

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Crl. Misc. No. M-34987 of 2014 (O&M)

Date of decision: 24.02.2015

Shyam Kumar Gupta

...Petitioner

versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arvind Singh, Advocate,
for the petitioner.

Mr. C.S. Bakhshi, Addl. A.G., Haryana.

Mr. Amit Chaudhary, Advocate,
for the complainant.

RITU BAHRI, J.

This petition under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in case FIR No.229 dated 22.05.2014, under Sections 406/420 IPC, registered at Police Station, Central, District Faridabad.

The petitioner had agreed to sell House No.705, Sector 14, Faridabad to the complainant for a sum of Rs.3,11,00,000/- and received an amount of Rs.1,20,00,000/- as earnest money. He had agreed to execute the sale deed in favour of the complainant after receipt of sale consideration. Possession of the house was delivered to the complainant. Thereafter, he was dispossessed therefrom by the officials of the bank on the ground that a loan of Rs.13/14 crores was outstanding against the said house. The regular bail application of the petitioner was declined by the Additional Sessions Judge, Faridabad on 05.09.2014 on the ground that the fact that the house had been mortgaged with the bank was concealed at the time of agreement to sell.

During the pendency of this petition, charges were framed against the petitioner and the trial Court was in the process of recording 15 prosecution witnesses. On 17.01.2015, Mr. Sakul Ram Meena, Chief Manager, State Bank of India, Delhi was examined as PW-4. He has deposed that a home loan of Rs. 44,00,000/- had been taken by Shyam Kumar Gupta-petitioner and Pankaj Kumar against the property in dispute i.e. House No.405, Sector 14, Faridabad and some other properties. One property has now been released by the bank after getting some payment. This was a free hold property and no "NOC" from HUDA was required.

Vide order dated 19.01.2015 passed by this Court, the petitioner was released on interim bail for four weeks to enable him to resolve the dispute with the complainant. But, the petitioner surrendered on 20.02.2015.

Learned counsel for the complainant, on instructions, has informed the Court that complainant is ready to make payment of Rs.1,19,00,000/- towards full sale consideration. However, this proposal has not been accepted by the petitioner.

Heard, counsel for the parties.

In the present case, the petitioner is facing trial under Sections 406/420 IPC. It is not in dispute that the petitioner had accepted Rs.1,20,00,000/- towards earnest money. The trial Court is proceeding to record the prosecution evidence. The petitioner has been in custody since 06.07.2014. The question, 'as to whether at the time of execution of agreement to sell, the complainant was informed with regard to the fact of taking loan of Rs.44,00,000/- from the bank or not, would be examined by the trial Court at the final stage of the trial. At this stage, no useful purpose will be served by keeping the petitioner in custody, as nothing is to be

recovered from him.

Keeping in view the period of incarceration of the petitioner and the fact that the trial is likely to take sometime for its conclusion, this Court is of the view that there is no need to detain the petitioner any longer. Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, Faridabad.

(RITU BAHRI)
JUDGE

24.02.2015
ajp