

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

CRM-M- 20807 of 2021

Date of Decision:-17.08.2021

Awadhesh Jyotishi

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Ram Kumar Saini, Advocate for the petitioner.

Mr. Vishal Kashyap, AAG, Haryana
assisted by ASI Satish Kumar.

Mr. Navmohit Singh, Advocate for the complainant

(proceedings conducted through video conferencing)

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GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in case registered vide FIR No.208 dated 21.5.2019 under Sections 406, 420, 506/34 IPC, registered at Police Station City Hisar, District Hisar.
2. The FIR was registered at the instance of Smt. Gaytri Devi, wherein it has been alleged that her husband had been serving Indian Navy and that after his retirement they sold their land measuring 15 acres in the year 2012 in their native village Kikrala and went to Madhya Pradesh to buy land where her husband met Santosh Prashar, property dealer who showed some land to them and later introduced complainant's husband to Hemant Sharma. A deal was struck for purchase of land and an amount of ₹15 lacs was transferred from the bank account of the complainant into bank account of Hemant

Sharma on 26.9.2012. The deal was for purchase of land measuring 110 acres at the rate of ₹1.25 lacs per acre which had been settled orally. It is further alleged that subsequently on 15.10.2012 another amount of ₹65 lacs was transferred to the account of Hemant Sharma from the account of the complainant and yet another amount of ₹65 lacs was deposited in the account of Hemant Sharma through RTGS. It is thus alleged that a total amount of ₹1 crore 45 lacs was paid to Hemant Sharma. It is further case of the prosecution that when the complainant and her husband again met Hemant Sharma at village Chhattarpur after about 10/15 days, he assured to get sale deeds registered after harvesting season is over. It is further alleged that subsequently complainant's husband namely Om Parkash kept on visiting Madhya Pradesh frequently and entered into a separate agreement with Awadhesh for purchase of land measuring 300 acres. It is alleged that pursuant thereto land measuring 225 acres was transferred to complainant's husband but the remaining 75 acres had not been transferred till date and Awadhesh had thus defrauded complainant's husband in this manner.

3. Learned counsel for the petitioner, in order to make out a case for grant of bail has made the following submissions:

- (i) that the petitioner has falsely been implicated in the present case and that falsity of the allegations would be evident from the fact that although the agreement in question is alleged to have been executed in the year 2012, the present FIR came to be lodged in the year 2019 i.e. after a delay of 7 years;
- (ii) that the complainant, in the FIR, has mixed up allegations in respect of different transactions with two different vendors in respect of different pieces of land inasmuch as while the first set

of allegations pertains to an agreement for purchasing 110 acres of land @ Rs.1,25,000/- per acre, from Hemant Sharma, the second set of allegations pertains to agreement for purchasing 300 acres of land from petitioner Awadhesh and wherein it is alleged that although 225 acres of land had been transferred but 75 acres still remains to be transferred and that in this manner a loss of ₹50 Lacs had been caused by petitioner;

(iii) that in fact the complainant has concealed the material fact that a sale-deed (Annexure P-2) had been executed by the petitioner in favour of complainant's son for the purpose of compensating her and with the said sale, all the dues stood duly settled and nothing remained due as is specifically recorded in Annexure P-2;

(iv) that the husband of the complainant remained alive till 30.4.2017 and no complaint whatsoever was ever made by him against the petitioner and that now after two years of his death and 7 years of the agreement, the complainant has come out with concocted allegations against petitioner;

4. The learned State counsel, assisted by learned counsel for the complainant, while opposing the bail application, has submitted that it is a case where separate agreements had been entered into between the vendee Om Parkash (husband of complainant) and vendors Hemant Sharma and with Awadhesh and that while the agreement with Hemant Sharma was oral, the agreement with the Awadhesh had been translated into writing. Learned State counsel has submitted that the bank transactions reflect that an amount of ₹1 crore 45 lacs had been transferred to bank account of Hemant Sharma. The learned State counsel has further submitted that transfer of another amount of ₹1 crore 40 lacs to the bank account of petitioner Avdhesh is duly established apart from cash withdrawal an amount of ₹1 crore 37 lacs during the period

in question. It has been submitted that the petitioner by not having transferred 75 acres of land had defrauded the complainant and her husband. It has further been submitted that since bail application of co-accused Hemant Sharma has been declined by this Court, the instant petition also deserves the same fate.

5. I have considered rival submissions addressed before this Court. A perusal of reply dated 23.4.2021 (Annexure P-2) to the bail application, filed before the trial Court would show that the petitioner was arrested on 18.2.2021 and the police claims to have collected evidence and information which has been stated as follows in the said reply:

“ In the case, the accused Awadhesh produced one receipt dated 9.10.2013, which is regarding amount of Rs 2 crores 77 Lac and 50 thousand which has been stated to be received by Awadhesh. Accused Awadhesh had made separate transaction with husband of the complainant namely Om Parkash in the year 2013 for land measuring 300 acres approximately at the rate of Rs.67,000/- per acre and accused got transferred 225 acres of land, but committed fraud with the husband of complainant by not transferring land measuring 75 acres and the expenses undue loss the complainant and undue benefit to himself and committed fraud worth lacs of rupees with the complainant.”

6. It is evident that the complainant refers to two different transactions with two different persons. While Hemant Sharma is alleged to have usurped ₹1 crore 45 lacs received by him through bank from husband of complainant and had not transferred any land, the prosecution does not dispute that the present petitioner had transferred 225 acres of land pursuant to an agreement

entered between the complainant's husband and the petitioner and it is land measuring 75 acres which remains to be transferred. Since a substantial portion of the land stands transferred, it cannot be said that right from the inception of the agreement, the petitioner had an intention to defraud the complainant or her husband. Further the fact that there is delay in lodging the FIR and the complainant's husband never chose to make any complaint during his lifetime would also be a factor to be considered in favour of the petitioner. The case of the petitioner is distinct from the case of co-accused Hemant Sharma as already indicated above since Hemant Sharma, despite having received huge amount of ₹1 crore and 45 Lacs had not transferred an inch of land in favour of complainant's husband. In any case, the petitioner has been behind bars for the last about 6 months. In these circumstances, the petition merits acceptance and is hereby accepted. The petitioner is ordered to be released on bail subject to the petitioner furnishing bail bonds/surety bonds to the satisfaction of CJM/ Trial Court/ Duty Magistrate, Hisar.

7. It is, however, clarified that none of the observations made above shall be construed to be an expression on merits of the main case.

17.08.2021

kamal/mohan

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No