IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.M-23619 of 2019(O&M)
Date of Decision: November 13, 2019

Vijay Dixit ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Preetinder S.Ahluwalia, Advocate for the petitioner.

Mr.Ashok Muthreja, DAG, Haryana assisted by SI Azad Singh.

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HARINDER SINGH SIDHU, J.

The petitioner has filed this petition under Section 438 Cr.P.C for grant of pre-arrest bail in case FIR No.279 dated 13.07.2018 under Sections 420, 467, 468 and 471 IPC (Section120-B IPC added lateron), Police Station Sector-53, Gurgaon.

The FIR had been registered on the complaint of District Town Planner (P), Gurugram alleging that Licence No.13-19 dated 26.06.2002 was granted to M/s Aerens Infotech Private Ltd. Delhi (herein for short 'Aerens') and M/s Senior Builders Ltd. Delhi (herein for short 'SBL') for development of commercial colony in an area measuring about 3.9 acres in Sector-53 Gurugram They were issued Occupation Certificates ('OC') for Block 'B' and Block 'C' vide memos dated 06.12.2004 and 15.06.2005. Aerens had submitted an application dated 24.12..2004 for grant of OC for Block 'A'. Certain shortcomings therein were conveyed to Aerens on

24.08.2005 Instead of rectifying the shortcomings, the Company prepared a fake OC for Block 'A' bearing Memo No.15649 dated 23.06.2006. Though, no such OC for block 'A' had been given by the Department. SBL got registered a Deed of Declaration on 27.07.2009 in the office of Sub-Registrar, Gurugram on the basis of the said fraudulent OC. Thereby, not only the documents were forged but fee prescribed for issuing OC which runs into lakhs was evaded.

The investigation revealed that Vijay Dixit (petitioner), Kalpana Dixit, Vinod Sharma were Directors of SBL. Ajay Gupta and Sanjay Kakkar were Directors of Aerens.

Learned counsel for the petitioner states that even as per the allegations in the FIR, SBL had no role in preparation of the fake OC and hence is not culpable in any manner. He argued that the application for issuance of OC was submitted by Aerens and fake OC was also prepared by Aerens. He refers to the contractual relationship between the parties, from which he sought to substantiate that the entire responsibility to get the OC was of Aerens. A Memorandum of Understanding dated 06.12.2001 (Annexure P-2) was entered into by and between Aerens and SBL, according to which it was Aerens alone which was bound to produce all the relevant Licenses, Certificates, NOCs etc. in respect of the land in question at its own cost. An Agreement to Sell dated 06.09.2002 (Annexure P-3) was entered into by and between both the companies, whereby, SBL agreed to purchase a part of the land in question from Aerens for a sum of approximately Rs.5.3 crores in order to develop the same of its own accord. As per this Agreement to Sell also, it was Aerens who was responsible for procuring all necessary Licenses, Certificates, NOCs etc. from the DTCP as well as other concerned Departments and make them readily available to SBL in order to enable SBL to commence the development of the Project in question. The entire sum of approximately Rs.5.3 crores stood paid by SBL to Aerens vide receipt Annexure P-4. However, Aerens lapsed in honouring its obligations with regard to, inter-alia, ensuring that the requisite Licenses and Occupation Certificates from the DTCP were procured and were renewed as required. In this regard, a legal notice dated 28.10.2005 (Annexure P-5) was issued by SBL to Aerens urging it to ensure due compliances in terms of the MoU and the Agreement to Sell. Aerens was also asked to clear all shortcomings that were pointed out in its application seeking the OC in respect of Block 'A' of the Project.

He stated that the Deed of Declaration was got registered by SBL relying on the OC submitted by the Aerens and there was no reason for them to suspect that it was fake.

Vide orders dated 05.07.2019 the petitioner was granted interim bail and asked to join investigation.

Ld. State Counsel on instructions states that though the petitioner has joined investigation, but is not co-operating with the investigating agency. He has not produced the original 'Deed of Declaration'.

Ld. Counsel for the petitioner on the other hand contended that whatever documents that were asked for and were in his possession have been handed over to the investigating agency. He argued that in any event the necessary documents are available in the office of the Sub-Registrar and the custodial interrogation of the petitioner is not required for the said purpose. Further the alleged forgery is of the year 2005 and 2009 and the case has been registered more than a decade thereafter.

Having regard to the facts and circumstances this petition is allowed. The order dated 05.07.2019 is made absolute. The petitioner shall join the investigation and cooperate with the Investigating Agency, as and when required. He shall also abide by the conditions envisaged in Section 438(2) CrPC.

November 13, 2019 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No