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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.20682 of 2020 (O&M)
Decided on: 11.11.2020

Manoj Kumar Kaushik

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Rajiv Malhotra, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

Mr. Manish Soni, Advocate
for respondent No.2/complainant.

ARVIND SINGH SANGWAN, J. (Oral)

CRM No.27152-2020

Heard.

Allowed as prayed for.

Document (Annexure P22) is taken on record subject to all
just exceptions.

CRM-M No.20682 of 2020

Prayer in this 2nd petition is for grant of regular bail to the
petitioner under Section 439 of the Code of Criminal Procedure (in
short 'Cr.P.C.') in FIR No.433 dated 01.12.2018, for offence punishable
under Sections 420, 467, 468, 447, 471, 120-B of the Indian Penal
Code, 1860 (in short 'IPC') registered at Sector-56 Police Station,
District Gurugram.

The earlier one was dismissed by this Court by passing a
detailed order dated 15.07.2019 passed in CRM-M No.20568 of 2019.

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The operative part of the said order, reads as under:-

“The allegations against the petitioner and other accused, on the basis of the FIR registered by the complainant Dr. Ritik Hooda, are that he has purchased a plot measuring 60 sq. yds. In Sushant Lok Phase-II, Gurugram, after paying Rs.24 lacs as sale consideration to one R.B. Yadav. It is further stated that initially the petitioner had purchased the property from Ansal's Buildwell Limited on 09.03.1994 and obtained the possession on 06.05.1997 and thereafter, a conveyance deed was also executed in favour of the petitioner. On 05.01.2002, the petitioner appointed Shiv Avtar son of Ballumal (co-accused) as his GPA vide Vasika No.173 dated 09.01.2002 registered before the Sub-Registrar, Delhi. Shiv Avtar on the basis of the same sold the property to one Ved Prakash son of Krishan vide sale deed dated 12.08.2002 for a sale consideration of Rs.1.5 lacs. Ved Prakash further sold it to Mrs. Seema vide sale deed dated 08.12.2006 for Rs.6 lacs. Thereafter, Seema further sold the property to R.B. Yadav vide sale deed dated 19.02.2010 for a sale consideration of Rs.6 lacs. The said R.B. Yadav, sold this property to the complainant for a sale consideration of Rs.24 lacs on 08.06.2011. The complainant was put in physical possession of the property by the aforesaid R.B. Yadav. It is further stated in the FIR that at that time, the complainant was a student of M.B.B.S. and later on, he had gone for further studies i.e. Master of Surgery in Jaipur and on 28.10.2018, when he visited Gurugram and went to see his plot, he was shocked to see a multi-storey building constructed at the plot. On further enquiry, it came to his knowledge that the petitioner has raised the said constructions illegally despite the fact that he has sold the property in January, 2002 through GPA and the property was further sold in different hands thereafter. It was also stated in the FIR that, in fact, by way of a conspiracy, the petitioner – Manoj Kumar has prepared certain false, forged and fabricated documents to cheat the complainant for a tune of Rs.80 lacs.

Counsel for the petitioner has further submitted that the petitioner was allotted a plot by Ansal's Buildwell Limited and his brother has forged a GPA. The brother of the petitioner died in the year 2005. It is further submitted that in the record of the Ansal's Buildwell Limited, the

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petitioner was still shown as the owner and he has raised the construction treating himself to be the owner of the property after taking requisite permissions from the departments. It is also stated that the petitioner never executed the GPA in favour of Shiv Avtar as the photograph on the GPA is of the real brother of the petitioner and therefore, in fact, the brother of the petitioner has cheated him.

Counsel for the petitioner has further argued that the petitioner is in custody for the last 02 months and is no required for further investigation. It is also stated that primarily it is a civil dispute and therefore, the petitioner is entitled for regular bail.

In reply, counsel for the State, on instructions from ASI Giri Raj assisted by counsel for the complainant has, however, opposed the prayer for bail. It is stated that the power of attorney holder of the petitioner was his own brother and therefore, the conspiracy to cheat is apparent on record. It is further argued that the FSL report is still awaited with regard to the forged document and since the property in hand has been sold to different persons from different time, well within the knowledge of the petitioner, he has taken illegal possession of the property and raised a construction as the petitioner was doing Master of Surgery at Jaipur and in his absence, he has illegally taken possession of the property.

It is further stated that the authenticity of the documents allegedly issued by Ansal's Buildwell Limited are yet to be proved during the course of the trial and merely because the petitioner has succeeded in depositing some amount on account of the arrears of water bills or maintenance charges, which any person on behalf of the true owner can deposit, the petitioner cannot claim the ownership of the plot which he has sold way-back in the year 2002.

Counsel for the complainant has further stated that the wife of the complainant was even requested to accept the market value of the construction raised at the spot, however, she has declined the same by stating that the petitioner is the owner of the property.

In reply, counsel for the petitioner could not dispute the fact that the GPA dated 05.01.2002, executed by the petitioner bears the photograph of his real brother Shiv Kumar, who has also signed the same and witnessed by one Rakesh Kumar. Counsel for the petitioner also could

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not dispute that this document was registered by the Sub-Registrar, Delhi which carries a presumption that the petitioner has executed the General Power of Attorney. It is also not disputed that subsequently the property was sold to various persons as stated in the FIR.

After hearing the counsel for the parties, I find no ground to grant the concession of regular bail to the petitioner, as the petitioner, after selling the property in the year 2002 has taken the illegal possession of the same by taking the benefit of absence of the petitioner, who was a student of medical science and has raised the illegal construction. The document relied upon by the petitioner regarding payment of some maintenance charges/bills to Ansal's Buildwell Limited, nowhere proves the ownership as the amount can be deposited by any person. Even the agreement set up by the petitioner with the builder is not binding on the right of the complainant, therefore, considering the gravity of the offence and the manner in which the same is committed by the petitioner in conspiracy with the other accused, I find no ground to grant the concession of regular bail.

Dismissed.”

Counsel for the petitioner has argued that the new ground for filing this petition is that the petitioner is in custody since 01.03.2019; the offences are triable by the Court of Magistrate; charges were framed on 16.01.2020 and the first date for recording the prosecution evidence was 30.01.2020.

Counsel for the petitioner has also submitted that the petitioner has already applied for bail under Section 437(6) Cr.P.C., which has been declined by the Court of Additional Sessions Judge vide order dated 06.10.2020, primarily on the ground that the present petition is pending before this Court.

Counsel for the petitioner has relied upon the judgment **“Vinod Kumar vs State of Haryana”**, passed by this Court in CRM-M No.29702 of 2018 vide order dated 19.12.2018, wherein in similar

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circumstances, the bail was granted to the accused persons under Section 437(6) Cr.P.C.

Counsel for the petitioner has further submitted that only 02 PWs have been examined so far and despite the lapse of 60 days time as per Section 437(6) Cr.P.C., the prosecution has not concluded its evidence. It is also submitted that irrespective of the allegation in the FIR, in view of the long custody of the petitioner which is more than 01 year and about 08 months and considering the fact that the offences are triable by the Court of Magistrate and the petitioner has acquired a right under Section 437(6) Cr.P.C., as he is not involved in any other case, the petitioner may be granted the concession of regular bail.

Counsel for the State assisted by counsel for respondent No.2/complainant has opposed the prayer for bail on the ground that the allegations against the petitioner are serious in nature.

Counsel for the complainant has additionally argued that the prosecution evidence could not be recorded due to COVID-19 situation in the country and therefore, the case is now re-fixed for prosecution evidence as the Courts have started working.

After hearing the counsel for the parties, considering the fact that the petitioner has filed this second petition on account of a right which has accrued to him under Section 437(6) Cr.P.C. and also in view of the fact the petitioner is in custody for the last 01 year and about 08 months; he is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety

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bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

11.11.2020
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No