

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

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**CRM-M-1139-2023
Date of decision: 10.01.2023**

ANJU SHARMA

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Kamaljeet S. Mamrat, Advocate
for the petitioner.

Mr. Saurav Verma, Addl. A.G. Punjab
for respondent-State.

Mr. Jai Bhagwan, Advocate
for the complainant.

VINOD S. BHARDWAJ, J. (Oral)

The second petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case bearing FIR No. 134 dated 22.10.2021 registered under Sections 420/120-B of the Indian Penal Code, 1860 & Section 82 of the Registration Act, 1908 at Police Station Naya Gaon, District SAS Nagar (Annexure P-1).

2. Briefly summarized the facts of the present case are that complaint in question was initially submitted by one Jaswant Singh son of Ram Singh resident of Village Naya Gaon (Karora), Tehsil Kharar, District S.A.S. Nagar, Mohali alleging that some persons were making an illegal encroachment and taking forcible possession of his land that were purchased by him. The said

encroachers had placed reliance on a sale deed executed in favour of the petitioner with respect to the land in question which was also appended by Jaswant Singh-complainant alongwith the complaint. During the investigation, the statements of various persons were recorded whereupon it transpired that various persons including Jaswant Singh-complainant had purchased shares in the land from Kuldeep Singh son of Sunder Singh son of Dyal Singh. From the above-mentioned ownership of 60 marlas land, the complainant had purchased 29 ½ marlas. The above-mentioned land was sold to them by Gurbachan Singh resident of Naya Gaon and the Registry had been executed in their favour by the owner Kuldeep Singh himself. The agreement to sell had earlier been executed on 27.05.2002 and possession of the land had been delivered to them. A total of 15 marlas of land was still available at site. During the investigation, co-accused Dinesh Kumar son of Bhagat Ram (husband of the petitioner herein) stated that Meghraj son of Bharat Singh had obtained a Power of Attorney from Harbans Kaur daughter of Diwan Chand vide Vasika No. 826 dated 23.11.2004 duly attested from the Joint Sub Registrar, Majri and that a Special Power of Attorney was executed by Meghraj in favour of Dinesh Kumar husband of the petitioner. On the strength of the aforesaid Special Power of Attorney, a sale deed was executed by Dinesh Kumar in favour of Anju Sharma on 09.08.2021 and that it has also transpired that the Original General Power of Attorney executed in favour of Meghraj was cancelled on 28.07.2021. Furthermore, such any Special Power of Attorney which was executed by Meghraj in favour of Dinesh Kumar also ceased to exist upon the cancellation of the GPA in favour of Meghraj. The sale deed in question has been executed by the Special Power of Attorney (Dinesh Kumar) in favour of his wife (the petitioner herein) on 09.08.2021.

3. Learned counsel appearing on behalf of the petitioner contends that the petitioner was unaware of the entire transaction and that her husband had executed a sale deed in her favour and that she had no role or participation in the commission of the offence. He further contends that the custodial detention of the petitioner is not required in the given circumstances of the case and the case is based on documentary evidence.

4. Learned counsel appearing on behalf of the respondent-State contends that the participation of the petitioner is well reflected. It is the case of the petitioner herself that the sale deed had been executed in her favour by her husband-Dinesh Kumar who had the Special Power of Attorney. It is contended that no sale consideration qua the aforesaid 25 marlas of land has ever been transferred from either Dinesh Kumar or the petitioner at the time of execution of the sale deed. It is also contended that once the General Power of Attorney executed in favour of the Meghraj had been revoked by the principal, the Special Power of Attorney became non-operational and that execution of the sale deed was a fraudulent act done by the petitioner in collusion with her husband Dinesh Kumar so as to defeat the rights of the true owner Harbans Kaur.

5. Learned counsel appearing on behalf of the complainant contends that the accused persons have forcibly entered into the land of the petitioner and taken possession of the same on the strength of false/fabricated and forged documents. Such an act cannot be said to be executed without the petitioner being involved consciously. Further, she is the main beneficiary in the entire transaction and there was no occasion as to why she should hold on to the property. A specific query was also raised to the petitioner to point out as to whether any consideration in lieu of the land was transferred in favour of Harbans Kaur at the time of the execution of the sale deed and/or as to whether

any consideration had been given by Dinesh Kumar at the stage of execution of the Special Power of Attorney.

6. Counsel for the petitioner contends that he has no instructions in this regard and that it is also not the specific case pleaded in the present petition filed. Consequently, there is no other option for this Court to hold that there was no sale consideration ever transferred from the petitioner and/or her husband Dinesh Kumar in favour of Harbans Kaur i.e. the true owner. The petitioner was also posed with a specific query as to whether the petitioner is ready to execute a relinquishment deed/cancellation deed in light of the fact that the sale deed has apparently been registered without transfer of any sale consideration, counsel for the petitioner contends that he has no instructions to the said effect and as such, he is not in a position to make any commitment as to whether he is ready and willing to revert the land in favour of the true owner or not.

7. Merely because the case is based on the documentary evidence may not be a ground to claim anticipatory bail as a matter of right. The totality of the circumstances, the nature of offence, the manner of execution of offence and the conduct of the accused is also required to be considered. The petitioner cannot be permitted to treat even though the execution of sale deed in her favour is not supported by requisite documents, yet, merely because the complainant-true owner would have some remedy available to her to file a civil suit seeking a declaration, the same would ipso fact be a just circumstance for grant of anticipatory bail to the person. Such an argument cannot be accepted as it intends to give premium treatment to a person who is accused and suspected of commission of criminal case. The aforesaid stand by itself reflects that the petitioner is not only conscious of the act committed by her, but also that they were aware of the legal consequences and rather intends to entangle the

complainant to prove her title despite not being authorized to transfer the title in their favour.

8. The present petition thus is not a case where a person has accidentally been involved in commission of an offence and rather reflects a thought out criminal act and conduct on the part of the petitioner which does not deserve sympathetic consideration by this Court.

The present petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 10, 2023
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No