IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 9273 of 2016 (O&M)
Date of Decision: 31.05.2016

Hem Singh Bharana

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. N.S. Shekhawat, Advocate
for the petitioner.

Mr. C.S. Bakshi, Additional Advocate General, Haryana
for respondent No. 1/State assisted by ASI Sanjay Kumar.

None for impleaded respondent No. 2-I.F.C.I.

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JASWANT SINGH, J. (ORAL)

Prayer in this petition under Section 439 of Cr.P.C. filed on behalf of the petitioner-accused-Hem Singh Bharana is for grant of regular bail in case FIR No. 53, dated 25.01.2015, for offences punishable under Sections 420, 406, 120-B of the Indian Penal Code, registered at Police Station City Palwal, District Palwal.

Petitioner-accused-Hem Singh Bharana is one of the Directors of a Developer Company-M/s. Adel Landmarks Ltd.

On the initial day of hearing on 12.04.2016, the prayer was only pressed for grant of interim bail to avail the benefit of an interim order dated 27.02.2016 (Annexure P-10), passed by Coordinate Bench in other FIRs relating to a Housing Project in Gurgaon. The same is re-produced below:-

"The petitioner-accused is Director of a Developer-Company (M/s. Adel Landmarks Ltd.)

It is apparent from the present FIR No. 53, dated 25.01.2015, under Section 420, 406 & 120-B, IPC, registered at Police Station City Palwal, District Palwal that the complainants are the allottees of the plots after substantial payments towards total sale price in a project at Palwal in Sector -8 under the name and Style "Era Greenworld".

Grievance is that the Developer-Company has raised a loan of Rs. 273 crores from Industrial Financial Corporation of India Ltd. (IFCI) by mortgaging the land under the project, which due to non-payment of installments due to the IFCI/bank, has been symbolically seized under the SARFAESI Act and proceedings for recovery of loan against the mortgaged property/collateral have been initiated before the Debt Recovery Tribunal. Thus, they apprehend threat to their possession as well as title. The other grievance is that the Developer-Company has received the amount towards EDC/IDC charges from the investors/allottees but instead of paying to the Government have mis-utilized the same. Other grievance is that the developer-company has violated the ex parte interim order dated 05.06.2014 passed by Security and Exchange Board of India (SEBI) restraining the Developer-Company from mobilization of the resources from the allottees/investors for the projects covered under the Collective Investment Scheme (CIS).

It is averred in the petition that there is no question of the Developer-Company or its Director cheating the investors/allottees as in the bilateral agreement between the two on 04.02.2012 (Annexure P-3), there is a self speaking clause 1 (iii) and (iv) whereby it has been clearly spelt out that the developer company would be entitled to raise a loan against the land comprising the project and the sale deeds would be executed in favour of the allottees/investors after clearing the loan and obtaining NOC from the financial institutions. It is next averred that qua the payment of EDC,

the Developer-Company would in future not raise any demand of EDC, which is not found due. As regards the violation of the SEBI order, it is stated that subsequently another order dated 07.10.2015 was passed whereby the proceedings against the petitioner were dropped and he was exempted from the rigors of the previous order dated 05.06.2014.

At the time of hearing, the prayer at this stage is only pressed for grant of interim bail to avail the benefit of the order dated 27.02.2016 (Annexure P-10) passed by Coordinate Bench in the other FIR relating to projects in Gurgaon.

It is evident in the order dated 27.02.2016 (Annexure P-10) that the petitioner-accused has been ordered to be released on interim temporary bail for a period of four months w.e.f. 01.03.2016 to 30.06.2016 subject to furnishing his stated bail bonds as also the condition that he would disburse minimum amount of Rs. 10 crores per month to the unallotted claimants in the said FIRs in equal proportions in installments.

Thus, the interim bail at this stage in the present FIR (and the connected FIRs) is being pressed so as to claim parity of treatment, more so, when the allegations in the present cases (registered at Palwal) are less rigorous than in other FIRs relating to projects at Gurgaon.

Learned State Counsel in order to secure the interest of the claimants/allottees/investors does not oppose the grant of interim bail subject to the petitioner-accused securing the interest of the complainants/other investors in the present set of FIRs relating to Palwal as well.

In response, learned counsel for the petitioner submits that a sum of Rs. 210 crores already stands paid to the banks/financial institutions and only a sum of Rs. 134 crores remains outstanding, which is adequately secured in favour of the banks/financial institutions in the light of other properties (apart from the land under the present project) lying *mortgaged and under litigation before the Debt Recovery Tribunal. He further submits that the possession qua plots/flats of the allottees stands protected by virtue of the 'status quo' order (at the instance of the some of the similarly placed allottees) passed by the Debt Recovery Tribunal and the moment clearance is obtained from the bank/Tribunal, they would execute the sale deeds/conveyance deeds in favour of the allottees on payment of balance consideration by them. He undertakes to submit, before the next date of hearing, the modalities before this Court for redressal of the grievance of the complainant/allottees/investors in the present FIR (and connected FIRs), including the release of the land under the present project.*

*Adjourned to **28.05.2016** for further consideration.*

In view of the above stand, on the oral request of the counsel for the petitioner/accused, Industrial Financial Corporation of India (IFCI) Ltd. through its General Manager (i.e. I.F.C.I. Tower, #61, Nehru Place, New Delhi-110019), is impleaded as respondent No. 2.

Let notice be issued to newly impleaded respondent No. 2 for the date fixed.

In the meanwhile, the petitioner shall be released on interim bail till 01.06.2016 to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned."

Emphasis Supplied

On the previous date of hearing on 28.05.2016, a status report by way of affidavit dated 28.05.2016 was taken on record.

None on behalf of the impleaded respondent No. 2 (Industrial Financial Corporation of India Ltd., New Delhi) has appeared in spite of due service upon them.

At the time of hearing today, learned counsel for the petitioner submits, firstly that in the light of the factual position noticed in the order dated 12.04.2016, as highlighted in the order reproduced here-in-above, no offence at all is made out as there is clear stipulation in the bilateral agreement between the Developer-Company and the allottees that a loan could be raised against the land comprising the project. However, in the affidavit submitted on 28.05.2016, the modality for securing the interest of the allottees in the present project on payment of their outstanding dues has been clearly spelt out. It is further stated that the Company has issued offer letter(s) on 27.04.2016 to all the allottees intimating their balance payments and requiring them to come forward for execution of sale deed in their favour and taking offer of actual physical possession. The petitioner undertakes to be bound by the contents of the affidavit. It is also contended that the petitioner is in custody since 09.02.2016 and after completion of the investigation, the challan stands presented. It is also submitted that the petitioner has not misused the grant of interim bail, therefore, prayer is for grant of regular bail to the petitioner.

Learned State Counsel, assisted by ASI Sanjay Kumar, does not dispute the custody period of the petitioner and the fact that challan stands presented. He, however, submits that the petitioner be bound down to protect the interest of the allottees in the present project.

Without commenting on the merits of the case, keeping in view the facts noticed above; custody period of the petitioner and the fact that trial is not likely to be concluded in near future, this Court finds that petitioner-accused deserves the concession of regular bail and as such he is ordered to be released on bail **subject to furnishing of fresh bail bonds and surety bonds** to the satisfaction of Chief Judicial Magistrate/Duty Magistrate/trial Court concerned.

It is clarified that if the interest of any of the allottees in the present project at Palwal is endangered and jeopardized, the bail granted to the petitioner shall liable to be cancelled.

Disposed of accordingly.

May 31, 2016
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(JASWANT SINGH)
JUDGE