

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-27683-2020 (O&M)

Date of Order: 23.09.2020

Deshraj Kamboj

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S.Cheema, Sr. Advocate, with
Mr. Arshdeep Singh, Advocate and
Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Mr. Mandeep Singla, Advocate
for the petitioner.

Mr. Deepak Sabherwal, Addl. A.G., Haryana.

ANIL KSHETARPAL, J(Oral)

The petitioner has filed an application under Section 438 of the Code of Criminal Procedure, 1973, for grant of concession of anticipatory/pre-arrest bail in a criminal case arising from FIR No.327, dated 08.08.2020, registered under Section 420 of the Indian Penal Code, 1860 and Section 10 and 11 of the Haryana Development and Regulation of Urban Areas Act, 1975, at Police Station Sector 10A, Gurugram.

In a nutshell, the case has been registered on an application forwarded by the Department of Town & Country Planning and Urban Estates, Haryana, which is based upon a fact finding enquiry conducted by the Divisional Commissioner, Gurugram. The petitioner was, at the relevant time, while being posted as a Naib Tehsildar-cum-Joint Sub-Registrar, Gurugram (Manesar) was given additional charge of Tehsils Harsaru and

Kadipur. The petitioner while exercising the powers of Sub-Registrar (Under the Registration Act, 1908), has registered a very large number of sale deeds which are alleged to be in violation of Section 7-A of the Haryana Development and Regulation of Urban Areas Act, 1975. The case has also been registered under Section 420 of the Indian Penal Code, 1860.

At the outset, it must be noticed that the period in question is from 20.04.2020 to 06.07.2020. In the reply filed by the State, it has been pointed out that in Tehsil Harsaru, 402 sale deeds out of total 691 sale deeds and in Tehsil Kadipur, 146 sale deeds out of total 856 sale deeds registered by the petitioner while discharging duties under the Registration Act, 1908, are alleged to be in violation of Section 7-A of the Haryana Development and Regulation of Urban Areas Act, 1975. In Tehsil Gurugram, the violation has been found in 143 sale deeds, out of which 91 are registered by the petitioner. In the State of Haryana, Tehsildars and Naib Tehsildars, are also given powers of Sub-registrar under the Registration Act, 1908. As per hierarchy in the department of revenue, the cadre is Patwari, Kanungo, Naib Tehsildar and Tehsildar. Thus, the petitioner was a superior officer in the hierarchy of revenue officials, over and above Patwari. In the reply of the State, it has been pointed out that modus operandi was that the Patwari of the area, would make changes in the khasra girdwari and on the basis thereof, submit a report and thereupon, the petitioner would register the sale deed.

The Haryana Development and Regulation of Urban Areas Act, 1975, has been enacted to restrict un-regulated development of the urban areas in the State. The area in question is abutting National Capital, Delhi. In these areas, usually there are unauthorized colonies spread over a large area. Section 7-A of the Haryana Development and Regulation of Urban

Areas Act, 1975, provides that no sale deed of agricultural land with respect to the area less than 2 kanals shall be registered without 'No Objection Certificate' (NOC) from the Director or an officer authorised by him, in writing in this behalf from the department of Town and Country Planning. The Registration Officers have been specifically directed not to register the sale deeds without 'No Objection Certificate' (NOC) from the concerned departments.

This court has heard learned senior counsels representing the petitioner and learned Additional Advocate General, Haryana.

Sh. R.S.Cheema, learned Senior Advocate, duly assisted by Sh. Arshadeep Singh, Advocate, while taking the Court to the various amendments in Section 7-A of the Haryana Development and Regulation of Urban Areas Act, 1975, has contended that there was a loophole in the Act which is now sought to be plugged. He submitted that because of a gap in the law, no criminal case is made out against the petitioner. He further contended that all the sale deeds have been registered after getting the site report from the local Patwari. Hence, the case registered against the petitioner is incorrect. He further submitted that the petitioner has already been suspended and there was no need of custodial interrogation.

On the other hand, Sh. Deepak Sabherwal, learned Additional Advocate General, Haryana, has submitted that the Divisional Commissioner, Gurugram, has already conducted a fact finding enquiry. He has pointed out that modus-operandi was to first change the entry in khasra girdwari from agricultural land to Gair Mumkin or constructed house and thereafter, submit a report on basis thereof. He further pointed out that certain sale deeds of agricultural land have also been registered without

insisting on the 'No Objection Certificate' (NOC). He also pointed out that the entire revenue record of district Gurugram, has been computerized and is available on a click of button to the officer. He further submitted that in the Jamabandi, the land is still recorded as agricultural land. He submitted that not only unauthorized colonies have carved out without obtaining Change of Land Use (CLU), the State is deprived of its revenue because no development charges are paid by the unauthorized and illegal colonizers. He, further pointed out that the custodial interrogation of the petitioner is necessary to unearth the nexus between the colonizers, property brokers and the revenue officials.

This court has considered the submissions of learned counsels.

At this stage, it would not be appropriate to opine about the merits of the case. It may be noted that during the period between 20.04.2020 to 06.07.2020, there were hardly 55 working days. This is the period when due to spread of Covid-19, pandemic, life was going in a slow lane and normal working in the offices was restricted. If one calculates, the petitioner was registering as many as 12 sale deeds per day which are alleged to have been registered in violation of Section 7-A of the Haryana Development and Regulation of Urban Areas Act, 1975. The petitioner was, at the relevant time, posted as Naib Tehsildar also. The petitioner, should have been vigilant. Once large number of sale deeds were coming to him for registration of smaller plots, he was expected to be careful. The problem of unregulated development of the urban areas, surrounding big towns is creating obstruction in the growth of planned and regulated development of the areas. Town after town is affected by this menace. The State government in such circumstances, is entitled to go to the root of the matter

and break the chain of nexus between unscrupulous colonizers, property brokers and revenue officials.

In view of the aforesaid discussion, this court is not inclined to grant the concession of pre-arrest bail to the petitioner.

The Director General of Police, Haryana, is requested to explore the possibility of constituting a Special Investigating Team (SIT) under officer of the rank of Additional Director General of Police from Head Office, to properly investigate the matter.

Needless to observe that the observations made by this court while deciding the petition for grant of pre-arrest bail, shall not be construed expression of opinion on the merits of the case.

Accordingly, the present petition is dismissed with the aforesaid directions.

September 23, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No