

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

CRM-M-54622-2022 (O&M)
Date of Decision:- 19.12.2022

Shibani Varma Kapur

Versus

.....Petitioner

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. R.S.Rai, Senior Advocate with
Ms. Rubina Vermani, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana,
assisted by ASI Rajvir and Assistant Manmohan, DTPC.

Mr. Rajesh K. Sheoran, Advocate,
Mr. Satish Saini, Advocate and
Mr. Hardeep Singh Poonia, Advocate for the complainant.

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GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of anticipatory bail in a case registered vide FIR No. 230 dated 17.9.2021 under Sections 406, 420, 467, 468, 471/120B IPC at Police Station Sector 53, Gurugram District Gurugram.
2. The FIR was registered at the instance of Mahender Singh, attorney of Baljeet Singh, who is an allottee of a plot measuring 60 square yards in “Economic Weaker Section” (EWS) category, situated at Ardee City, Gurugram. The complainant submitted his complaint against Ardee Infrastructure Private Limited and other licence holding companies for Ardee City, Gurugram; Shibani Kapur Varma, Director Ardee Infrastructure Private

Limited; Anil Hasija, Vice-President, Ardee Infrastructure Private Limited; and other accused associated with the scam in question. The complainant alleged that the allottee Baljeet Singh had been allotted a plot measuring 60 square yards in EWS category by Ardee Company in February, 2000. Shibani Kapur Varma being Director was involved in day-to-day business and decision making of the company. Anil Hasija, being Vice President is stated to be fully involved in the deals and business development of the company. It is alleged that the accused had obtained licence for development of a project namely Ardee City and as per the mandatory conditions of licence, they were required to reserve 20 per cent of the area for allotment of plots to persons belonging to EWS category. The allottee Baljeet Singh had applied for the same and had deposited an amount of ₹1200/- with M/s Ardee Infrastructure. Thereafter, the accused are alleged to have demanded an additional amount of ₹25,000/- in cash. However, despite having received the said payment, the complainant has not been given any plot till date i.e. even after more than two decades, although licences had been obtained between the period from 1995 to 2002. It is alleged that the accused, very cleverly earmarked such land for EWS category plots which was having some kind of defect or was disputed and that while some part of the land earmarked had already been acquired, some part of land was having an underground gas pipe-line on account of which construction could not have been raised. It is alleged that the accused had collected huge money from various allottees under EWS category and had usurped the said amount while they were spending hundreds of crores for constructing commercial building

namely Ardee Mall and were earning huge profits by allotting plots and flats in the said township while ignoring the economic weaker sections.

3. The learned counsel for the petitioner, while pressing upon the case for grant of anticipatory bail, made the following submissions :-

- (i) that the petitioner was not associated with any company when the licences in question were originally issued during the period from 1995 to 2002 for development of 'Ardee City' in which the complainant stakes his claim as an allottee in EWS category and that the entire affairs of the company were being looked after by petitioner's father namely Sh. Ashok Verma and after death of petitioner's father on 1.6.2008, it has been petitioner's sister Sheffali Verma who is at helm of affairs though petitioner had also been appointed as an Additional Director on 3.3.2005;
- (ii) that the very fact that the name of the petitioner is missing in notice dated 4.7.2011 (Annexure P-3) and also also in notice dated 2.8.2018 (Annexure P-4) issued by the Directorate of Town and Country Planning, Haryana (in short hereinafter referred to as 'the DTCP') for cancellation of licences, whereas the name of her sister Ms. Sheffali Verma is specifically mentioned therein goes to show that the petitioner was not incharge of the affairs of the company so as to be held responsible for any default;
- (iii) that delay in handing over possession of EWS plot to complainant would not attract any penal offence and, at best, could be a case of civil wrong;
- (iv) that even if delay is construed to be an offence, the same would be a compoundable offence as is evident from policy dated 16.8.2013 (Annexure P-18), wherein different slabs of fine have been prescribed depending upon extent of delay in development of flats in EWS category;

- (v) that out of the acquired land comprised in *khasra* nos. 955, 956, 964, 965, 966, 839, 840/1, 841/1, 934, 936/1, 983, 988/3, 991/2, 1001 and 1002, release of land comprised in *khasra* nos. 955, 956, 964, 965, 966, 983 and 991/2 was approved by Council of Ministers on 20.5.2002 and the said approval was duly conveyed to Financial Secretary and Principal Secretary to Govt of Haryana, Town and Country Planning Department, Haryana, vide letter dated 22.5.2002 (Annexure P-20) and that somehow the revenue record has not been updated accordingly;
- (vi) that as per the settled policy and procedure, it is the State which has to allot the plots in EWS category and the builder/developer has no role to play in the same and infact vide letter dated 24.9.2021 (Annexure P-13) and 22.11.2021 (Annexure P-14), the Senior Town Planner, Town and Country Planning Department, Gurugram had been requested to conduct the draw of plots in EWS category;
- (vii) that there is hardly any land which would be affected by the gas pipeline, which has been laid underground and since only about half of the property can at best be said to be acquired out of the property which was shown to be earmarked for carving out plots for EWS category, the said plots can very well be carved out from the remaining property;
- (viii) that the petitioner cannot be attributed any offence as misrepresentation with regard to reservation of any area or carving out plots in EWS category, if made, had been made by the Vice President i.e. Anil Hasija, whose signatures appear on the lay-out plans which had been prepared in the year 2015;
- (ix) that since District Town Planner, Enforcement, Gurugram has already got lodged another FIR i.e. FIR No. 234 dated 20.9.2021, Police Station Sector 53, Gurugram (Annexure P-7), wherein allegations pertaining to furnishing forged documents have been levelled against several accused including the petitioner, raising similar allegations in present case which are otherwise not alleged in present FIR, virtually amounts to '*Double-Jeopardy*', more so when the petitioner has been granted interim bail in

the other FIR (i.e. FIR 234 dated 20.9.2021) by this Court vide order dated 18.11.2022 passed in CRM-M-53702-2022;

(x) that the petitioner himself is not an allottee and is merely an attorney who claims to have stepped into the shoes of the allottee and infact has been set up as a stage at the instance of the petitioner's siblings with whom the petitioner has a dispute regarding inheritance/property.

4. Opposing the petition, the learned State counsel assisted by counsel for the complainant has submitted that it is a case where M/s Ardee Infrastructure Private Limited and its other licence holding companies including M/s Gopal Dass Estates & Housing Pvt. Ltd. had defrauded hundreds of applicants who had applied for allotment of plots in EWS category and that while majority of construction of flats/villas in other categories has been completed and possession had been handed over by the accused to the allottees, the complainant and others who belong to EWS category are left in the lurch though they had also deposited initial amounts ranging from ₹20,000/- to ₹30,000/- way back in the year 1999.
5. It has further been submitted by learned State counsel that the accused, in a well orchestrated conspiracy, had got the licences issued and renewed by furnishing incorrect information and forged revenue record and out of the 15 *khasra* numbers, which were furnished in the year 2015 to be the area earmarked for carving out plots in EWS category, 7 *khasra* numbers were found to have already been acquired. It has been pointed out that land falling in another 2 *khasra* numbers was rendered unusable because of laying of underground gas pipeline. It is, thus, contended that the aforesaid conduct

shows the intention on part of accused to defraud the innocent persons belonging to EWS category.

6. The learned State counsel submitted that the petitioner cannot feign ignorance about the misdeeds of the Company or of other Directors or office bearers, Vice President etc., who had intentionally furnished incorrect information to authorities as regards earmarking of land for EWS category and despite a period of more than two decades having elapsed, had not handed over possession of plots in EWS category whereas the allottees in the premium category of flats, villas etc. had been handed over possession as the same were money spinning proposals. The learned State counsel has, thus, submitted that the petitioner does not deserve the concession of anticipatory bail.
7. This Court has considered the rival submissions.
8. Though, it was argued on behalf of the petitioner that complainant Mahender Singh is not an aggrieved person and is an Attorney of original allottee and infact is a stooge put up against the petitioner at behest of his sister with whom the petitioner has a dispute over property, this Court need not delve deep in said aspect as in a case where a large number of persons are affected or aggrieved by an act or conduct of the accused, the defect in locus of complainant, if any, loses significance. In the present case, hundreds of persons like complainant have not been allotted any plot in EWS category and as such, anyone could have set the police machinery into action.

9. Another contention made on behalf of the petitioner is to the effect that the DTCP in its letter dated 6.8.2021 (Annexure P-10) has admitted the title of the land earmarked for EWS plots to be clear is rather misconceived inasmuch as the concluding paragraph of that very letter clearly shows that the DTCP upon finding that the title was not clear had granted another opportunity to the accused to resolve the pending disputes as with respect to title of the land. Rather, pursuant to the correspondence between DTCP and the accused including letter dated 6.8.2021, the licenses issued to the accused have been cancelled vide order dated 2.9.2021 (Annexure P-6). The relevant extract from the cancellation order is reproduced herein-under :-

“9. The hearing was attended by Sh. Hirdesh Bedi, authorized signatory on behalf of the licensee alongwith DTP (P), Gurugram, STP, HSVP & Tehsildar Wazirabad and it has been observed that the title of part licenced land falling in village Wazirabad is not clear yet. Therefore, final opportunity of 7 days to resolve the pending disputes w.r.t. title of land as well as to hand over the EWS plots earmarked on land having clear title was granted vide memo dated 10.08.2021.

10. However, it is observed that the matters are still unresolved. Sufficient time has already been granted to clear the land and compliance of terms and conditions of the licence but you have failed to resolve the issue of disputed land and rectify the deficiencies conveyed from time to time. No further time to remove the deficiencies can be granted. Therefore, the license No. 58-67 of 1995, 1-9 of 1997, 2-13 of 1998 and 49-65 of 2002 granted for development of residential plotted colony over an area measuring 209.429 acres in Sector-51-52 & 57. GMUC is hereby cancelled.”

10. The aforesaid position leaves no manner of doubt that the title of the land for developing EWS category plots was not clear.

11. The contention on behalf of petitioner that it is State and not the builder/developer who has to allot the plots in EWS category is also not acceptable as the plots can be made available to applicants/allottees in EWS category by the State only when land is made available by the builder/developer. The letter dated 24.9.2021 (Annexure P-13) and letter dated 22.11.2021 (Annexure P-14) written by the company i.e M/s Gopal Das Estates & Housing to Senior Town Planner to complete process of allotment of plots in EWS category is nothing but an eye-wash as the said letters were written only after the licences in favour of accused companies in respect of entire 209 acres of land had been cancelled by DTCP, vide order dated 2.9.2021 (Annexure P-6). In any case, in the absence of land with clear title, possession could not have been handed over to allottees.
12. The factual position discerned from admitted averments and documents, which would be relevant for addressing the issues in hand is stated hereunder:
- (i) Licences for development of “Residential Plotted Colony” in Sectors, 51, 52 and 57, Gurugram, in respect of land measuring 209 acres had been issued in favour of accused companies during the period 1995 to 2002.
 - (ii) As per one of the conditions of licences, the accused/company was mandated to develop and allot EWS category plots. When the area of township project exceeds 100 acres, 20% of the same is to be developed for EWS. The said position is admitted by the petitioner. However, in the instant case the only information furnished by both the learned counsel is that 283 plots were supposed to be developed and allotted in EWS category. The total area which was to be utilized for developing

plots for EWS category is not forthcoming either in petition or in reply. However, even if it is taken that only 10% out of 209 acres was to be utilized for developing plots in EWS category including roads, water-supply, sewerage, electricity etc. an area of about around 20 acres would be required to be earmarked.

- (iii) It is not disputed that possession of not even a single plot out of 283 plots supposed to be allotted in EWS category has been given to any applicant till date. By way of a conducting a draw of lots in the year 2000, plots were allotted to 104 applicants in EWS category but possession has not been handed over till date. On the other hand, pursuant to a query raised by this Court in its order dated 23.11.2022, it has been informed by M/s Gopal Das Estates and Housing Ltd. in its letter dated 28.11.2022 (Annexure R-6) in reply to notice issued by investigating agency, that possession of almost all flats has been handed over. A total of 1589 flats had been constructed and handed over to allottees and only three remain to be handed over. Similarly, out of 24 villas which were constructed, possession of 23 has been handed over to allottees. Out of the 172 shops constructed in Ardee Mall, possession of 171 shops has been handed over.
- (iv) There have been issues with regard to the land earmarked by builder for developing plots for EWS category inasmuch as either a part of land was found to be one under which a gas pipeline was passing through on account of which development upon the same was not possible or the land shown to be earmarked was already acquired. Though, the petitioner claims that the acquired land had been released subsequently, pursuant to a decision taken by Council of Ministers on 20.5.2002, conveyed to Financial Secretary and Principal Secretary to Govt of Haryana, Town and Country Planning Department, Haryana, vide letter dated 22.5.2002 (Annexure P-20), but neither the State has admitted the said fact nor any revenue record/mutation indicating reversal of ownership in respect of all those *khasra* numbers is forthcoming. Still

further, when the layout plan was got renewed in 2015, forged documents were furnished by the accused company.

- (v) The DTCP issued notice dated 4.7.2011 (Annexure P-3) regarding deficiencies and violations to the accused companies and later gave an opportunity of personal hearing vide letter dated 20.9.2018 (Annexure P-4) and ultimately cancelled all the licences issued to accused in respect of entire 209 acres of land, vide order dated 2.9.2021(Annexure P-6).

13. While tracing the criminal essence from the aforestated factual position, the matter may be crystallized to the following acts on part of accused, which point towards their complicity:

- (a) The accused had taken money from the complainant and from several others like him more than two decades ago on the pretext of allotting plots in EWS category but had not given possession of plot to them till date and have retained their money all along, while they have allotted and given possession of hundreds of flats/ villas etc. to allottees in premium categories. Such act would attract offence of “criminal breach of trust” and “cheating” as well.
- (b) The land which was earmarked, from time to time, in the layout plans for developing residential area for EWS category, was intentionally chosen to be such an area which either had some disadvantageous characteristics like underground gas pipe-line or was already acquired. Such act would fall within the ambit of “cheating” in the given circumstances.
- (c) As per investigation, forged revenue documents were furnished on behalf of the company at the time of getting the layout plans renewed in the year 2015. Such act will constitute offence of “forgery”.

14. Examining the role of petitioner *viz-a-viz* the act stated at (a) in preceding paragraph, admittedly there is whopping delay of more than two decades in handing over possession of plots in EWS category which infact have not been handed over till date. The amount initially deposited by complainant or by some others like him is still with accused company. Whether the accused collected the said amount during the period 1995 to 2000 from applicants in EWS category with an intention to usurp the same or as to whether it was later that the accused chose to misappropriate the same is a debatable question. The petitioner, in any case, was inducted as Additional Director of the company much later in the year 2005 and cannot be said to have connived with co-accused at the time of deposit of amount by complainant and others during the period 1995 to 2000.
15. While considering the role of petitioner as regards the act stated at (b) in para 13 of this order, upon perusal of the layout plans and the revenue record, it is apparent that an underground gas pipe-line has been laid which passes under a part of area earmarked for EWS category. It is also borne out that a part of earmarked land stood acquired. Though, the learned counsel for petitioner vehemently argued that land stands released from acquisition as per letter dated 22.5.2002 (Annexure P-20) but no revenue record to this effect has been shown despite the fact letter dated 22.5.2002 (Annexure P-6) was issued about 20 years back. As a matter of fact, the DTCP has cancelled all the licences issued to accused companies in respect of entire 209 acres of land, vide order dated 2.9.2021 (Annexure P-6) *inter-alia* on ground that the accused had not developed plots in EWS category and upon being dis-

satisfied as regards title of land. Though, the specific role of the petitioner in aforesaid acts is yet to be established but she surely could be held vicariously liable. But in such a situation where the petitioner's specific role after her induction in company in 2015 is yet to be established and the petitioner happens to be a lady, her case can be considered for extending the concession of anticipatory bail.

16. Now, coming to the role of petitioner pertaining to act stated at (c) in Para 13 of this order, the investigating agency has certainly laid its hands on evidence to the effect that when an application for renewal of lay-out plan was submitted on behalf of the company in the year 2015, the same was accompanied by forged revenue documents and it was on the basis of the forged revenue documents that the licence was got renewed. The petitioner was very much part and parcel of the said company in the year 2015. Although, it has been informed and is not disputed that the said forged revenue documents bear the signatures of co-accused Anil Hasija, Vice President of the Company but the petitioner can also be held vicariously liable for the same, being an Additional Director of the Company. However, the fact remains that a separate FIR i.e. FIR No. 234 dated 20.9.2021, Police Station Sector 53, Gurugram (Annexure P-7) stands registered against the petitioner and others with the allegation that forged revenue documents had been furnished by the accused at the time of issuance/renewal of licenses. The petitioner has already been granted interim bail in respect of the said FIR vide order dated 18.11.2022 passed in CRM-M-53702-2022. As such, raising of similar allegations in the present case when the same are otherwise

not specifically alleged in the FIR would *prima facie* be a case of *double jeopardy*.

17. Having regard to the totality of the facts and circumstances of the case particularly the fact that the petitioner cannot be attributed any kind of intention at the inception of the alleged fraud when the complainant and others had deposited amounts with the company inasmuch as the petitioner was not associated with the company around the year 2000 in any manner before 2005 and also the fact that the petitioner has been granted interim bail in another FIR wherein similar allegations of forgery of revenue record have been levelled and also that the petitioner is a lady, the petition merits acceptance and is hereby accepted.
18. The petitioner, in the event of her arrest, shall be released on bail subject to her furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.
19. It is however clarified that none of the observations made above shall be construed to be an expression on merits or demerits of the case of prosecution.

19.12.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No