

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No.M-30804 of 2017 (O&M)
Date of Decision: October 30, 2017.**

Raj Kumar Sharma

.....PETITIONER(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Manoj Kaushik, Advocate
for the petitioner (s).

Mr. Ashish Yadav, Addl.A.G. Haryana.

Mr. Sanjeev Manrai, Senior Advocate with
Mr. Abhimanyu Singh, Advocate
for complainant.

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.155 dated 07.08.2016 registered for the offences punishable under Sections 420, 406, 120-B of Indian Penal Code, at Police Station Tigaon, District Faridabad.

Heard.

As per the allegations in the FIR, complainant had agreed to purchase land measuring 22 kanals 5 marlas situated in village Kabulpur vide agreement dated 29.05.2013 with M/s Earth Buildmart Pvt. Ltd. through its Directors. The total sale consideration was ₹3,64,34,375/- and

earnest money of ₹36,43,437/- was paid. The date for execution of the sale deed was settled as 09.05.2014. Another sum of ₹50 lakh was paid on 28.07.2013, ₹25 lakh on 03.07.2013 and ₹10 lakh on 10.06.2013 but no receipt was issued by the company to the complainant. Thereafter, a bogus general power of attorney was executed in favour of Sandeep Dutt and a fake sale deed in favour of Tanu Sharma was shown to the complainant and possession at the spot was also alleged to be of Tanu Sharma.

Learned State counsel assisted by learned counsel for the complainant submits that petitioner has joined the investigation but his custodial interrogation is required. He has referred to the agreement of sale dated 13.04.2013 allegedly executed by M/s Earth Buildmart Pvt. Ltd. with regard to land measuring 1 acre 4 marlas i.e. 4961 square yards, in favour of petitioner. It has been argued that this document was ante-dated as on 13.04.2013 M/s Earth Buildmart Pvt. Ltd. was not even owner of the land agreed to be sold to petitioner. He has further referred to the general power of attorney executed by petitioner in favour of Sandeep Dutt, wherein he has referred himself as owner in possession of this land as per fake sale deed No.24744 dated 12.02.2008. On the basis of that general power of attorney Sandeep Dutt executed registered sale deed in favour of Tanu Sharma wife of petitioner.

Learned State counsel further argues that petitioner was not owner of the land regarding which he has given power of attorney. This land was in fact, owned by M/s Earth Buildmart Pvt. Ltd. Power of attorney given by the petitioner and the sale deed in favour of his wife are documents not binding either on M/s Earth Buildmart Pvt. Ltd. or the complainant.

However, wife of petitioner on the basis of this sale deed, is claiming her possession over the disputed land.

The petitioner has an agreement in his favour. As to whether agreement dated 13.04.2013 in favour of petitioner was ante-dated; general power of attorney executed by petitioner and the sale deed executed by Sandeep Dutt Sharma on the basis of that general power of attorney are the document binding on M/s Earth Buildmart Pvt. Ltd. or the complainant, is a matter to be decided by the civil Court. The complainant being not a party to these documents is, in no manner, bound by the same. He has his separate and independent remedy based on agreement dated 29.05.2013 in his favour.

The proposition as put forth by learned State counsel is that petitioner has executed general power of attorney in favour of Sandeep Dutt Sharma with regard to property, which was not owned by him. Sandeep Dutt Sharma on the basis of that document, executed a sale deed in favour of wife of petitioner. Even if, submission by learned counsel for complainant and learned State counsel be believed, the question, which appears to have escaped the attention of Investigating Agency is that a document not executed by M/s Earth Buildmart Pvt. Ltd. or to which the complainant is not a party, is not binding on either of them. Even otherwise, legal proposition is well settled that a party cannot convey a better title than it possesses itself. Consequently, power of attorney executed by petitioner in favour of Sandeep Dutt and sale deed executed by Sandeep in favour of Tanu Sharma, ipso facto are not binding on complainant or M/s Earth Buildmart Pvt. Ltd.

Keeping in view the above facts, I am of the considered opinion that the entire case is based on documentary evidence for which custodial interrogation of the petitioner is not required. Consequently, without expressing any opinion on merits of the case, this petition is allowed and order dated 23.08.2017 is made absolute till the presentation of challan, subject to the following terms:-

- (i) that the petitioner shall make himself available for interrogation by the police as and when required;
- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) that the petitioner shall not leave India without the prior permission of the Court.
- (iv) that the petitioner will seek regular bail on the presentation of challan in Court, which the trial Court will decide on the basis of evidence collected during investigation.

At this stage, learned State counsel submits that petitioner may be directed to produce the original agreement executed by M/s Earth Buildmart Pvt. Ltd. in his favour.

Learned counsel for the petitioner submit that original documents are in possession of petitioner and will be produced before the Investigating Officer as and when so required.

(SURINDER GUPTA)
JUDGE

October 30, 2017
Sachin M.

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No