

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

CRL. MISC. No.M-40676 OF 2016 (O&M)
DATE OF DECISION : 26th JULY, 2017

Jagbhushan Tanwar

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. R. S. Rai, Senior Advocate with
 Mr. Sidharth Tyagi, Advocate and
 Mr. Nishant Tanvir, Advocate for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana.

Mr. J. S. Bedi, Senior Advocate with
Mr. S. S. Brar, Advocate for the complainant.

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A. B. CHAUDHARI, J.

The petitioner has filed the present petition under Section 438 Cr.P.C. seeking anticipatory bail in FIR No.417 dated 13.08.2015 registered under Sections 406, 420, 120-B IPC (Sections 467, 468 & 471 IPC added later on) at Police Station Surajkund, District Faridabad.

Heard learned counsel for the rival parties.

In support of the petition for anticipatory bail Mr. R. S. Rai, learned senior counsel for the petitioner contended that according to the complainant the alleged offence had taken place in the year 2007 while the complaint was made in the year 2015. According to him the petitioner is President of Swami Sudershanacharya cooperative Group Housing Society (in short 'the Society'). Complainant Sanjay Kumar

Atree son of Shri Dhanraj lodged FIR against the petitioner that he was cheated inasmuch as he has not been given the flat which he has purchased from Mr. Sharad Mittal vide membership No.49 of the Society. According to the complainant he has purchased the membership No.49 and he was entitled to the same flat and has actually brought his articles. He was orally allotted flat No.42 of the society and therefore, he had deposited his belongings in the said flat. But behind his back his belongings were shifted to flat No.84. He then made complaint to the office of Sub-Registrar (Assistant Registrar), Cooperative Societies, Faridabad (in short, 'the Authority') on 22.06.2009, which is still pending.

Learned counsel for the petitioner, therefore, contended that it appears that Sharad Mittal had taken the money from the complainant Sanjay Kumar Atree with a view to sell his membership No.49 when he does not have any membership with the society. According to him, Sharad Mittal alleges to have purchased the membership from one Guruvachan Singh who was stated to be an original member of the Society, whereas as a matter of fact he was never member of the society much less original member. Learned counsel for the petitioner, therefore, submitted that at any rate the dispute is pending before the appropriate authority for adjudication and the FIR has been lodged before a number of years and at any rate the petitioner has already joined the investigation. He further submitted that looking to the nature of the dispute between the parties, the petitioner would be entitled to grant of anticipatory bail.

Per contra, Mr. J. S. Bedi, Senior Advocate for the complainant and the learned State counsel vehemently opposed the petition for grant of anticipatory bail and submitted that there is evidence on record to show that the petitioner is President of the Society had in fact recognized Sharad Mittal as its member and that is why loan was raised on the membership. Mr. Bedi also raised several other contentions and showed certain number of documents. However, I think it is not necessary to record all the documents for the following reasons:

For the first place I find that the dispute has already been referred to the Authority for adjudication. Secondly, the dispute appears to have been arisen out in the year 2007 and the complaint with the Authority was filed in the year 2009 while the FIR has been lodged in the year 2015. If really the complainant had in his mind any thought that the petitioner having committed offence, he would not have hesitated in lodging the FIR in the Police Station in the year 2009 itself.

At any rate, the complainant has not made any specific allegation against the petitioner as a person, but as a President of the Society. The issue is highly debatable. There are number of facts which are disputed. Not only that the adjudication by the appropriate authority has to be made as to the grievance of the parties. In that view of the matter, I do not think, that by allowing arrest of the petitioner any purpose will be served. Even the investigation by the Police may not be of much help since the matter relates about the dispute between the members of the society and its office bearers, which can be resolved the best by the Sub-Registrar Societies.

In the result, I find that the petition deserves to be allowed.

Hence, I make the following order:

ORDER

- (i) CRL. MISC. No.M-40676 OF 2016 is allowed.
- (ii) Interim order dated 15.11.2016 granting anticipatory bail to the petitioner is made absolute.

26TH JULY, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>