Promila Nain, Advocate.

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M.M.S. BEDI, J.

Petitioner is in custody in case FIR No. 261 dated August 16,
2014 under Section 10 of the Haryana Development and Regulation of
Urban Areas Act, 1975, for short 'the Act' and under Sections 406, 420,

120B IPC registered at Police Station Rajendra Park, Gurgaon and FIR No. 85, dated March 21, 2015, under Section 10 of Haryana Development and Regulation of Urban Areas Act, 1975 registered at Police Station Rajendra Park, Gurgaon.

This order will dispose of a petition for grant of regular bail in case FIR No. 85 dated March 21, 2015 under Sections 406, 420 IPC read with Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975, for short 'the Act', at Police Station Rajendra Park, Gurgaon, which was registered at the instance of District Town Planner (Enforcement), Gurgaon, vide complaint dated March 13, 2015 for lodging FIR against M/s Desert Moon Realtors Pvt. Limited for violating condition of licence and provisions of Section 7 (1) of the Act, on the ground that the said Company had been granted licence No.94 dated September 5, 2012 by the Director General Town and Country Planning under Section 3 of the Act for developing residential group housing project on land measuring 10.919 acres in the revenue estate of Village Daultabad, Sector 103, Gurgaon. Condition No.5 of the licence has been violated as advertisement for sale of flats/ office/ floor area had been issued before approval of the lay out plan/ building. M/s Desert Moon Realtors Pvt. Limited is subsidiary company of M/s ADEL Land mark Limited. One investor Parveen Kundu has paid Rs.9,02,500/- for booking Unit No. B-3/204 in the project called Cosmo City, Sector 103, Gurgaon launched by M/s Desert Moon Realtors Pvt. Limited through M/s ADEL Land Mark Limited. Demand of Rs.40700000/-

vide two letters has been raised. The provisions of Section 7 (i) of the Act stand violated. Similar complaints were received from Pushkar Shanker Shukla, Pawan Kharbanda, Col. Balbir Singh etc.

As the petitioner had, during the course of arguments submitted that he was ready to satisfy the aggrieved persons who had not been allotted any unit by making arrangement, to return amount alongwith interest and that some settlement was being arrived at with the intervention of Commissioner of Police who had directed that more FIRs will not be registered and that the petitioner would return the amount received by him in instalments, and since there was protest by the persons who had been fraudulently allotted units and the person who had not been allotted any unit, this Court had passed an interim order on September 9, 2015 to release the petitioner for a period of 20 days from September 10, 2015 to September 29, 2015 and to surrender before the Illaqa Magistrate on September 30, 2015. The operative part of the order dated September 9, 2015 is reproduced as follows:-

“Learned counsel for the petitioner has submitted that the petitioner is ready to satisfy the unallottee aggrieved persons by making arrangement for return of the investments alongwith interest and that in this context a settlement has already arrived at before the Commissioner of Police who had agreed that no more separate FIRs will be registered and that the petitioner will return the amount in instalments alongwith interest to the investors. He has also argued that the petitioner does not have any intention to cheat the investors. The allottees have been given numbers of their units and that the relationship of builder

and buyer is governed by the contract. Mr. Bansal submits that the petitioner is ready to discharge his liability as per the terms of the agreement between his company and the allottees.

The petition was opposed by 29 allottees and non-allottees by putting in representation through Ms.Promila Nain. Mr. Yogesh Gupta, Advocate represents 16 unallottee investors, Mr. Parvesh Saini represents 8 non-allottees, Mr. Randhawa represented 35 aggrieved persons who are allottees and non-allottees. Mr.Manoj Bajaj appeared for 9 aggrieved persons, Mr. Sumit Goel had put in appearance for 52 aggrieved persons, Mr. J.S. Ghuman, Advocate has put in appearance on behalf of 6 unallottee investors. Sh. Ganesh Kamat represented 23 persons which include 9 allottees and 14 unallottees. Mr. Satish Aggarwal, Advocate represented 75 persons of Cosmo City Flat Buyers Welfare Society and Mr. Ish Puneet Singh, Advocate represented 4 allottee persons.

A large number of allottees appeared in the Court to oppose the release of petitioner on bail having an apprehension that in case the petitioner is released on bail he would escape and it will be difficult for the allottees and non-allottees to recover the amount obtained from them fraudulently by act of cheating. Being aware that while deciding bail petition, the claims of the claimants cannot be settled by a Court while exercising powers under Section 439 Cr.P.C. , but in the interest of justice, the victims were given an opportunity to put-forth their grievance.

After hearing counsel for the petitioner and the aggrieved persons following order was passed by this Court on August 27, 2015:-

“CRM No.27854 of 2015 in CRM-M No.25586 of 2015 is allowed. Affidavit is permitted to be taken on record.

The investigating officer has also produced a statement indicating the liability of the petitioner qua the complainants/ investors.

Counsel for the petitioner is ready to furnish an undertaking to discharge the liability qua all the above said persons, who having not been allotted the units.

The affected parties have got a reasonable apprehension that with an oblique motive to get relief, a false undertaking is being offered before this Court.

Counsel for the petitioner will furnish an undertaking, signed on behalf of the petitioner, indicating the specific dates to discharge the liability so as to assess the bona fide of the petitioner.

A copy of the affidavit has been given to the complainants and the learned State counsel. The statement furnished by the investigating agency has also been taken on record.

At this stage, counsel for the petitioner has made an offer that the petitioner would produce the bank drafts in the name of the persons, who have not been allotted the units. At the same time, an offer has also been made to allot the units to the persons, who are interested in the allotment of the units at this moment.

At this stage, a large number of investors have sought intervention by appearing in person as well as through Advocates to oppose the petition for bail and the proposal offered by the petitioner's counsel claiming that all the funds of the company have been diverted to other companies and that an attempt is being made by the petitioner to avoid his liability and seek the concession of bail. The list of investors/ victims is taken on record as Mark ' X'.

Counsel for the petitioner has further given an assurance to satisfy all the persons mentioned in the list supplied, by 28.08.2015 to all the un-allottees. Counsel for the petitioner has submitted that all the unallottees will be repaid their invested amount with 11 per cent interest as undertaken before the Commissioner of Police, Gurgaon.

Adjourned to 01.09.2015, in order to enable the petitioner to show his bona fide by the next date of hearing. It is clarified that the abovesaid steps have been taken dehors the merits of the case on the basis of the offer made by the petitioner in the Court. In case, the petitioner is not able to satisfy the complainant/aggrieved persons mentioned in the list Mark 'X', the matter will be taken up on merits on the next date of hearing.”

When the case was taken up on September 1, 2015, counsel for the petitioner has presented 79 bank drafts in the name of 79 persons being 25% of the amount due to them. A total sum of Rs.3,58,17,000/- in the shape of bank drafts was offered in the Court to satisfy partly the claim of 79 persons.

Counsel for the petitioner has further submitted that in case an opportunity is given to the petitioner to come out for short duration on interim bail some memorandum of understanding can be arrived at. He has referred to a memorandum of understanding alleged to have been arrived at before the Commissioner for the unallotted cases and allotted cases in Gurgaon project.

Counsel for the claimants has vehemently opposed the act of the Commissioner in permitting the petitioner to arrive at some settlement in a criminal case of cheating.

In view of the said circumstances the settlement by memorandum of understanding by the petitioner was not

accepted by the aggrieved persons who came forward to oppose the petitions of bail.

There is no doubt regarding the fact that there are more than 50 FIRs of similar nature and nearly 100 complaints registered against the petitioner by different persons who have invested money in the projects launched for allotment of flats/units. It is also an admitted fact that a large number of petitions for quashing of the FIR on the basis of compromise with the concerned complainants in different FIRs are also pending. The petitioner has made an endeavour to establish his bonafide by making an attempt to discharge the liability of the Company in his capacity as Director by offering partial amounts to the non-allottees. He has also offered to settle the matter as per the contracts with the allottees also. The prosecution has actually been launched on account of violation of the provisions of the Act by receiving money from various persons without appropriate sanction of the building plans and committing breach of the terms and conditions of the licence. The sentence of imprisonment provided under Section 10 of the Act is three years RI on the basis of Magisterial trial. In the cases of fraud, cheating or misappropriation, the intention of the accused is the foundation for determining the criminal liability.

Taking into consideration the conduct of the petitioner, his offer to satisfy the claimants, the nature of the allegations in the FIR and the claim of the victims, I have tried to strike a balance between the important virtue i.e. liberty of an under-trial and the right of the complainant and the victims and arrived at a conclusion that the bonafide and intention of the petitioner deserves to be tested before curtailing his further liberty.

Without expression of any opinion on merits of the case, at this stage, I am of the opinion that the interest of justice would be adequately met in case the liberty of the petitioner which is an important virtue, is protected for a short duration simultaneously watching the interest of the aggrieved persons. The said objective can be achieved by granting petitioner interim temporary bail for a period of 20 days. Petitioner would be released on bail on his furnishing personal bonds for a sum of Rs.50 lacs with one surety of the like amount to the satisfaction of the Illaqa Magistrate for a period of 20 days i.e. w.e.f. September 10, 2015 to September 29, 2015. He would be required to surrender before the Illaqa Magistrate on September 30, 2015 subject to any other direction passed by this Court.

Be listed on September 28, 2015, for arguments.

A condition is imposed upon the petitioner that he would deposit his passport before his release with the Illaqa Magistrate and will not leave India and that he will leave his address and place of his availability to the Commissioner of Police, Gurgaon as well as the investigating officer alongwith his contact number. He will be available for investigation which is stated to be still pending. It is made clear that the above said period has been granted to the petitioner to satisfy partly or in toto, the claim of the allottees and non-allottees. The drafts which were offered in the Court will be handed over to the investigating officer within 24 hours.”

When the matter was taken up on September 28, 2015 for arguments, Mr. J.S. Bedi, Senior Advocate prayed for extension of time ensuring that the petitioner would be able to satisfy all the aggrieved persons especially the ones who had not been allotted any unit. The matter was

thereafter taken up on September 30, 2015 and bail granted to the petitioner was extended till October 9, 2015 by passing the following order:-

“PRESENT:- Mr.Sanjiv Bansal, Advocate, for the petitioner.
Mr.C.S.Bakshi, Addl. A.G., Haryana.
Mr.Sumeet Goel, Advocate.
Ms.Promila Nain, Advocate.
Mr.Pravesh K. Saini, Advocate.
Mr.Yogesh Gupta, Advocate.
Mr.Manoj Bajaj, Advocate.
Mr.R.S.Randhawa, Advocate.
Mr.J.S.Ghuman, Advocate.
Mr.Ganesh Kamat, Advocate.
Mr.Satish Aggarwal, Advocate.
Mr.Ish Puneet Singh, Advocate.
Mr.Ashwani Bakshi, Advocate.
Mr.C.S.Singla, Advocate.

The petitioner had been granted concession of interim temporary bail for a period from 10.9.2015 till 30.9.2015 vide order dated 9.9.2015.

The application was listed for arguments on 28.9.2015.

Counsel for the petitioner had submitted that the petitioner has made arrangement for satisfying the claimants who have not been allotted units and has assured that if a period of one week is given, he would satisfy all the non-allottees claiming their money. The claimants may approach him in the office where he would be available. The claimants have their doubts about the bona fide of the petitioner.

Before adjudicating the case on merits, I deem it appropriate to give an opportunity to the petitioner to discharge his liability to the satisfaction of the claimants/interveners/objectors.

In the interest of justice, the bail granted to the petitioner is extended till 9.10.2015 to fulfill his commitment subject to same terms and conditions mentioned in order dated 9.9.2015. He is directed to appear before the Illaqa Magistrate on 9.10.2015 to be taken in custody subject to the decision in the main bail application on 7.10.2015. All the claimants may approach the petitioner in the office.

Be listed on 7.10.2015 for further orders.”

The petitioner has surrendered before the Jail Authorities as per the directions passed by this Court on October 8, 2015, which are as follows:-

“Present: Mr. J.S. Bedi, Sr. Advocate, with
Mr. R.Kartikeya, Advocate, for the petitioner.

Mr. Deepak Sabharwal, Addl. A.G., Haryana.
Mr. C.S. Bakshi, Addl. A.G., Haryana.

Mr. Sumit Goel, Advocate.
Mr. R.S. Randhawa, Advocate.
Ms. Harmeet Kaur, Advocate, for
Mr. Ish Puneet Singh, Advocate.
Ms. Promila Nain, Advocate.
Mr. Parvesh K. Saini, Advocate.
Mr. Manoj Bajaj, Advocate.
Mr. Himanshu Puri, Advocate, for
Mr. J.S. Ghuman, Advocate.
Mr. Ganesh Kamath, Advocate.
Mr. Satish Aggarwal, Advocate.
Mr. Ashwani Bakshi, Advocate.
Mr. Amit Kaushik, Advocate.

79 drafts as mentioned in the order dated 09.09.2015 handed over earlier to State counsel towards discharge of liability partly have been returned by the Investigating Officer/State counsel on account of the counsel for the persons entitled to the bank drafts, having refused to accept the same.

However, learned counsel for the petitioner submits that the bank drafts handed over back to the petitioner in the Court today would be directly disbursed by the petitioner against the signatures of the persons who are ready to claim the same by approaching the office of the petitioner.

Arguments heard.

Affidavit of the investigating officer indicating the steps taken in the course of investigation has been placed on record.

For final order, to come up on 12.10.2015.

Counsel for the petitioner on the instructions of Mr. Veneet Sehgal, Advocate has submitted that he has got instructions to state that the petitioner will disburse another amount of Rs. 7 crores in addition to approximately Rs. 20 crores already disbursed/offered to be disbursed by the petitioner.

The petitioner will surrender before the jail authorities on 09.10.2015 subject to final decision in the present petition on 12.10.2015.”

Petitioner has been involved in a similar case in FIR No. 261 dated August 16, 2014 in which his petition for bail has been dismissed.

Mr. J.S. Bedi, learned senior advocate for the petitioner has raised all the contentions raised in CRM M-25586 of 2015, in this case. The petition for bail has been dismissed in that case on the ground that the further investigation after presentation of challan has been undertaken by SIT.

State counsel and counsel for the aggrieved persons have submitted that statements of the victims are being further recorded by taking up investigation under Section 173 (8) Cr.P.C.

Following the judgment of even date passed in CRM M-25586 of 2015, I do not find any ground to grant the concession of bail to the petitioner.

The petition is dismissed.

November 9, 2015
sanjay

(M.M.S.BEDI)
JUDGE