S.No.101

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-20907 of 2019 (O&M)
Date of Decision:08.05.2019

Smt. Mohanwati .....Petitioner

Vs.

State of Haryana .....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Shiv Kumar, Advocate
for the petitioner.

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Rajbir Sehrawat, J.(Oral)

This is a petition seeking anticipatory bail to the petitioner in case FIR No.165 dated 14.12.2018 registered under Sections 419, 420, 467, 468, 471, 506, 120-B IPC at Police Station Adarsh Nagar, Ballabgarh, District Faridabad.

The FIR in the present case came into being on the statement of one Amit Kumar, with the allegations that his mother was the owner in possession of Plot No.1184, Street No.10, Adarsh Nagar, Ballabgarh, District Faridabad. This plot was purchased by her with the help of her brothers and a house was constructed thereon. The complainant along with his two siblings was residing in the house. However, in the year 1993, the mother of the complainant expired due to beating given by the father of the complainant. Thereafter, the father of the complainant solemnised the second marriage with the present petitioner in the year 2000. From the second marriage as well, one son was born. However, after the second marriage, the complainants and his siblings were turned out of the house.

Thereafter, in the year 2005, father of the petitioner in collusion with his cousin Udaiveer, and by participation of the present petitioner, who happens to be step mother of the complainant, sold the above said house which was owned by mother of the complainant. In the process of selling of this house, the photographs of the mother of the complainant have been pasted on the sale deed. She has been impersonated by the present petitioner and the present petitioner put the thumb impression impersonating as the mother of the complainant. Hence, the accused mentioned in the FIR have committed a fraud, forgery and fabricated the false document. Earlier, the complainant was not in the knowledge of this fact. However, now the complainant had come to know of the fact. Accordingly, he got the FIR lodged.

Arguing case for the petitioner, learned counsel for the petitioner has submitted that the petitioner has not executed any sale deed by impersonating the mother of the complainant. The thumb impressions present on the sale deed are not the thumb impressions of the present petitioner. It is further submitted that even the photographs of the petitioner have been wrongly attached on the sale deed. The petitioner being an illiterate lady; has nothing to do with the transaction of the execution of the sale deed. It is further submitted that the complainant himself might have done this act of forgery. It is further submitted that otherwise also, the sale deed is shown to be executed by one Joginder Singh as GPA of mother of the complainant. It is further contended by counsel for the petitioner that in fact the complainant had earlier also resorted to the forgery of the signatures of the husband of the petitioner on a stolen cheque created for an amount of Rs.25 lakhs. However, the payment of the said cheque was denied by the

Bank on the ground that signatures on the cheque do not match with the verified signatures of the drawer. Despite that, the complainant has filed a complaint under Section 138 of NI Act. Hence, it is argued that it is the complainant only who has dubious antecedents and the petitioner has been wrongly named in the present case.

However, having heard learned counsel for the petitioner and perused the file, this Court does not find any substance in the argument of the learned counsel for the petitioner.

Of course, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

In the present case, there is a direct allegation that the deceased mother of the complainant has been impersonated and the sale deed has been executed on her behalf qua the property owned by her. The execution of the sale deed is not even disputed by the petitioner. It is also not disputed that the photographs of the mother of the complainant have been duly affixed on the said sale deed. Even the thumb impressions have been put on the said sale deed in the name of the mother of the complainant. This all is being done in the year 2005, despite the fact that there is not even dispute that the mother of the complainant had expired wayback in 1993. The only argument on behalf of the petitioner is that the thumb impressions found on the sale deed are not the thumb impressions of the present petitioner. However, this Court does not find any reason to believe the version of the petitioner at this stage, when even her photographs are found pasted on the sale deed. The sale deed is also of the year 2005. Neither the petitioner nor her husband has raised ever eyebrow against the said sale deed, despite the fact that it is their house which has been sold through the said sale deed. This reflects upon, ex-facie, participation of the petitioner and her husband in the incident.

This Court also does not find any force in the argument of the learned counsel for the petitioner that the sale deed has been executed and presented for registration by one Joginder Singh and therefore, the petitioner is not responsible for this sale deed. The FIR duly contains an allegation that the father of the complainant has done this exercise in collusion with his own cousin, Udaiveer who is named as father of said Joginder Singh. Otherwise also, allegation against the petitioner is qua impersonating the mother of the complainant. So who presented the said sale deed for registration is irrelevant for the purpose of the case of the petitioner.

Otherwise also, the details of the alleged fraud are so intricately interwoven that if the petitioner is granted protection of the Court order, then she is not likely to answer the questions put up by the Investigating Officer; in the manner in which they are required to be answered. Hence, in the considered opinion of this Court, grant of any protection to the petitioner at this stage, would hamper free and fair investigation of the case as well.

In view of the above, finding no merit in the present case, the same is dismissed.

However, it is clarified that nothing said above, would be taken as an expression on merits of the case for any purpose whatsoever.

May 08, 2019 **(RAJBIR SEHRAWAT)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No