

107/209

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-29658-2017 in/and
CRM-M-32474-2017 (O&M)
Date of decision: - 18.9.2017

Monika

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. R.S. Bains, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Karan Vir Nanda, Advocate for complainant.

ARVIND SINGH SANGWAN, J (ORAL)

CRM-29658-2017

Present application is for placing on record Annexure R-1 to Annexure R-3.

For the reasons mentioned in the application, same is allowed. Annxures R-1 to R-3 are permitted to be taken on record.

CRM-M-32474-2017

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No. 0251 dated 6.7.2017 under Sections 406/420/120-B IPC, registered at P.S. Zirakpur, District SAS, Nagar (Annexure P-1/T).

Learned counsel for the petitioner submits that petitioner, a lady having two minor children, as per FIR, is alleged to have received ₹ 10 lacs on behalf of her husband/co-accused-Ved Parkash, in pursuance to an agreement to sell dated 14.10.2016 allegedly executed by Ved Parkash, in favour of

respondent-complainant- Himanshu Gaba.

Learned counsel for the petitioner further submits that as per the allegations in the FIR, husband of the petitioner, Ved Parkash entered into an agreement to sell with the complainant- Himanshu Gaba on 14.10.2016 and received an amount of ₹ 40.00 lacs (in cash). Subsequently, it is alleged that petitioner on receiving a sum of ₹ 10.00 lacs (in cash) on behalf her husband executed a receipt dated 4.11.2016. The allegations in the FIR are that this receipt was executed in pursuance to agreement to sell entered into between the husband of the petitioner and the complainant. He further submits that in fact on an earlier occasion, one Anil Kumar and Narinder Kumar filed a civil suit for specific performance on the basis of one agreement to sell dated 30.04.2015 (Annexure P-6/B) against the husband of the petitioner-Ved Parkash and Haryana Urban Development Authority, Panchkula, regarding the same property. In the said suit, it was pleaded that in pursuance to the said agreement to sell dated 30.4.2015, possession of the property was handed over to them by the husband of the petitioner and accordingly a decree of symbolic possession by way of specific performance was prayed for. Husband of the petitioner-Ved Parkash had filed the written statement on 2.2.2017, stating that part of the property was in possession of M/s Vikson Finance and Investment Pvt. Limited as a tenant and therefore, no question of delivering the possession of the property arose and he even contested the agreement to sell pleading it to be bogus document.

Learned counsel for the petitioner further refers to order dated 11.11.2016 (Annexure P-5) passed by Civil Judge (Junior Division), Panchkula, dismissing the application filed under Order 39, Rule 1 and 2 C. P.C., holding that no possession of the property was delivered to Anil Kumar and Narinder Kumar by the husband of the petitioner-Ved Parkash.

It is further submitted that even in another suit filed by one Satish Kumar against the aforesaid Ved Parkash, praying for a decree of permanent injunction on the basis of his possession, application under Order 39 Rule 1 and 2 was dismissed vide order dated 6.5.2016 by the Civil Court.

Learned counsel for the petitioner, with reference to the aforesaid two civil suits as well as the order passed by the Civil Court, submits that in both the written statements, filed by Ved Parkash-owner of the property, he has nowhere stated that he has entered into an agreement to sell with the present complainant- Himanshu Gaba, though the written statements were filed subsequent to the alleged agreement to sell dated 14.10.2016.

Learned counsel for the petitioner, with reference to two agreements to sell, one allegedly executed with complainant- Himanshu Gaba and other set up by Anil Kumar and Narinder Singh, (both documents are placed on records as Annexure P-2 and Annexure R-1, respectively), submits that a perusal of these documents would show that these have been prepared on a proforma which are in *verbatim* carrying the same language; same pages and thus, stated that in fact complainant- Himanshu Gaba; Anil Kumar and Narinder Kumar are in hand in gloves. In fact, on account of obtaining a loan of ₹ 6.00 lacs, certain documents which were got signed from the petitioner as well as her husband-Ved Parkash as a security has been misused as agreement to sell.

Learned counsel for the petitioner has further argued that there is no privity of contract between the petitioner and the complainant. He further submits that complainant-Himanshu Gaba has alleged that he has paid an amount of ₹ 40.00 lacs (in cash) to the husband of the petitioner-Ved Parkash and ₹ 10.00 lacs (in cash) to the petitioner, without disclosing the source and perusal of the agreement to sell (Annexure R-1) show that many columns were left vacant

which makes it doubtful. Lastly, it is submitted that the petitioner is in judicial lock up since 14.7.2017 and being a lady is no more required for further investigation as offences are triable by the Court of Magistrate.

On the other hand, learned State counsel as well as learned counsel appearing for complainant has opposed the concession of bail on the ground that serious allegations are leveled against the petitioner and the complainant is ready to produce the proof of payment.

Keeping in view the above fact and without commenting upon the merits of the case, present petition is allowed. Petitioner is directed to be released on bail, on her furnishing bail bonds/surety to the satisfaction of CJM/Duty Magistrate, SAS Nagar, Mohali.

However, it will be open for the prosecution to apply for cancellation of bail in case the petitioner is found involved in any other subsequent case or found misusing concession of bail.

(ARVIND SINGH SANGWAN)
JUDGE

18.9.2017
preeti

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No