

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

**CRM-M-56039-2018
Date of decision: 08.01.2019**

Shiv Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sanjay Vashisth, Advocate
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

Mr. Amitabh Tiwari, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular 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 has purchased a plot, developed by Ansal Buildwell Ltd. from one R. B. Yadav on 08.06.2011 for a sum of ₹ 24 Lakh.

Learned counsel for the petitioner further submits that it is the own case of the complainant that he had taken physical possession of the plot from R. B. Yadav but he had not raised any construction on the said plot as he was completing his studies. On 28.10.2018, when the complainant visited Gurugram, he was shocked to see that a multistory building has

already been constructed on his plot and on inquiry, it was found that co-accused Manoj Kumar s/o Nand Lal has raised illegal construction over his plot despite the fact that he had conscious knowledge of having sold the said plot in January, 2002 and was left with no more ownership rights over the said plot. It is further stated that the complainant has doubt that the accused has modified and forged the documents to achieve his illegal design.

Learned counsel for the petitioner further submits that primarily FIR was registered against co-accused Manoj Kumar and during investigation, the police recovered a General Power of Attorney dated 5.01.2002, which was allegedly executed by Manoj Kumar in favour of Shiv Avtar and on the last page of this registered GPA, the petitioner has signed as witness No. 2 whereas one Rakesh Kumar, real brother of Shiv Avtar, has signed as witness No. 1.

Learned counsel for the petitioner further submits that as per reply, submitted by the police before the Additional Sessions Judge, while deciding the application for bail (copy attached as Annexure P-3), as per order dated 28.11.2018 passed by the Additional Sessions Judge, granting interim bail to co-accused Manoj Kumar to join investigation, it was found by the police that co-accused Manoj Kumar has admitted that on 05.01.2002, the aforesaid GPA was executed in favour of Shiv Avtar, however, the other original documents were lost. He further stated that he had spent ₹35 Lakh on the construction. Even, Shiv Avtar and aforesaid Rakesh Kumar, the GPA holder and first witness to the GPA, respectively, stated that it was done at the instance of petitioner Shiv Kumar @ Mintu.

Learned counsel for the petitioner further submits that

petitioner is neither a beneficiary of the GPA nor had received any amount as it is the own case of the complainant that at the time of execution of GPA, an amount of ₹33,000/- was given to the petitioner by co-accused Manoj Kumar.

Learned counsel for the petitioner has further argued that originally Ansal Buildwell Ltd. had transferred the said plot to Manoj Kumar on 08.08.1996, vide conveyance deed, and thereafter, Manoj Kumar executed a GPA in favour of Shiv Avtar on 02.01.2002, in which the petitioner was an attesting witness. Thereafter, Shiv Avtar, on the basis of the GPA, sold the said 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, as per own case of the complainant, he has 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 further submits that the petitioner is in judicial custody since 02.12.2018 and is no more required for any custodial investigation and primary dispute is between the complainant and aforesaid co-accused Manoj Kumar who despite having no ownership rights had raised the illegal construction over the plot of the complainant and, therefore, the petitioner is entitled to bail.

Learned State counsel, on instructions from ASI Satish Kumar, assisted by learned counsel for the complainant, has, however, opposed the prayer of the petitioner on the ground that it has come in the statements of Shiv Avtar, GPA of co-accused Manoj Kumar, and his brother Rakesh Kumar, the first witness to the GPA, that in fact it has been done at the

instance of the petitioner. It is further submitted that other co-accused are yet to be arrested.

After hearing learned counsel for the parties and noticing the fact that the police, during investigation, has found that Manoj Kumar has raised the illegal construction over the plot of the complainant despite having conscious knowledge of the fact that he has executed a GPA in favour of Shiv Avtar who had further sold the property to Ved Parkash and it was further sold twice and finally R. B. Yadav had sold it to complainant Ritik Hooda and, therefore, by taking the benefit of absence of complainant, Monoj Kumar raised illegal construction over the plot, it could not be said that petitioner was a beneficiary of the aforesaid deals as there is no allegation that the petitioner has taken unauthorized possession of the said plot or has raised any construction.

In view of the above, without commenting upon the merits of the case and considering the aforesaid facts and also in view of the fact that offences are triable by the Court of a Magistrate, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

January 08, 2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No