

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

101

**CRM-M-30211-2020
Date of decision: 31.08.2021**

Ved Pal

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

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

Mr. Sumit Jain, Addl. A.G., Haryana
for respondent No.1-State with
Mr. Ashok Kumar, ACP,
EOW, Incharge, SIT and
Mr. Lalit Kumar, District Town Planner,
Enforcement, Faridabad
(in person through video conferencing).

None for respondent No.2.

ARUN KUMAR TYAGI, J.(ORAL)

(The case has been taken up for hearing through video conferencing.)

1. The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.111 dated 22.02.2020 registered under Section 7(i) of the Haryana Development and Regulation of Urban Areas Act, 1975 in Police Station Sector-7, District Faridabad to which Section 7(A) of the Haryana Development and Regulation of Urban Areas Act, 1975, Sections 420, 468, 471 and 120-B of the Indian Penal Code, 1860 and Sections 3 and 17 of the Haryana Regulation of Property Dealers and Consultants Act, 2008 have been added later on.

2. The District Town Planner Enforcement, Faridabad had

sent letter dated 04.02.2020 to the Public Inspector-cum-Incharge, HUDA Cell, Sector-12, Faridabad alleging that accused Ved Pal @ Vivek proprietor of M/s Shri Ram Real Estate was carving out unauthorized colony on land bearing khasra No. 93//8,9,10/1,12,13,18/2 in the revenue estate of village Sihi, District Faridabad in violation of Sections 3, 7 (1) and (2) of the Haryana Development and Regulations of Urban Areas Act, 1975 by subdividing land into a colony without obtaining licence from the Director, Town Country Planning, Haryana, Chandigarh. Copies of the letter were sent to Sub Registrar Ballabgarh, District Faridabad with request not to register any document regarding transfer deed of the above said land and Executive Engineer, DHBVN, Ballabgarh, Faridabad with request not to release the Electricity connection to the above said land. On the basis of the above said letter, FIR was registered and the police investigated the case.

3. Apprehending his arrest for commission of the above said non-bailable offences, the petitioner has filed the present petition for grant of anticipatory bail.

4. Vide order dated 24.11.2020, this Court had granted interim anticipatory bail to the petitioner with direction to join the investigation.

5. In view of the subsequent addition of statutory provisions to the FIR requisite amendments were allowed to be made to the petition on oral request of learned Counsel for the petitioner vide order dated 24.08.2021.

6. Priyanka Devi, to whom the petitioner is alleged to have

sold plot vide agreement to sell dated 09.10.2019 was impleaded as respondent No.2 vide order dated 14.01.2021. In the course of hearing of the petition personal appearance of the Commissioner of Police, Faridabad, District Town Planner, Faridabad, concerned SHO and Investigating Officer of the case before this Court through video conferencing was also ordered. Mr. O.P. Singh, Commissioner of Police, Faridabad appeared on 17.03.2021 and informed the Court that the matter including the aspects of fraud/cheating involved in the case would be got investigated by constituting Special Investigation Team.

7. The petition has been opposed by the State in terms of status report/reply dated 03.11.2020, short reply dated 07.01.2021 and additional reply dated 11.02.2021 filed by Jaiveer Singh, HPS, Assistant Commissioner of Police, Ballabgarh, District Faridabad and additional affidavit dated 24.04.2021 filed by Ashok Kumar, HPS, Assistant Commissioner of Police, EOW, Incharge SIT.

8. The petitioner also filed rejoinder dated 22.02.2021 to additional reply dated 11.02.2021.

9. After hearing learned Counsel for the petitioner and learned State Counsel, the case was reserved for orders on 24.08.2021 but vide order dated 26.08.2021, the same was listed for re-hearing.

10. I have heard Mr. Rajiv Sharma, learned Counsel for the petitioner and Mr. Sumit Jain, learned State Counsel for respondent No.1-State and have gone through the record.

11. Learned Counsel for the petitioner has submitted that the petitioner is neither the owner of the land in question nor connected with the same in any manner. The land in question belongs to Gulab

Singh, Bhagwat Singh, Jagpal Singh, Avtar Singh, Deeraj Singh, Ramesh Singh, Suresh Singh etc. as per jamabandi for the year 2013-

14. The land in question has not been sold by the petitioner to anyone. Agreement to sell executed in his favour by Arun Tewatia and agreement executed by the petitioner in favour of Priyanka Devi were cancelled. No offence whatsoever is made out against the petitioner. Similarly placed co-accused have been granted anticipatory/regular bail. In compliance with order dated 24.11.2020, the petitioner has joined the investigation and the petitioner may be granted anticipatory bail as his custodial interrogation is not required in the case.

12. On the other hand, learned State Counsel has vehemently opposed the petition and submitted that the petitioner carved out plots without obtaining the requisite licence. The petitioner, without getting himself registered as property dealer, executed agreements to sell in favour of Priyanka Devi and others and defrauded them. The petitioner thereby committed the subject offences. In view of nature of accusation and gravity of the offences, the petitioner does not deserve grant of anticipatory bail. Custodial interrogation of the petitioner is necessary for proper and effective investigation of the case and effecting recovery of the relevant documents. Therefore, the petition may be dismissed.

13. However, learned State Counsel has acknowledged that co-accused Arun Tewatia, who was not initially arrested by the police in view of directions given by Hon'ble Supreme Court in ***Arnesh Kumar Vs. State of Bihar and another : 2014(8) SCC 273***, was subsequently granted anticipatory bail by learned Additional Sessions Judge, Faridabad vide order dated 10.05.2021 passed in BA No.1845 of 2021.

14. In the present case recovery of the documents executed by the petitioner can be made by joining him and also persons party to the same in investigation and custodial interrogation of the petitioner is not essential for the above said purpose.

15. In view of the facts and circumstances of the case, nature of accusation against the petitioner, the fact that custodial interrogation of the petitioner is not essential in the case and there is no material to justify the apprehension of the petitioner fleeing from justice or tampering with evidence or criminally intimidating the prosecution witnesses, but without expressing any opinion on the merits of the case, I am of the considered view that the petitioner deserves grant of anticipatory bail.

16. In view of the above, the petition is allowed and order dated 24.11.2020 granting interim bail to the petitioner is made absolute and anticipatory bail is granted with respect to all the offences initially mentioned in and subsequently added to the FIR in the case. However, the petitioner shall join the investigation again if and as and when called upon to do so and shall abide by the conditions enumerated in Section 438 (2) of the Code of Criminal Procedure, 1973, failing which the protection of anticipatory bail order shall not be available to him.

17. However, before parting with the case it may observed that the facts and circumstances emerging from the material on record and submissions made during hearing of the present petition show defrauding of the innocent buyers by the unscrupulous property dealers by culpable misrepresentation of the facts and gross

negligence/inaction on the part of concerned administrative authorities and lack of proper investigation by the police. The distressing facts and circumstances unfolding very sordid state of affairs may be noticed as under:-

- (i) In the present case, the petitioner is alleged to have carved out a colony without licence and to have thereby committed subject offences but the petitioner was not owner of the land in question at the relevant time.
- (ii) As per jamabandi for the year 2013-14 the land in question belonged to Gulab Singh, Bhagwat Singh, Jagpal Singh, Avtar Singh, Deeraj Singh, Ramesh Singh, Suresh Singh etc.
- (iii) In photograph of the land in question placed on record by the petitioner in compliance with order dated 24.11.2020 to show the existing position of the land in question, one house was seen to have been constructed on the same. The said house was stated to have been constructed by Priyanka Devi. The District Town Planner Enforcement, Faridabad stated that construction had been raised on 4 plots allegedly sold by co-accused Arun Tewatia and on 11 plots allegedly sold by the present petitioner.
- (iv) In additional reply dated 11.02.2021 filed by Jaiveer Singh, HPS, Assistant Commissioner of Police, Ballabgarh, District Faridabad, Arun Tewatia was stated to have purchased land from (a) Gulab Singh through agreement dated 23.02.2019 and GPA No.1236 dated

- 18.04.2019 (b) from Dheeraj vide agreement dated 18.12.2019 and GPA No.5598 dated 17.12.2019 and (c) from Suresh vide agreement dated 22.08.2019 and GPA No.3546 dated 20.08.2019.
- (v) In reply dated 11.02.2021 filed by Jaiveer Singh, HPS, Assistant Commissioner of Police, Ballabgarh, District Faridabad, the petitioner was stated to have purchased land measuring 3257.58 sq. yds. in the shape of 52 plots by way of agreement to sell dated 22.08.2019 executed in his favour by Arun Tewatia which is stated to have been cancelled on 02.11.2020 and to have sold one plot to Priyanka Devi vide agreement to sell dated 09.10.2019 which is alleged to have been subsequently cancelled on 29.09.2020.
- (vi) Arun Tewatia as general power of attorney of the owners is stated to have executed two sale deeds No.6020 dated 09.10.2019 and 1097 dated 06.05.2019.
- (vii) Arun Tewatia and Ved Pal are stated to have executed agreements to sell in favour of persons named in the affidavits/replies filed on behalf of respondent No.1-State without having any sale deeds in their favour.
- (viii) It is very strange that the transactions of sale and purchase of land are being made by persons, who are not registered property dealers but are evidently working as property dealers, by merely executing agreements to sell which are even alleged to have been subsequently cancelled yet

possession of the land has been transferred and even houses have been constructed on the same.

- (ix) Copies of his letter were sent by the District Town Planner Enforcement, Faridabad to Sub Registrar Ballabgarh, District Faridabad with request not to register any document regarding transfer deed of the above said land and Executive Engineer, DHBVN, Ballabgarh, Faridabad with request not to release the Electricity connection to the above said land but as mentioned in affidavit of Ashok Kumar, HPS, ACP, EOW, Incharge SIT sale deeds were registered by the Sub-Registrar Ballabgarh and even electricity connections were released.
- (x) No action was taken against the owners who were not even joined in the investigation till so observed by this Court in this regard.
- (xi) In the replies filed in the case on behalf of respondent No.1 it is not specifically mentioned who are the other persons who have constructed the houses, what are the documents executed in their favour and what action was taken by the concerned administrative authorities to prevent unauthorized construction at the time when the houses were being constructed and regarding approval of site plan/sanctioning of electricity connection.
- (xii) In rejoinder dated 22.02.2021 the petitioner has submitted that Arun Tewatia had sold land measuring 3257.58 sq. yds. carved out in 52 plots through agreement to sell dated

22.08.2019 to the petitioner but on coming to know the illegality the petitioner got the agreement to sell dated 22.08.2019 cancelled vide agreement to sell dated 02.11.2020 with the consequence that the very basis of agreements to sell executed by him of there being an agreement to sell in his favour is knocked out.

18. Big fraud has been committed involving transfer of land divided into plots by executing agreements to sell and handing over possession thereof without execution of any sale deeds (except two sale deeds No.6020 dated 09.10.2019 and 1097 dated 06.05.2019) on the basis of which even construction of fifteen houses had already been raised. A common man is first defrauded by the land owners, colonizers and property dealers by fraudulently transferring agricultural land to them without requisite license/permission for huge amount of money by exploiting his need for shelter by construction of a residential house. The concerned agencies of the State, which are bound to protect the common man against such frauds, initially sleep over the matter and by their inaction allow raising of construction by him and subsequently wake up from their slumber and then cause huge loss to him by demolishing the construction raised on the ground of the same being unauthorized construction in an unauthorized colony without taking strict action against the concerned land owners, colonizers and property dealers. The police makes superficial investigation of the case instead of making thorough investigation required by the facts and circumstances of the case regarding the entire modus operandi qua transfer of the land and also raising of

unauthorized construction of houses on such land.

19. On 17.03.2021, Mr. Deepak Sabharwal, Additional Advocate General, Haryana, who appeared before this Court on behalf of respondent No.1 State of Haryana, submitted that the matter of taking of requisite steps for prevention of such cases of fraud/cheating and defrauding of innocent buyers by the unscrupulous property dealers is being considered by the concerned authorities and he also sought time for filing of additional reply in this regard.

20. Even though no additional reply has been filed regarding the steps so taken by or being under consideration of the Government of Haryana but in view of the fact that the matter is under active consideration of the Government of Haryana, this Court does not consider it necessary to intervene by issuance of any directions under Section 482 of the Code of Criminal Procedure, 1973. However, it will be appropriate that at the time of making such deliberations, the Government of Haryana also takes into consideration the following aspects/measures:-

(i) Registration of all agreements to sell immovable property residential/commercial/industrial in the State of Haryana may be made compulsory by appropriate legislation/amendment as may be considered necessary;

(ii) Giving of information regarding all agreements to sell/sale deeds executed in respect of urban residential/commercial/industrial land falling within the purview of the Haryana Development and Regulation of Urban Areas Act, 1975 to the District Town Planner in all the Districts in the State of Haryana by the property

dealers/concerned land owners may be made compulsory;

(iii) Information regarding licences granted to the companies/firms/builders/colonizers with requisite particulars regarding terms and conditions of the licences and also of the residential/commercial/industrial land to which the licences pertain be made available on the website in respect of all the Districts in the State of Haryana in searchable mode so that a person on submitting the particulars of land he intends to purchase gets the requisite information regarding the status of the same;

(iv) The Deputy Commissioner, Superintendent of Police and District Town Planner in all the Districts in the State of Haryana may be made responsible for strict implementation of the Haryana Regulation of Property Dealers and Consultants Act, 2008 for ensuring that no person works as property dealer without requisite registration and also furnishes complete information regarding the transactions made through him; and

(v) The District Town Planner, Deputy Commissioner, Superintendent of Police in all the Districts in the State of Haryana may be made responsible for strict implementation of the Haryana Development and Regulation of Urban Areas Act, 1975 and if any unauthorized colony comes up in the District then departmental action may be taken against the concerned District Town Planner, Deputy Commissioner and Superintendent of Police of the District.

21. The suggestions given above may be taken into consideration by the Government of Haryana for such policy based action as may be considered appropriate.

22. A copy of this order be supplied to learned State Counsel and be also sent to the Chief Secretary, Government of Haryana and the Director General of Police, Haryana for information and taking of appropriate action.

31.08.2021

(ARUN KUMAR TYAGI)

Vinay

JUDGE

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