

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-43825-2022(O&M)

Date of decision : 22.09.2022

Mona Arora

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Keshav Pratap Singh, Advocate
for the petitioner.

Mr.Dhruv Sihag, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR no.488 dated 03.09.2020 registered under Sections 406, 420, 120-B IPC at Police Station Camp Palwal, District Palwal.

Learned counsel for the petitioner has submitted that in the present case in fact, the second floor of the property was sold to the complainant but inadvertently, in the sale deed the same has been mentioned as the first floor which was actually a typographical error. It is further submitted that in the State of Haryana, the Apartment Act is in force and a sale deed can be executed in a floor wise manner.

Learned State counsel, on the other hand, has vehemently opposed the present petition for anticipatory bail and has submitted that the sale deed dated 10.06.2016 mentions that the first floor had been sold to the

actually was of some other floor has been filed. It is submitted that the presumption of truth vests with a registered document. It is further submitted that in spite of having sold the first floor to the complainant on 10.06.2016 and after having received the entire sale consideration, the petitioner along with her husband, have mortgaged the property in dispute and had taken a loan of Rs.1,20,00,000/- in 2017 from Tata Capital Finance Services Limited. It is further submitted that once the document was registered in the Estate Officer then it is surprising as to how the petitioner and her husband managed to get a loan of such huge amount sanctioned without the consent of the complainant. It has been stated that the said loan amount has not been repaid till date. It has further been stated that although, the FIR has been registered on 03.09.2020, but neither the petitioner nor her husband have come forward to cooperate in the investigation.

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

The petitioner had sold a flat which is situated at Arya Samaj Road, New Colony, Palwal under the name of Sai Village House no.25/8 on 10.06.2016 and the said sale deed had been duly registered. It is the case of the prosecution that after having sold the said flat, loan amount of Rs.1,20,00,000/- had been taken from Tata Capital Financial Services Limited in the year 2017 without the consent of the complainant on the same flat. The said loan has not been repaid and as per the allegations in the FIR, the officials of Tata Capital Financial Services Limited are seeking repayment of the said loan from the complainant Raj Rani. The fact that the petitioner and her husband were able to mortgage the property and get the loan of Rs.1,20,00,000/- in spite of the fact that the property had already

been sold, shows that prima facie the petitioner is guilty of the offences alleged to have been committed. The petitioner is the direct beneficiary of the transaction in question and it has been rightly observed by the Sessions Judge, Palwal that her case cannot be treated to be at parity with Ajay Kumar Giri, who was an Advocate and who had just given his report to the best of his ability. A perusal of paragraph 3 of the order rejecting the anticipatory bail to the petitioner as well as the stand of learned State counsel also highlights the fact that the petitioner has not come forward to cooperate with the investigation in spite of a lapse of 1½ years as the FIR had been registered on 03.09.2020. The argument of learned counsel for the petitioner to the effect that actually second floor of the property was sold to the complainant is apparently an afterthought and is baseless. It is not disputed by the petitioner that in the sale deed dated 10.06.2016, which is a registered document and presumption of truth is attached to the same, it has been stated that it is the first floor which has been sold. It is the said property which after sale has been illegally mortgaged. It is a matter of settled law that no oral evidence contrary to the documentary evidence is admissible. In the present case although, the sale deed is of the year 2016 yet, after the lapse of more than 6 years, no suit for declaration has been filed for challenging the said sale deed by the petitioner. A registered sale deed transfers the property from the vendor to the purchaser which has been detailed in the registered sale deed. The petitioner and her husband had managed to get the loan on the same property which had been sold by virtue of the registered sale deed without first getting any declaration that the said sale deed was with respect to the some other floor.

Keeping in view the above said facts and circumstances, this

Court is of the opinion that the petitioner does not deserve the concession of anticipatory bail. Accordingly, the present petition for anticipatory bail is dismissed.

Nothing stated above shall be construed as an 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 petition.

Pending miscellaneous application stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

September 22, 2022
Davinder Kumar

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