

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

CRM-M-489 of 2017 (O&M)

Date of decision: 19.01.2017

Ishpal Bhardwaj

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Bedi, Sr. Advocate with
Mr. Shaurya Sharma, Advocate for the petitioner(s).

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Sumeet Goel, Advocate and
Mr. Manish Arora, Advocate for the complainant.

Jitendra Chauhan, J. (Oral)

By filing the present petition, under Section 438 of the Code of Criminal Procedure, the petitioner has sought anticipatory bail in FIR No.289 dated 09.10.2016, registered under Sections 420, 406 and 120-B of IPC, at Police Station Sector 56, Gurgaon, District Gurgaon.

It is contended that the the petitioner allegedly took over Sunhera Apna Ghar Society which was established in the year 1996 from the existing members in the year 1998. He further states that the petitioner launched a housing project in the name of Silver Leaf to hand over 40 affordable housing flats to the members by the year

2008 against which the petitioner received Rs. 16 crores. The petitioner failed to complete the project as per the schedule. He further submits that the petitioner has been running a construction company in the name and style of Sh. Sidhali Infrastructure & Construction Co. Pvt. Ltd., and he had entered into an agreement with above said Sunhera Apna Ghar Society, therefore, the learned counsel contends that the misappropriation of funds, if any, is by the members of the society. The petitioner has nothing to do with the affairs of the society. The petitioner is now ready to complete the project in a time bound manner. In support of his contentions, the learned counsel cites **Mohinder Singh Vs. State of Haryana**, 1998 (4) RCR (Criminal) 787 and **International Advanced Research Centre for Powder Metallurgy and New Material (ARCI) and Ors. Vs. Nimra Cerglass Technic (P) Ltd. and Anr**, 2015(4) RCR (Criminal) 883.

On the other hand, the learned State counsel as well as the learned counsel for the complainant oppose the bail application and submit that the petitioner is the main kingpin who allegedly usurped crore of rupees from various investors. The learned State counsel refers to the disclosure statement of Amit Kumar, cousin of the petitioner wherein he has specifically stated he was appointed as President of the Society and his signatures had been forged by somebody, the membership was increased from 40 to 94. The learned

counsel for the complainant also submits that the petitioner is the main conspirator and he credited money into his personal account from the account of the society. He further states that in fact the Sunehra Apna Ghar Society and Silver Leaf are one and the same project and it was the petitioner who received the amount by projecting one society as two societies to the public. He further informs that the petitioner along with Amit Kumar has sold

The learned counsel for the complainant further submits that the petitioner along with Amit Kumar has sold about 214 dwelling units as against the 94 dwelling units. More than 200 claims have already been laid by investors/persons before the Cooperative Societies Department, Haryana. In fact, the petitioner had also been acting as President of the society and managing all the affairs. FIR No.158 dated 30.06.2016, under Sections 420, 406, 467, 468, 471 and 120-B of IPC has also been got registered by Deputy Registrar, Cooperative Societies, Gurgaon against the petitioner regarding the fraud committed. The learned counsel cites State Represented by the CBI Vs. Anil Sharma, 1997(4) RCR (Criminal) 268.

Heard.

As per the record, initially the Sunehra Apna Ghar Cooperative Housing Society was formed in the year 1996 with 40 members for constructing affordable housing flats on one acre land.

The petitioner took over the society from existing members by

introducing his new members and launched a housing project in the name and style of Silver Leaf with a promise to hand over 40 affordable housing flats to members by 2008. The total contract was of Rs. 19 crores which would be completed within 24 months. However, despite the receipt of the amount, the petitioner failed to complete the project within the stipulated period. At the asking of the petitioner, Amit Kumar, the alleged President of the society (cousin of the petitioner) issued share certificates to more than 94 members. The receipts were still being issued in the name of Sunehra Apna Ghar Coop. Society. There is evidence that the funds were credited in the personal account of the petitioner from the account of Society.

From the above facts and circumstances, it is prima facie clear that the petitioner has duped the money of the investors on false promise. Neither the amount has been returned nor the possession of the apartments has been handed over even to the original allottees.

Thus, keeping in view the accusation, this Court feels that it is a fit case where custodial interrogation of the petitioner is required to find out the modus operandi and to unearth the truth with regard to misappropriation of funds. Therefore, no case for anticipatory bail is made out, at this stage. The ratio of case law cited by the learned counsel for the petitioner is distinguishable on facts and will not apply in the present case.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

19.01.2017
sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No