

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

(I)

CRM-M-13814-2019

Date of Decision:20.05.2019

HARSH SHARMA

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

(II)

CRM-M-18627-2019

KOMAL GUPTA

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM : HON'BLE MR.JUSTICE GURVINDER SINGH GILL

Present: Mr. A.P.S. Sandhu, Advocate with
Mr. Gursimranjit Singh, Advocate
for the petitioner in **CRM-M-13814-2019**.

Mr. J.S. Bedi, Senior Advocate with
Mr. Pratik Gupta, Advocate with
Mr. Abhay Sher Singh, Advocate
for the petitioner in **CRM-M-18627-2019**.

Mr. Ashok Singh Choudhary, Addl. A.G., Haryana.

GURVINDER SINGH GILL, J. (ORAL)

1. This order shall dispose of the aforementioned two petitions filed
on behalf of Harsh Sharma and Komal Gupta seeking anticipatory

bail in respect of FIR registered against them vide FIR No.620 dated 18.10.2016 under Sections 420, 467, 468, 471/120-B, Police Station Palam Vihar, Gurugram.

2. While it is the first petition on behalf of Harsh Sharma, Komal Gupta has filed this petition for the second time, the first having been dismissed vide detailed order dated 22.09.2017.
3. The FIR was lodged at the instance of Bhupesh Sethi wherein it has been alleged that his father Surender Kumar had purchased first floor of plot No.878, Block-I, measuring 300 square metres situated in Palam Vihar, Gurugram from M/s Mount Agro & Infra Developers Pvt. Ltd. and that petitioner Harsh Sharma, being authorized signatory had in connivance with the Directors of the company represented that there was no lien or charge of any kind on the property and also showed the original documents and consequently a sale deed dated 27.9.2012 was executed in favour of complainant's father Surender Kumar Sethi for an amount of ₹54,45,000/-. It is further alleged that in the sale deed there was specific recital that the property is free from all encumbrances, liens, mortgages etc. The complainant alleged that later it transpired that property in question was in fact mortgaged with Corporation bank on account of M/s N.K. Gold Medallion Pvt. Ltd. having borrowed ₹1,42,72,94,148.62/- wherein M/s Mount Agro & Infra Developers Pvt. Ltd. had stood guarantee and wherein plot

No.878, Block-I, measuring 300 square metres situated in Palam Vihar, Gurugram was mortgaged.

4. Learned counsel for the petitioner-Harsh Sharma has submitted that he was a mere employee of M/s N.K. Gold Medallion Pvt. Ltd. and it was on the asking of his employer that he was made to sign certain documents so to act as authorized signatory of M/s Mount Agro & Infra Developers Pvt. Ltd. and he never knew about the status of the property in question as regards the same having been mortgaged earlier as said fact was never disclosed to him either by his employer or by M/s Mount Agro & Infra Developers Pvt. Ltd.. It has also been submitted that another identical FIR was lodged in respect of another plot i.e. flat situated on the ground floor wherein the petitioner has already been granted bail by the trial Court.
5. Learned counsel representing the petitioner-Komal Gupta has submitted that although he was earlier a Director of the company i.e. M/s Mount Agro & Infra Developers Pvt. Ltd. but he had resigned from the same. Learned counsel in this context has drawn the attention of this Court to a copy of Form No.DIR-11 (Annexure P-4), as per which the petitioner had resigned from the company on 25.10.2011 whereas the sale deed in respect of the flat in question was executed much later i.e. on 27.9.2012.
6. Learned counsel has further submitted that although the first anticipatory bail application filed by the petitioner stood dismissed

on 22.09.2017, but subsequently there has been a change of circumstances inasmuch as the amount in question i.e. ₹55 lakhs stands deposited by co-accused Neeraj Gupta who has since been granted bail. Learned counsel in this context has referred to order dated 13.12.2017 and order dated 28.3.2018 (Annexure P-10) in respect of co-accused Neeraj Gupta.

7. Opposing the petitions, the learned State counsel has submitted that as far as the petitioner Harsh Sharma is concerned, he had played an active role inasmuch as he is the one who misrepresented regarding the property being free from all encumbrances whereas the property stood mortgaged and that being an authorized signatory he cannot feign ignorance about the status of the property and is infact equally liable.
8. The learned State counsel has further submitted that as far as the petition on behalf of petitioner-Komal Gupta is concerned the same is not maintainable as his earlier application for grant of bail was dismissed by passing a speaking order vide order dated 22.09.2017 passed in CRM-M-41614-2016. It has further been submitted that the contention of learned counsel to the effect that he had resigned from the company of M/s Mount Agro & Infra Developers Pvt. Ltd. is negated from the evidence collected by the police during investigation as it has been found that he had been playing an active role in the affairs of the company had effected several

transactions even thereafter and had been issuing cheques upto the year 2013 and that in these circumstances it cannot be said that he had nothing to do with the affairs of the company after his alleged resignation in 2011 from the Directorship of the company.

9. I have considered rival contentions addressed before this Court. As far as the petitioner-Harsh Sharma is concerned, he being an authorized signatory of the company would be expected to know about the status of the property regarding which he had executed a sale deed and he cannot escape from his liability merely by saying that he was simply to sign on the dotted line on the asking of the Directors of the company. Since the allegations are specific to the effect that he had represented to the complainant that the property was free from all encumbrances when in fact it was not, his involvement in the scam is implicit and in these circumstances he does not deserve the concession of bail.
10. As regards petitioner-Komal Gupta, although the application filed by Komal Gupta seeking anticipatory bail on earlier occasion stands dismissed on merits, the learned counsel has however vehemently argued that since there has been change of circumstances after dismissal of the application, the same is duly maintainable. Learned counsel has submitted that the said circumstances are in the nature of deposit of an amount of ₹55 lakhs by co-accused and grant of bail application to co-accused

Neeraj Gupta. Although deposit of an amount of ₹55 lakhs cannot strictly be said to a circumstance justifying bail to the present petitioner but all the same, the bail application of the petitioner is being considered on the merits mainly in view of the contention of learned counsel for the petitioner for grant of bail on the grounds of parity since co-accused Neeraj Gupta has been granted bail.

11. First of all it needs to be borne in mind that it is a case where the property in question which was sold to the complainant already stood mortgaged inasmuch as the accused M/s Mount Agro & Infra Developers Pvt. Ltd. had stood guarantee for the loan advanced to M/s N.K. Gold Medallion Pvt. Ltd., the Directors of which are related to petitioner. The total loan amount is stated to be ₹142 crores approx. and as such deposit of an amount of ₹55 lakhs would not redeem the mortgage with respect to flat sold to the complainant. In any case it is not disputed that the amount of ₹55 lakhs deposited by co-accused was ordered to be transferred to DRT where the matter regarding recovery of loan amount is pending. As far as the contention of the petitioner that he had resigned from the Directorship of M/s Mount Agro & Infra Developers Pvt. Ltd on 25.10.2011, the learned State counsel has pointed out that even after the alleged resignation, the petitioner has been transacting on behalf of the company right upto the year 2013 and it cannot be said that he had nothing to do with affairs of

the company after having resigned from the Directorship. The learned State counsel in this context has shown details of various transactions carried out by the petitioner. It is the petitioner Komal Gupta who had authorised Harsh Sharma to execute sale-deed in favour of complainant. The State counsel has informed that petitioner-Komal Gupta had not even co-operated fully with investigation when he was granted interim bail earlier during pendency of CRM-M-41614-2016 as is also mentioned in order dated 22.09.2017.

12. In these circumstances, this Court does not find any fresh ground to have accrued to the petitioner-Komal Gupta so as to justify grant of anticipatory bail after his earlier petition for seeking anticipatory bail had been dismissed on merits by this Court. In view of the discussion made above, this Court does not find any ground to grant anticipatory bail to either of the accused. The petitions being without any merit are hereby dismissed.

13. It is, however, clarified that none of the observations made above shall be construed to be an expression on merits of the main case.

(GURVINDER SINGH GILL)
JUDGE

20.05.2019
Gaurav Sorot

Whether reasoned / speaking? **Yes / No**

Whether reportable? **Yes / No**