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

**211**

**CRM-M-15463-2022**
**Decided on :22.04.2022**

Rakesh Gupta @ Rakesh Varshney

. . . Petitioner

Versus

Union Territory, Chandigarh.

. . . Respondent

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

PRESENT: Mr. Nitin Jain, Advocate
for the petitioner.

Mr. C.S. Bakshi, Addl. P.P., U.T. Chandigarh.

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**VIKAS BAHL, J. (Oral)**

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 158 dated 26.07.2018 under Sections 419, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 registered at Police Station Sector 03 North, U.T. Chandigarh.

Learned counsel for the petitioner has submitted that in the present case, the primary allegation on the basis of which the FIR has been registered against the petitioner is that the petitioner had mortgaged a plot measuring 200 square yards in favour of the complainant-Bank and when the Bank people visited the spot where the said plot was supposed to be situated, they found that the said property was not identifiable or traceable.

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It is further submitted that the police has strangely come to the conclusion that the sale deed dated 08.12.2005 executed in favour of the presenter petition is a forged and fabricated document. It is contended that till date, no person has challenged the said sale deed in any Court of law and further reference has been made to the legal opinion dated 26.12.2005 (Annexure P-3) given by the counsel for the Bank who had opined, after taking into consideration the said sale deed, that the petitioner had the right and the legal, valid and marketable title to mortgage the subject property. In the said legal opinion, the reference has been made to the original owner and various documents executed to show transfer of property from original owner to present petitioner. It is further contended that as far as the allegation in the FIR with respect to the company, of which the petitioner is Ex-Director, is concerned, the suit for recovery has already been filed by the Bank before the Debt Recovery Tribunal in the year 2011. It is argued that in the present case, in view of the judgment of the Hon'ble Supreme Court passed in ***Md. Ibrahim and others Vs. State of Bihar and another***, reported as ***(2009) 8 SCC 751,*** *prima facie*, the offence of forgery or cheating is not made out. It is further argued that the person who had executed the said sale deed in favour of the petitioner has himself not challenged the said sale deed. It is further submitted that in the present case, the alleged loan had been taken by the company in question and the company has not even been arrayed as an accused and under the provisions of the Indian Penal Code, the petitioner cannot be made vicariously liable for the debt the company is liable to discharge. It is submitted that the petitioner has been in custody since 29.11.2021 and the

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challan has already been presented and the investigation is complete qua the petitioner and there are as many as 26 witnesses, none of whom have been examined and thus, the trial is likely to take time. It is further submitted that the entire case is based on documentary evidence and no purpose would be served by keeping the present petitioner in custody and the present case is triable by the Magistrate.

Learned State counsel, on the other hand, has opposed the present application for regular bail and has submitted that the petitioner is involved in four more cases of similar nature which shows that the petitioner is a habitual offender. It is further submitted that as a result of the investigation, it has been found that the sale deed dated 08.12.2005 is a forged and fabricated document and thus, the petitioner has managed to take loan on the basis of a forged and fabricated document.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner has already been granted bail in all the said other cases and has further submitted that as per settled law, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application. For the said proposition, learned counsel for the petitioner has relied upon judgment dated 16.01.2012 passed by the Hon'ble Supreme Court in Criminal Appeal No.159 of 2012 titled as ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and others*** **2012 (2) SCC 382** reference has been made to the relevant portion of paragraph 6 which is reproduced hereinbelow:-

> "*As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent*

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> *cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."*

This Court has heard learned counsel for the parties and has perused the paperbook.

In the present case, the present petitioner has primarily been implicated in the FIR on account of having mortgaged a plot measuring 200 square yards, which as per the Bank is not identifiable. Further, as per the prosecution case, the sale deed dated 08.12.2005, is stated to be a forged document. The said sale deed is, however, a registered document executed in favour of the petitioner with respect to the plot in question. No challenge has been made to the said sale deed in a civil Court or before any other forum and it is a matter of settled law that it is only the civil Court which can declare a sale deed to be invalid. The person who has executed the said sale deed or the person who was the original owner of the said property has not filed any such civil suit. The present FIR has been registered after a period of more than 12 years from the date of the registration of the said sale deed. At the time of grant of loan, the legal opinion was taken from the counsel for the complainant-Bank and as per the legal opinion dated 26.12.2005, after taking into consideration the said sale deed, it was specifically observed that the petitioner had a legal, valid and marketable title to the said property. As per the abovesaid legal opinion, vide the first registered

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sale deed dated 25.07.1970, the property was sold to one Chokhe Lal and the said Chokhe Lal had thereafter executed a will dated 10.05.1991 in favour of Ghan Shyam Dass who, apart from other documents, had executed registered GPA dated 06.01.1998 in favour of Laxmi Narain and it is the said Laxmi Narain who has executed the registered sale deed dated 08.12.2005 in favour of the petitioner. With respect to the allegation pertaining to the loan which was allegedly taken by the company, of which the petitioner was Ex-Director, having not been returned, suffice it to say that OA No. 2 of 2011 has been filed by the Bank before the Debt Recovery Tribunal for the recovery of the said amount. In the present case, the company has not even been made an accused. Thus, the question as to whether the petitioner could be made vicariously liable for the debt due from the company, would be a matter of trial which would be decided finally during the course of trial. With respect to forgery, apart from the fact that there is no challenge to the sale deed dated 08.02.2005, it would be relevant to note that the Hon'ble Supreme Court of India in ***Md. Ibrahim's*** *case (supra)* has held as under:-

> *"16....There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first*

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> *is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of `false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.*
>
> *17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."*

The ratio of law laid down in the said judgment also leans in favour of the petitioner. The petitioner is stated to be in custody since 29.11.2021 and the challan has already been presented qua the petitioner and there are as many as 26 witness none of whom have been examined. The entire case is based upon documents and is triable by the Magistrate.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the

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concerned trial Court/Duty Magistrate and subject to his not being 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**

**April 22nd, 2022**
*Mehak*

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No

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