IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Misc. No.M-2969 of 2017 (O&M)

Date of Decision: September 21, 2017

Nirmala

......PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rahul Vats, Advocate
for the petitioner (s).

Mr. Luvinder Sofat, D.A.G. Punjab.

Mr. Vikramveer Sharda, Advocate
for the complainant.

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SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.85 dated 09.02.2015 registered for the offences punishable under Sections 418, 420, 406, 465, 468 read with Section 120-B of Indian Penal Code, at Police Station City Ballabgarh, District Faridabad.

Heard.

Instant FIR was registered on the complaint of Ram Lal son of Shri Bihari, who had purchased house No.D-662 from petitioner vide sale deed dated 03.12.2010 for a sale consideration of ₹5,85,000/-. The sale deed was executed as per collector rate while petitioner and her husband

Richhpal have taken another sum of ₹21,15,000/- from the complainant. At the time of sale, it was represented by the petitioner and mediator Prem Singh @ Premi that there is no liability on this plot. When the complainant constructed a new house after demolishing old one, the officials of Canara bank came to his house and apprised him that there is liability of ₹25 lakh on the plot which was on account of loan taken by petitioner Nirmala and her husband Richhpal in the year 2006 and the same had not been cleared. The complainant inquired about this fact from the petitioner and her husband, who admitted that they had taken a loan of ₹25 lakh but this fact was not disclosed at the time of executing the sale deed in favour of complainant. Complainant was apprised that the petitioners were not having the amount payable to the bank and they have transferred the house in their favour and the matter is now in between complainant and the bank. Under the pressure of the bank, complainant paid the loan after arranging money and when he went to the bank to obtain NOC, he came to know that petitioner had executed an agreement dated 04.08.2010 regarding this house in favour of Nirmala Kapoor wife of Sohan Lal. The complainant inquired this matter from the petitioner but they did not give any reply.

Learned counsel for the petitioner has argued that though the liability on the house was not mentioned in the sale deed but this fact was in the knowledge of complainant and he was paying the bank loan in installments in the year 2013.

Learned counsel for the complainant has argued that in the year 2013, the complainant came to know of the bank loan. He took up the matter with the husband of petitioner, who vide affidavit executed in

November, 2013, (copy of which has been placed on file and taken on record as Annexure P-10), took the responsibility to repay the entire bank loan. To save his property from being attached, the petitioner under compulsion paid the bank loan.

It is not disputed that there was outstanding loan of the bank taken by the petitioner and her husband when the house was sold to the complainant. The husband of petitioner had given an affidavit to the complainant that he will repay the loan amount.

Counsel for the petitioner submits that petitioner being a lady, is not in a position to repay the bank liability over the property sold by her to the complainant. The entire fault is of the husband of petitioner, who had taken loan and given the affidavit in favour of complainant.

The property was sold by the petitioner and there is specific mention in the sale deed that the house being sold by her is free from all incumbrances. It appears that the complainant was deliberately kept in dark as in the agreement dated 04.08.2010 (Annexure-C1) executed by the petitioner in favour of Smt. Nirmala Kapoor, this fact is specifically mentioned that she had taken loan from Canara Bank on this house and will clear the same before executing the sale deed in favour of Smt. Nirmala. The above facts discloses a prima facie case of cheating by the petitioner as the complainant, was not disclosed the bank loan on the house or the agreement executed by petitioner dated 04.08.2010 in favour of Smt. Nirmala. Despite these admitted facts, the petitioner has not come forward with any proposal to indemnify the complainant.

Keeping in view the above facts and circumstance and conduct of the petitioner, I do not find any reason to exercise the discretionary power of this Court to extend the benefit of anticipatory bail to the petitioner.

This petition has no merits. Dismissed.

(SURINDER GUPTA)
JUDGE

September 21, 2017
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No