

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

(204)

CRM-M-24312-2021.
Date of Decision:-12.10.2021.

Sunita Bagai and another

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Arshdeep Bhullar, Advocate for the petitioners.

Mr. Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J. (Oral)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioners in case FIR No.188 dated 02.12.2019 under Sections 406, 420 of IPC, registered at Police Station, Sector 20, Panchkula, Haryana.

The present petition has been filed by two petitioners i.e., petitioner No.1-Sunita Bagai and petitioner No.2-Varinder Bagai. On 29.09.2021, when the matter came up for hearing, learned counsel for the petitioners had withdrawn the petition qua petitioner No.2 and as such, petition qua petitioner No.2 was dismissed as withdrawn. With respect to petitioner No.1, the present petition has been filed for grant of regular bail.

Learned counsel for the petitioners has submitted that initially FIR in question was registered under Sections 406 and 420 of IPC and it was only subsequently that section 120-B of IPC has been added. It is further submitted that Section 120-B of IPC in addition to Sections 406 and

CRM-M-24312-2021

420 of IPC, have been mentioned in the order vide which bail applications of the petitioners have been rejected. However, on account of inadvertent error, Section 120-B of IPC has not been mentioned in the head note of the petitions.

On the oral request of learned counsel for the petitioners, it is ordered that the present petitions which have been filed with respect to bail by mentioning Sections 406 and 420 of IPC be read as bail applications having been filed under Sections 406, 420 and 120-B of IPC. Learned counsel for the petitioners has further submitted that this Court, vide judgment dated 17.09.2021, while deciding the bail application of petitioner No.1 in respect of 17 cases in which petitioner No.1 was involved, had granted regular bail to petitioner No.1. It is submitted that in fact, petitioner No.1 is involved in 18 cases and out of which, in 17 cases, similar allegations had been made as in the present case and petitioner No.1 was granted bail. Learned counsel for the petitioners has pointed out that as far as the present case is concerned, the name of the complainant is Major Pintoo Pandit and the amount which is stated to be deposited by him is Rs.55,76,105/- and he has filed a case before the RERA Authorities, as is apparent from the order dated 06.01.2021 (Annexure P-5) and his name appears at Page No.34 Sr. No.29. It is submitted that the case of petitioner No.1 is absolutely similarly placed as the case of petitioner No.1 in the said 17 cases. Reference has been made to the said order, the relevant portion of which is reproduced hereinbelow:-

XXX---XXX---XXX

*“It is not in dispute that in the present case,
prior to the registration of the FIR, 13 of the complainants*

CRM-M-24312-2021

*had filed applications before the HRERA authorities and 4 complainants had filed cases before the Consumer Forum as is detailed in the Chart hereinabove. On 30.04.2019, the consumer complaints were allowed, vide order dated 30.04.2019, passed in **consumer complaint no. 865 of 2019** which has been reproduced at page 13 in the order dated 06.01.2021 (Annexure P-5) and the relevant part of the same has already been reproduced hereinabove. Perusal of the same would show that it has been observed by the authority that 464 apartments have already been allotted and out of the total cost of the project which was Rs.342.56 crores, an amount of Rs.208.13 crores has already been invested and only an amount of Rs.94.26 crores has been collected from the allottees which showed that in fact, promoters had invested more money which they collected from the allottees. It is also clear that after passing of the said order, the execution of the said order has also been filed and vide order dated 06.01.2021, the relevant portion of which has been reproduced hereinabove, the authority in exercise of its power under Section 40 of 2016 Act have ordered the recovery of amount payable as arrears of land revenue and the Order dated 30.04.2019 has been ordered to be treated as a decree of civil court. In pursuance to the above, the Executive Director, HRERA, Panchkula, vide letter dated 25.02.2021 (Annexure P-2) addressed to the Collector, Panckhula, issued recovery certificate and directed him to*

CRM-M-24312-2021

take further action. Further, in pursuance of the above, Assistant Collector 2nd Grade, Panchkula, has issued summons of attendance to petitioner Sunita Bagai as well as Virender Bagai and Vinod Bagai. The land in question is stated to be 14.95 acres in Sector 20 Panchkula, Haryana and thus, the petitioner being hopeful that the complainant should be able to recover their money in the said execution proceedings, cannot be stated to be without any basis. Moreover, if petitioner no.1 is released then as per the assertion of learned counsel for petitioner no.1, even she could help in finally resolving the matter.

The present case whether being a case of a business failure or a case of mis-utilizing the funds collected, would be considered at the time of trial. However, several arguments have been raised which make the whole issue debatable. In so far as petitioner no.1 Sunita Bagai is concerned, it is admitted that she had resigned on 26.02.2019. Arguments of the learned State counsel to the effect that by the said time the complaints have been made, have been rebutted by learned counsel for petitioner no.1 by submitting that even resolutions passed by the Board of Directors in its meeting dated 01.06.2006 (page 66), dated 05.04.2010 (page 65) and 05.04.2019 (page 64) show that it was Vinod Bagai, Managing Director and Virender Bagai who was authorized to manage and control the land measuring 14.95 acres situated in the revenue estate of Village Kundi, Sector 20,

CRM-M-24312-2021

Tehsil and District Panchkula and the name of petitioner no.1 Sunita Bagai does not figure in the same and thus, the fact as to whether petitioner no.1 Sunita Bagai was even actively involved in the project is also a matter of debate.

Keeping in view the abovesaid facts and circumstances and moreso, the fact that petitioner no.1 Sunita Bagai has been in custody since 20.02.2021(more than 6 months 25 days) and the challan in the present case has already been filed and there are 23 witnesses and charges have not been framed as yet and the trial is likely to take long, thus, this Court deems it appropriate to allow the regular bail applications of petitioner no.1 Sunita Bagai in all the aforesaid 17 petitions, subject to the condition that petitioner no.1 Sunita Bagai would execute bond with one solvent surety to the sum of Rs.50,000/- in each of the case to the satisfaction of the learned trial Court. Petitioner no.1 Sunita Bagai would also be bound by her statement that she would not alienate house no.87, Sector 7, Panchkula without permission of the Court.

Accordingly, the aforesaid petitions are allowed qua petitioner no.1 Sunita Bagai.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail applications.

CRM-M-24312-2021

A photo copy of this order be placed on the files of each connected case.”

Learned State counsel has although opposed the present bail application but could not dispute the fact that petitioner No.1 has already been granted bail in 17 cases, in which the allegations are similar to the allegations made in the present FIR.

This Court has heard the learned counsel for the parties.

Keeping in view the above facts and circumstances, moreso, the fact that petitioner No.1 has been granted the concession of regular bail in the other 17 cases, in which the allegations are similar as in the present case, the present petition also deserves to be allowed.

Accordingly, the present petition is allowed and petitioner No.1-Sunita Bagai is ordered to be released on bail on her furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to the fact that she is not required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

October 12, 2021.

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes/No

Yes/No