2023:PHHC:040272

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

CRM-M-18105 of 2022 (O&M)
Reserved on: -10.03.2023
Date of pronouncement: - 15.03.2023

Anita Kapoor

......Petitioner

Versus

State of Haryana

......Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. R.S. Rai, Senior Advocate, with
Mr. Keshav Partap. Singh, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. D.S. Kohli, Advocate, and
Mr. Shrey Ashat, Advocate,
for the complainant.

NAMIT KUMAR, J.

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.177 dated 25.04.2021 under Sections 420, 406, 467, 468, 120-B IPC (Sections 406, 467, 468, 120-B IPC were added later on), registered at Police Station Sector 40, Gurugram, District Gurugram.

Brief facts of the case are that the above mentioned FIR was registered at P.S. Sector-40, Gurugram in pursuance to the orders passed by the Ld. CJM, Gurugram u/s 156(3) Cr.P.C. on the complaint filed by complainant namely Harvinder Singh against the petitioner-Anita Kapoor, co-accused Virender Kapoor and Arohan Kapoor (son of the petitioner), stating therein that the complainant and above named accused are acquainted with each other for the last 24 years. In May 2016, the accused persons approached the complainant for the sale of property bearing No. A – 46, Greenwoods City, Sector-45, Gurugram measuring 420 Sq. mtrs. The complainant agreed to purchase the said property for Rs. 4,50,00,000/- and it was decided that registry will be done on 22.03.2017. The complainant paid the amount of Rs. 50,00,000/- on 18.06.2016 by way of two cheques of Rs. 25 Lakhs each bearing Nos. 527365 and 527366 dated 18.06.2016. Arohan Kapoor presented the original chain of title deeds of the property in question to the complainant. The agreement to sell was executed between the parties on 23.06.2016. The accused persons assured the complainant that the property is free from all encumbrances. The complainant paid further amount of Rs. 35 Lakhs by way of two cheques dated 24.06.2016 bearing nos. 527374 and 527375 dated 24.06.2016. He further paid Rs. 2.5 crores on 25.06.2016 and Rs. 45 Lakhs on 27.06.2016. The said payments were acknowledged by the accused persons by way of acknowledgement receipts. Thus, the complainant paid total amount of Rs. 3,35,00,000/- to the accused persons. Later, the accused persons started avoiding the complainant on one pretext or the other and were dragging/lingering on the execution of sale deed. Thus, the complainant issued a reminder on 26.10.2017, however, on request of the accused, the date of execution of Sale Deed was postponed on 31.10.2017. But still, they lingered on the matter on one pretext or the other. Later on, the complainant found a public notice dated 27.11.2020 issued in The Times of India newspaper that the aforementioned accused persons have entered into agreement to sell dated 02.03.2020 with one Mrs. Sita Rani Dudeja. On enquiry, the complainant further found that during the ongoing negotiations with the complainant, the accused persons had obtained a loan of Rs. 6 Crores from M/s Aditya Birla Finance company. The complainant confronted the accused Virender Kapoor, however, he threatened the complainant for life and for implicating him in false cases. In this way, the accused persons cheated the complainant and caused wrongful loss to the tune of Rs. 3.35 crores to the complainant.

On issuance of notice of motion, status report dated 16.05.2022 by way of affidavit of Aman Yadav, Assistant Commissioner of Police, Sadar, Gurugram, has been filed, wherein it has been stated as under: -

> *"3. That the investigation was initiated by SI Tejpal. During investigation, on 01.05.2021, the relevant record was obtained from the complainant. On 21.05.2021, the certified copy of the sale deed pertaining to the year 2011 (vide which the accused persons had purchased the property in question) was obtained from the concerned Tehsil. On 27.05.2021, the details of account no.*

309871397000 of the complainant were obtained. The details of account no. 0424053000002361 of co-accused Virender Kapoor and Anita Kapoor, and the details of account no. 424053000000248 of Arohan Kapoor, Anita Kapoor and Vikran Kapoor were obtained. Ashu Jhingan and Shiv Sagar Tiwari (witnesses of the agreement to sell and acknowledgment receipts) were joined in the investigation and their statements were recorded.

4. That the record pertaining to the loans obtained by the accused persons from India Bulls Housing Finance in the year 2014, 2015 and 2017 against the property in question was obtained. Further the record pertaining to loan obtained by the accused persons from Aditya Birla Finance in September, 2017 against the property in question was also obtained.

5. That it was found during investigation that the agreement to sell was executed between the complainant Harvinder Singh and accused Virender Kapoor and Anita Kapoor on 23.06.2016 for the sum of Rs. 4.5 crores. Virender Kapoor and Anita Kapoor had affixed their signatures on the same. In pursuance of the same, the complainant had paid two cheques bearing no. 527365 and 527366 of Rs. 25 Lakhs each on 18.06.2016, two cheques bearing no. 527374 and 527375 of Rs. 17.5 Lakhs each on 23.06.2016. He further paid Rs. 2.05 crores in cash to the accused. The receipts of the same were signed by accused Virender Kapoor and Anita Kapoor and that the amount was checked by the co-accused Arohan Kapoor and he kept the same with him. Virender Kapoor and Anita Kapoor (present petitioner) gave the possession of one room set on 2nd Floor of the property in question to the complainant on 24.09.2016. It was also found that the accused persons had taken loan of Rs. 4,92,50,000/- crores in the year 2014, Rs. 32,00,000/- in the year 2016 *and Rs. 5,00,85,000/- in the year 2017 from Indiabulls Housing Finance company. They had also obtained a loan of Rs. 7 crores in the year 2017 from Aditya Birla Finance Company. However, they had concealed these facts from the complainant. It was further found that after the above mentioned agreement with the complainant, the accused persons entered into agreement to sell the property in question with Sita Rani Dudeja in March 2020 for the sale consideration of Rs. 6.80 crores. The said agreement was taken into police possession. The forgery was substantiated from the reply of the accused dated 31.10.2017 given to the complainant in response to the reminder letter written by him to the accused. It was further revealed by the reply dated 17.06.2019 given by the accused persons in reply to the legal notice of the complainant. The above facts revealed that the intention of the petitioner and her co-accused was dishonest from the very beginning and forged title papers were created and the same were used to cheat the complainant. Section 406, 467, 468, 120-B IPC were added in the present case on 14.10.2021.*

6. That the accused namely Virender Kapoor was arrested on 16.10.2021. One Apple I-phone, one gold ring, one kada white metal, one iron kada, one purse containing three ATM cards, driving license, RC of Creta vehicle no. HR-26-EL-2035 and three old notes of Rs. 500/- were recovered during personal search. The same were taken into police possession. The said Creta vehicle was also taken into possession from accused Virender Kapoor vide recovery memo dated 16.10.2021. One Geyser and one Panasonic LED were recovered from the said vehicle and the same were taken into possession vide recovery memo dated 16.10.2021. The disclosure statement of Virender Kapoor was recorded wherein he admitted the planning

> *and commission of present offence along with his wife Anita Kapoor (present petitioner) and son Arohan Kapoor.* ***He further stated that the forged title deeds of the property in question were prepared by the accused Arohan Kapoor and the signatures were affixed by Anita Kapoor and Virender Kapoor on the said forged title papers. The forged title papers are with the petitioner."***

Learned Senior counsel for the petitioner contended that the petitioner is innocent and has been falsely implicated in the present case. No offence is made out under Sections 420, 406, 467, 468, 120-B IPC against the petitioner. It is further contended that prosecution version is highly unbelievable as no person of ordinary prudence would ever pay a huge amount of Rs.3.35 crores for a property which is lying mortgaged with a bank/financial institution without seeing original title deed. He further submitted that a civil suit bearing No.1585 dated 19.04.2021 for specific performance of agreement to sell is already pending before the Court of learned Civil Judge (Junior Division), Gurugram, and the civil dispute has been given the criminal colour and false FIR has been registered against the petitioner. It is further contended that the petitioner is not involved in any other case except FIR No.900 dated 26.10.2020 under Sections 498-A, 406 IPC, registered at Police Station Rajauri Garden, Delhi. It is further submitted that no custodial interrogation of the petitioner is required. It is also submitted that no recovery is to be effected from the petitioner.

Per contra, Learned State counsel, assisted by learned counsel for the complainant submits that a fraud has been committed by the petitioner and her co-accused with the complainant by entering into an agreement to sell dated 23.06.2016 for a total consideration of Rs.4.50 crores out of which 3.35 crores have been paid by the complainant to the petitioner and co-accused and the said payment has been duly acknowledged by the petitioner and co-accused vide Annexures R-3 to R-7 and the said fact has also been admitted by the petitioner and co-accused in their reply dated 17.06.2019 to the legal notice served upon by the complainant dated 23.05.2019, relevant part of which is reproduced as under: -

> *"….Your client has seen & inspected the Original title deeds at the time of entering into Agreement to Sell. We undertake to tender the original title documents of the property and execute the sale deed on or before 30.04.2020.*
>
> *x x x*
>
> ***Inspite of all the delay we agree that we have received a sum of Rs.3,35,00,000/- (Rupees Three Crores and Thirty Five Lacs Only) which obviously forms a major portion of the total Sale Consideration**. All the apprehensions of your client are wrong & unfounded the property is absolutely encumbrance free and we hold absolute claim title without any lien or third party interest, whatsoever. **The newspaper notice dated 24.10.2017 was also unnecessary**, and we suggest that there is no need to waste money on these unfounded apprehensions. We are people of honour, **even if we have defaulted our commitments but we would never think of cheating an angel like Mr. Harvinder Singh**."*

It has further been contended that not only the fraud has been committed with the complainant but with another person, namely, Sita Rani Dudeja with whom agreement to sell dated 02.03.2020 has been entered into for a consideration of Rs.6.80 crores during the currency of agreement to sell dated 23.06.2016 and the said person has paid a sum of Rs.99 lacs to the petitioner alongwith other co-accused. Learned State counsel has produced the statements dated 14.10.2021 of Sita Rani Dudeja and her husband Hari Chand son of Tara Chand recorded under Section 161 Cr.P.C. As per above statements, petitioner and co-accused assured Sita Rani Dudeja that the said property is free from all encumbrances and no loan exists on the said property. Further, the fraud has been committed with various banks/financial institutions where the property has been mortgaged time and again and loans have been taken by the petitioner and co-accused. It is further contended that one of the financial institutions namely Aditya Birla Finance Ltd. from where the loan was raised by the petitioner and co-accused against the same property had approached this Court by filing CWP No.34220 of 2019 –Aditya Birla Finance Limited v. District Magistrate, Gurugram and others seeking writ of *mandamus* for handing over physical possession of built up property i.e. Plot No.46, Block-A, Residential Colony known as Green Wood City, Gurugram, on the basis of order dated 03.10.2019 passed by District Magistrate, Gurugram under Section 14 of the 'Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002' (hereinafter referred to as 'the SARFAESI Act'), which was allowed by a Division Bench of this Court vide judgment dated 06.12.2021 and direction was issued to the District Magistrate, Gurugram to ensure that the physical possession of the property in question is handed over to the authorized person of the petitioner – finance company within one week. The relevant portion of the said judgment is as under:

> *"In the present writ petition filed under Article 226 of the Constitution of India the petitioner, financial institution seeks directions for handing over the physical possession of a built up property i.e. Plot No.46, Block-A, Residential Colony known as Green Wood City, Gurugram.*
>
> *2. The same is based on the fact that an order has been passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') by the District Magistrate, Gurugram on 03.10.2019 (Annexure P-3), whereby on account of default of outstanding dues of Rs.6,61,95,276/- as on 17.05.2019 by respondent No.5, who is the proprietor of respondent No.4-M/s Kapco Enterprises, whereas respondents No.6 to 8 are his close relatives, the physical possession of the mortgaged property was to be handed over. Any person claiming tenancy or leasehold rights was left open to avail its remedy before the Debt Recovery Tribunal under Section 17 (4A) of the Act. On account of the said order being not executed as such by the State, the Financial Institution was constrained to come to this Court.*
>
> *x x x x*
>
> *4. It is to be noticed that on 23.09.2020, the State was directed to file the affidavit of the respondent No.1-District Magistrate, Gurugram and respondent No.2-Naib Tehsildar, as to why possession of the disputed property has not been taken, which is apparently on account of the fact that order which was sought to be implemented was passed under Section 14 of the Act on 03.10.2019 (Annexure P-3). The implementation was to be done by*

giving possession notice of 15 days and locks were to be broken up if the secured assets were found locked. On 08.10.2020, it had been brought to the notice of the Court that there was a interim stay passed by the Civil Court, Gurugram in the suit filed by the alleged tenant against the proprietor of the firm-respondent No.5 and respondent No.6 to 8, who are the close family members of the proprietor and injunction had been taken on 15.11.2019. Accordingly, this Court observed that there was collusion between the 3rd respondent and 5th respondent and directed that the order would not prevent the petitioner from taking possession of the property in question. Counsel for the 3rd respondent at that time had undertaken that he would surrender the possession of the flat and an affidavit would be given by the next date i.e. on 09.10.2020. On doing so, he was to be granted two weeks time to vacate and surrender the possession, since he had filed CM-10422-CWP-2020 in the case and brought forward the case of tenancy. Relevant portion of the order dated 08.10.2020 reads as under:-

> *"When the same is looked into, its clear indication that there is collusion between 3rd and 5th respondent to ensure that the possession of the property is not taken pursuant to the provisions of SARFAESI Act. Therefore, this Court is of the considered opinion that the said order, passed by learned Civil Judge (Junior Division), Gurgaon, against 5th respondent, would not prevent the petitioner herein from taking possession of the property in question. In light of the aforesaid observation of this Court, learned counsel appearing for 3rd respondent, seeks 15 days' time to voluntarily surrender the possession of*

> *the flat, which is in his possession, and he would state that an affidavit to that effect would be filed by him, before the conclusion of the working hours of 9th October 2020, before this Court. His submission is placed on record and he is permitted to file affidavit to that effect and accordingly, he is granted two weeks' time to vacate and surrender the possession of the same to the petitioner herein. With such observation, application in CM-10422-CWP-2020, is hereby disposed of. A copy of this order is directed to be sent to respondent No.1 and 2."*

5. Apparently, the needful was not done and on 26.10.2020 directions were issued to respondent No.1 to ensure compliance of the order dated 08.10.2020 and proceedings were deferred for 18.12.2020. A settlement was arrived at on 17.11.2020 inter se the petitioner and the borrowers which is attached with CM-13730-CWP-2020, in which reference was also given of the present litigation. The same had been arrived on the basis of the written proposal made on 13.11.2020 by the proprietor and his family members for settlement of the outstanding dues of Rs.7,89,71,538/- by a payment of Rs.6,30,00,000/- only. A mention was also made of the pendency of the proceedings under Section 17 (1) of the Act before the Debts Recovery Tribunal-II, Delhi. It was further agreed that in the event of any default as per the payment schedule, the deed of settlement was to become null and void.

6. On 26.02.2021, the Coordinate Bench found that since possession was handed over to the landlord as argued by the counsel for the tenant, there was a contempt of this Court, as respondent No.3 as the occupant/tenant had violated his own undertaking as *noticed in the earlier order dated 08.10.2020. Resultantly, two weeks more time was sought to take remedial measures and comply with the undertaking. Further indulgence was granted on 25.03.2021 and the order reads as under:-*

> *"After going through the pleadings on record, with the able assistance of learned counsel for the parties, it is apparent that the alleged tenant-respondent No.3 and the owners of the mortgaged residential property/respondents No.5 to 8 have tried to mislead the Court regarding the actual physical possession of the secured asset on different dates. That apart, the conduct of the principal borrowers/private respondents No.5 to 8 in adhering to the terms and conditions of settlement is not bona fide.*
>
> *At this stage, without going into the respective misconduct of the parties, we feel that there is no legal impediment in implementing the order dated 03.10.2019 passed by District Magistrate, Gurugram under Section 14 of the SARFAESI Act.*
>
> *However, we deem it expedient to grant one opportunity to the principal borrowers/respondents No.5 to 8 to give a date before which they will voluntarily and peacefully handover physical possession of the mortgaged residential flat.*
>
> *List on 01.04.2021 for further consideration."*

7. On 01.04.2021, respondents No.5 to 8 prayed for 10 days time to voluntarily and peacefully surrender the physical possession of the mortgaged property. The affidavit of respondents No.5 & 6 was to be filed by the next date of hearing and the case was listed on 06.04.2021. On the said date, two days more *time was taken for the purpose to persuade the Bank for accepting the agreeable amount within a reasonable time with the undertaking that in case of failure, respondents No.5 to 8 would hand over the vacant possession of the property. On 09.04.2021 this Court was apprised that an SLP against the order dated 01.04.2021 had been filed and accordingly proceedings were deferred for 28.04.2021. Accommodation was taken on the said date on account of the fact that the case was listed for hearing on 30.04.2021 before the Apex Court.*

8. It is not disputed that the Apex Court had also passed a conditional order on 30.04.2021, whereby it had noticed that a sum of Rs.1 crore had been paid by M/s Kapco Enterprises against the settlement of Rs.6,30,00,000/-. An opportunity was given to deposit Rs.2 crores before 05.05.2021 and the Bank was to examine the fresh proposal sympathetically, since the earlier settlement dated 17.11.2020 had also been breached. Further caveat was put in case the amount of Rs.2 crores is not deposited by 05.05.2021, the special leave petition would stand dismissed. The said order dated 30.04.2021 (Annexure A-1) passed in SLP Nos.5699 and 6528 of 2021 titled as M/s Kapco Enterprises & others Vs. Aditya Birla Finance Limited and others' reads as under:-

> *"The dispute in the present special leave petition is with regard to repayment of loan taken by the petitioner-Company from the 1st Respondent-Aditya Birla Finance Limited. It is not disputed that the agreement was entered into between the parties on 17.11.2020 according to which, the petitioners were required to pay the entire settlement amount of Rs.6,30,00,000/- (Rupees six crores thirty lakhs only) by 28.01.2020. The total due amount at*

that stage was Rs.7,89,71,538/- (Rupees seven crores eighty nine lakhs seventy one thousand five hundred thirty eight only) and the settlement was made for an amount of Rs.6.30 crores. In terms of the said settlement, the petitioner-Company had paid an amount of Rs.1 crores but did not comply with the schedule of payment of further dues. Mr. Arkaj Kumar, learned counsel appearing for the petitioner has made statement that the petitioner-Company is willing to pay an amount of Rs.2 crores through bank draft on or before 05.05.2021 and has further submitted that he shall make a fresh proposal for settlement of the dues which may be considered by the 1st Respondent. Mr. Sanjeev Singh, learned counsel appearing for the 1st Respondent has submitted that in view of the fact that the petitioner did not honour the earlier settlement dated 17.11.2020, he would now be liable to pay the entire dues along with upto date interest. He has, however, submitted in case, a fresh proposal is given along with the bank draft of Rs.2 crores on or before 05.05.2021, the respondent-Finance Company would be agreeable to consider the proposal for settlement of dues. In view of the aforesaid facts and circumstances, we dispose of this special leave petition with the direction that in case, the petitioner-Company deposits a bank draft of Rs.2 crores with the 1st Respondent on or before 05.05.2021 along with a fresh proposal for settlement of dues, the said proposal shall be considered by 1st Respondent sympathetically as expeditiously as possible, preferably within a period of two weeks from the filing of such application. It is

> *further provided that in case, the petitioner-Company does not deposit the bank draft of Rs.2 crores on or before 05.05.2021, this special leave petition shall stand dismissed. With the aforesaid direction, the special leave petition shall stand disposed of. Pending application(s), if any, shall also stand disposed of."*

9. A perusal of the communication dated 06.09.2021 (Annexure A-2) would go on to show that respondent No.5 only offered a demand draft of Rs.1,30,00,000/- (Rs.1.3 crores) before the Bank, which accordingly had not agreed to accept the same. The formal rejection was also done on 28.09.2021 (Annexure A-3) by communicating the same to the proprietor of the firm and his family members.

10. <u>Keeping in view the above, it is apparent that the respondents themselves have to be faulted for violating of five undertaking before this Court and even before the Apex Court. No further indulgence is liable to be granted, on account of the huge amount outstanding which is now pending against the petitioner to the tune of over Rs.8 crores. They are already keeping the possession for over two years of the property, by which the petitioner-financial institution would have earned handsome remuneration, if the same had been leased out, as it is situated at a prime location in Gurugram.</u>

11. <u>Accordingly, the present petition is disposed of with directions to the respondent No.1-District Magistrate, Gurugram to ensure that the physical possession of the property in question is handed over to the authorized person of the petitioner within a week from today whether it is from the private respondents or their agents</u>.

> *12. Needless to say that the District Magistrate shall take appropriate police help at the time of handing over the physical possession of the property in question to the authorized person of the petitioner, the financial institution. Similarly, the rights of any parties to the said property will be adjudicated upon by the Tribunal, before whom proceedings are already pending as we have not decided on the said issue on merits."*

It has further been argued that the petitioner along with co-accused committed forgery as they have prepared forged documents of the property in question which were shown to the complainant as well as to Sita Rani Dudeja and whereas while taking loan from various banks/financial institutions, same were deposited with them. Learned State counsel further submits that custodial interrogation of the petitioner is required for recovery of amount inasmuch as there are serious allegations against her of committing forgery and fraud of crores of Rupees. Therefore, she is not entitled for grant of anticipatory bail.

I have heard learned counsel for the parties and perused the record.

From the above facts, it is crystallized as under: -

(i) Petitioner along with co-accused entered into an agreement to sell dated 23.06.2016 with complainant-Harvinder Singh with regard to property i.e. Plot No.46, Block-A, Residential Colony known as Green Wood City, Gurugram, measuring 420 sq. yards for a total consideration of

Rs.4.50 crores, out of which petitioner and co-accused received Rs.3.35 crores from the complainant against due acknowledgements. The said agreement was to be executed by 22.03.2017 and due date was further extended many times on false pretext and flimsy grounds. The receipt of the said amount has been admitted by the petitioner and co-accused in their reply dated 17.06.2019 to the legal notice served upon by the complainant dated 23.05.2019.

(ii) Another agreement to sell dated 02.03.2020 has been executed by the petitioner and co-accused Virender Kapoor @ Virender Kapur with Sita Rani Dudeja, during the currency of agreement to sell dated 23.06.2016.

(iii) Petitioner and co-accused mortgaged the property in question and have taken loan from 'India Bulls' – Rs.4,92,50,000/- in the year 2014, Rs.32,00,000/- in the year 2016, Rs.5,00,85,000/- in the year 2017. They had also obtained a loan from Aditya Birla Finance Limited in the year 2017 for a sum of Rs.7 crores. Since the said amount was not repaid by the petitioner and co-accused, Aditya Birla Finance Limited approached this Court by way of CWP

No.34220 of 2019 for taking physical possession of the property in dispute.

(iv) Physical possession of the property in question has been taken by Aditya Birla Finance Limited from petitioner along with other co-accused who were respondents No.5 to 7 in those proceedings in terms of Division Bench judgment of this Court dated 06.12.2021 on the basis of order dated 03.10.2019 passed under Section 14 of the SARFAESI Act by District Magistrate, Gurugram,.

A perusal of the record would further show that the despite of the fact that property in question was already mortgaged with the India Bulls, the petitioners had deceitfully entered into the agreement to sell with the complainant, by saying that the property is free from all encumbrances, to extract money from him. The petitioner with other co-accused had entered into agreement to sell with Sita Rani subsequently knowing fully that they were not legally competent to do so, since the property was mortgaged with financial company and agreement to sell of said property had already been taken place with the complainant. The conduct of the petitioner along with other co-accused is dubious, which can be ascertained by the observations made by Hon'ble Division Bench in the matter (CWP No.34220 of 2019) referred to above, as they have been faulted number of times for violating their undertaking before this Court as well as Hon'ble Supreme Court. It is apt to mention here that as per the record, forged documents have been made to sell the property in question for extraction of money. A civil suit for specific performance of agreement to sell dated 23.06.2016 filed by the complainant is also pending before trial court at Gurugram.

It is relevant to mention here that co-accused Arohan Kapur was granted anticipatory bail by learned Additional Sessions Judge, Gurugram, vide order dated 21.06.2021. Lateron, Sections 406, 467, 468 and 120-B IPC were added. Thereafter, Arohan Kapur moved a petition seeking anticipatory bail before the learned Additional Sessions Judge, Gurugram, which was dismissed vide order dated 28.10.2021. Thereafter, he moved a petition before this Court and vide order dated 04.07.2022 passed in CRM-M-46285-2021, the same was dismissed on account of absence of any apprehension of threat/arrest.

The present case relates to economic offence. The Hon'ble Supreme Court in ***State of Gujarat Versus Mohanlal Jitamalji Porwal and others (1987) 2 SCC 364***, the held as under:-

> *"5. ....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from*

the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....”

In Y.S. ***Jagan Mohan Reddy Versus CBI (2013) 7 SCC 439***, the Hon’ble Supreme Court held as under:-

> *“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*
>
> *35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”*

Reliance can further be placed upon the Hon’ble Supreme Court dictum passed in ***Prem Shankar Prasad v. The State of Bihar and another, 2021(4) RCR (Crl.) 598*** and ***Anil Kumar Singh v. High Court of Judicature at Patna through its Registrar General and another, (2020)19 Supreme Court Cases 364*** whereby the Hon’ble Apex Court had denied the concession of anticipatory bail in view of the gravity of offences and the conduct of the petitioner.

In view of the peculiar facts and circumstances of the case and settled preposition of law by the Hon'ble Supreme Court, this is not a fit case to grant anticipatory bail to the petitioner. There is *prima facie* case against the petitioner. The allegations are serious in nature and keeping in view conduct of the petitioner as well as essential parameters for consideration of bail petition i.e. nature of offence, the punishment thereto, possibility of her tampering with the prosecution evidence in case of her release on bail, likelihood of her fleeing away from the jurisdiction of the Court etc. to my mind, a deeper probe is required to unearth the truth and their *modus operandi* for which custodial interrogation of the petitioner is necessary.

No other point has been argued.

Accordingly, the petition is dismissed.

Nothing stated herein above shall be construed as an expression of opinion on the merits of the case.

(NAMIT KUMAR)
JUDGE

15.03.2023
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No