

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

**CRM-M-4585-2019
Date of decision: 31.01.2019**

Manoj Kumar Kaushik

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Vaibhav Narang, Advocate
for the petitioner.

Mrs. Baljit Mann, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No. 433 dated 01.12.2018, registered under Sections 120-B, 420, 447, 467, 468 and 471 of the IPC at Police Station Sector 56, Gurugram, District Gurugram.

Learned counsel for the petitioner submits that as per the allegations in the FIR, complainant Ritik Hooda had purchased a plot measuring 60 sq. yards in Gurugram from one R. B. Yadav for a sale consideration of ₹24,00,000/- on 08.06.2011 and had taken the physical possession of the plot from R. B. Yadav but he could not raise any construction on the said plot as he was completing his studies. On 30.10.2018, when the complainant visited Gurugram, he was shocked to see that a multistory building was constructed on his plot and on further inquiry, he came to know that accused/petitioner Manoj Kumar, who was the earlier

owner of the plot, has raised illegal construction over the said plot in conspiracy with other co-accused. It is further stated that petitioner Manoj Kumar had conscious knowledge that he had sold the said plot in January, 2002 and was left with no ownership right over the said plot and the accused persons have forged the documents in conspiracy with each other.

Learned counsel for the petitioner has argued that the petitioner was allotted the plot in dispute on 29.03.1994 and the possession of the plot was handed over to him on 06.05.1997. It is further submitted that petitioner is a Govt. servant and he is working in EPFO Department and his brother Shiv Avtar on 09.01.2002 forged the General Power of Attorney (*for short 'GPA'*) by posing himself as petitioner and got the said GPA registered before the Sub-Registrar, though the petitioner was not present and as per verification done by the police, the photo on the GPA is of his brother Shiv Avtar.

Learned counsel for the petitioner has further submitted that in a reply, filed by the police before the Additional Sessions Judge (Annexure P-4), it is stated that Investigating Officer ASI Giri Raj obtained the bio-data of the petitioner from EPFO, New Delhi and on comparison of the photograph of the petitioner with that of GPA, the photograph available on the GPA was found to be of the brother of petitioner Shiv Avtar, however, this reply is silent about comparison of the signatures of the petitioner with his standard signatures.

Learned counsel for the petitioner has further argued that on the basis of the said GPA, Shiv Avtar sold the plot to one Ved Parkash on 12.08.2002 who further sold it to one Seema on 08.12.2006 for a sum of ₹6

Lakh and Seema had further sold it to R. B. Yadav on 19.02.2010 for ₹6 Lakh and from R. B. Yadav, the complainant had purchased the said plot/property on 08.06.2011 for a sum of ₹24 Lakh and had taken the possession.

Learned counsel for the petitioner has further submitted that all these transactions are illegal and were done at the back of the petitioner and he has raised the construction from his own funds as he is owner of the plot and dispute, if any, is of civil nature regarding possession of the plot and the petitioner has not committed any offence.

Learned counsel for the petitioner has further submitted that the original documents of the plot were lost and, therefore, he has even registered a DDR on 28.03.2017 with the Crime Branch, Delhi in this regard.

Learned counsel for the petitioner has lastly argued that it is a case where the custodial investigation of the petitioner is not required and he is ready to join investigation.

Learned counsel for the complainant, who has appeared on her own, has argued that it has come in the statement of Shiv Avtar, brother of the petitioner, in whose favour the petitioner had executed the GPA on 09.01.2002, as well as in the statement of his another brother Rakesh Kumar, who is first witness to the GPA, that the GPA was executed on the instructions of the petitioner. It is further argued that the very fact that since 2002 till 2011, when the complainant had purchased the said plot, the same was sold three times and the petitioner had every knowledge about the same.

Learned counsel for the complainant has further argued that the original documents of the plot were handed over to the subsequent purchasers and presently they are in possession of the complainant and despite knowing well about this fact, the petitioner has got the aforesaid DDR registered only in the year 2017.

Learned counsel for the complainant has further argued that the petitioner, at the initial stage, had taken a stand that he was not aware of whose photograph was affixed on the GPA, however, when the police verified, he admitted that it is the photograph of his brother Shiv Avtar.

Learned counsel for the complainant has placed on record a photocopy of the said GPA which is a registered document and it can be easily manipulated as at that time, the photographs were not taken through computerized system.

It is further submitted that the petitioner is not coming to the Court with clean hands. The petitioner initially filed anticipatory bail application before the Additional Sessions Judge by stating that no FIR is registered against him and on 15.12.2018, the said anticipatory bail application was dismissed as an FIR was registered against the petitioner. Despite knowing the fact that the FIR stands registered against the petitioner, he filed anticipatory bail application in this Court bearing CRM-M-57335-2018 with the same plea and the same was also rendered infructuous as it was noticed by the Court that the FIR already stands registered against the petitioner, vide order dated 09.01.2019.

Learned counsel for the complainant further submitted that again the petitioner filed anticipatory bail application before the Additional

Sessions Judge which was dismissed on 15.01.2019 by observing that all the original documents relating to the property in dispute are in possession of the complainant which prima facie shows that the petitioner had the knowledge since 2002 that he had sold the property through his GPA and the custodial investigation of the petitioner is required to prove his *modus operandi* for committing the offence and a cost of ₹20,000/- was also imposed upon the petitioner.

Learned counsel for the complainant has also referred to order dated 08.01.2019, vide which, regular bail was granted to co-accused Shiv Kumar, wherein it was brought to the notice of the Court that during investigation, the petitioner, in compliance of an earlier order dated 28.10.2018, passed by the Additional Sessions Judge, had admitted that he executed the aforesaid GPA in favour of Shiv Avtar and said Shiv Kumar was granted regular bail considering the fact that he was not the beneficiary of the GPA and was only a second witness to the same.

After hearing learned counsel for the petitioner as well as learned counsel for the complainant, I find no ground to grant anticipatory bail to the petitioner as it has come during investigation that he has raised illegal construction over the plot of the complainant despite having conscious knowledge that he has executed a GPA in favour of his brother Shiv Avtar on 09.01.2002 and thereafter, the said property was sold three times against different sale considerations and this fact was well within the knowledge of the petitioner and he has tried to tamper with the GPA and other documents and, therefore, his custodial investigation is required.

Accordingly, this petition is dismissed.

However, I am of the opinion that imposition of cost of ₹20,000/- by the Additional Sessions Judge, vide order dated 15.01.2019, is not justified, therefore, that part of the order is set aside.

January 31, 2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No