

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

**CRM-M No.47327 of 2017
Decided on: 24.08.2018**

Kapila Sherawat

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN**Present :** Mr. Tribhuvan Dahiya, Advocate for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. R.K. Saini, Advocate for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioner prays for grant of anticipatory bail in FIR No.323 dated 13.04.2017, registered under Sections 406 and 420 IPC at Police Station Hisar Sadar, District Hisar.

The operative part of the order dated 09.01.2018, vide which interim anticipatory bail has been granted to the petitioner, is reproduced as under:-

“Counsel for the petitioner submits that a bare perusal of the FIR which is got registered at the instance of the member of Cooperative Society, prima facie shows that no offence under Sections 406 and 420 IPC is made out, as in the FIR, it has nowhere been stated that the petitioner has misappropriated any amount of the society in the capacity of its President.

Counsel for the petitioner further submitted that on 25.05.2003, by way of issuance of a public notice; it was proposed to cancel the allotment of plots of some members who have failed to deposit the outstanding amount. Later on as per the resolution of the society dated 12.10.2004 which was held under the Chairmanship of the then

President-Narain Singh, the plots of some members were cancelled and it was decided that the same be allotted to new members. It is further submitted on behalf of the petitioner that the petitioner was elected as President on 07.04.2006 and with regard to similar allegations, on an earlier occasion, FIR No.393 dated 14.08.2011 was registered against the petitioner under Sections 406, 420, 467, 468, 471 and 506 IPC in Police Station Sadar Hisar. The petitioner was arrested and later on faced a full length trial. The Judicial Magistrate 1st Class, vide its judgment dated 06.03.2017 acquitted the petitioner holding that the ingredients of the aforesaid offence are not made out against the petitioner.

Counsel for the petitioner further submits that with the same set of allegations now the present FIR has been registered.

Learned State counsel on instructions from Inspector Krishan Kumar has submitted that the Assistant Registrar, Co-operative Society, Hisar has conducted an inquiry on 27.11.2012 in which it was stated that the audit of the society was conducted upto the year 2010-11 and has further reported that there is no basic amenities in the society, however, from this report, it is not clear that from 26.11.2012 till the registration of the FIR, any action was taken by the department in this regard or not.

Learned counsel for the complainant has relied upon an inquiry report dated 27.01.2017 submitted by Inspector Co-operative Society Hisar, in which it has been recommended that the decision regarding the disputed plots which were cancelled be taken under Section 102 of the Haryana Cooperative Societies Act, 1984 and in case double allotment has been made regarding the plot, action be taken for registration of the case against the accused persons. It is stated at the bar that till date no such

decision under Section 102 of the Haryana Co-operative Societies Act, 1984 is made by the competent authority. A perusal of this report further shows that an advisory has been issued that the audit of the previous years be also conducted as the petitioner has not provided the relevant record of the Co-operative Society and, therefore, action be taken against her.

Counsel for the complainant further submits that society has filed CWP No.13792 of 2017 in which a direction has been issued to the Society to submit the record as demanded by the respondent authorities for the purpose of conducting the enquiry. In reply the counsel for the petitioner submits that petitioner is no more president since 2016.

Without commenting on the merits of the case, considering the fact that till date no such inquiry under Section 102 of the Haryana Cooperative Societies Act, 1984 or any direction of the Court is there to hold that the petitioner has committed an offence under Section 406 and 420 IPC and also in view of the fact that the petitioner, on similar allegation has faced trial in FIR No.393 and she has been acquitted vide judgment dated 06.03.2017 by the trial Court, the petitioner is directed to join investigation within a period of 30 days from today and appear before the investigating officer for furnishing all the relevant record and she shall be released on interim bail subject to the following conditions:-

- 1. She shall make himself available for interrogation by a police officer as and when required;*
- 2. She shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and*
- 3. She shall not leave India without previous permission of the Court.*

List on 30.04.2018.”

Counsel for the petitioner submits that the petitioner, in pursuance to the order dated 09.01.2018, has already appeared before the Investigating Officer and has joined the investigation. Thereafter, again in terms of order dated 30.04.2018, the petitioner has joined the investigation and has handed over the documents, which were in his possession.

Counsel for the State, on instructions from Inspector Manoj Kumar, has not disputed the factual position and submits that though the petitioner has joined the investigation, however, the complete record has not been handed over by him. It is further submitted that the co-accused of the petitioner namely Jagdeep was arrested and he has made a disclosure statement that he has concealed some record, which has already been recovered.

In reply, counsel for the petitioner has submitted that since the petitioner was removed from the post of President on 27.02.2017 and whatever the record was available with her, she has handed over the same to the Administrator.

In view of the above, the petition is allowed and the interim bail granted to the petitioner vide order dated 09.01.2018 is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.

(ARVIND SINGH SANGWAN)
JUDGE

24.08.2018

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Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No