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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-47919 OF 2023 (O&M)
DATE OF DECISION: 05.10.2023****Prabhat Sanotra****...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present: Ms. Santwana Aggarwal, Advocate,
For the petitioner.

Mr. Karan Garg, AAG, Haryana.

ARUN MONGA, J. (ORAL)

Following the denial of bail by the learned trial court, the petitioner is now before this court seeking his release as an undertrial in a case with FIR No.109 dated 21.05.2021, registered under Sections 120-B, 419, 420, 467, 468, 471 of the Indian Penal Code, 1860 (IPC) at the Sushant Lok Police Station in Gurugram.

2. According to the prosecution's case, FIR was registered on 21.05.2021 based on a complaint filed by Hero Housing Finance Limited (HHFL) through its authorized representative, Shri Vikram Saw. The complainant is a housing finance company duly registered under the Companies Act, 2013.

2.1 The complaint alleged that accused Manoj Sharma, Vandana Sharma, The Circus Entertainment Pvt. Ltd., Vicky Phillips Thomas, and Geetanjali committed fraud upon the complainant company by obtaining a housing loan using forged and fabricated documents to siphon off the loan amount. After the loan was disbursed, a significant portion of the sale proceeds was re-transferred to the account of the purchaser by the sellers. PAN Cards of the accused persons were issued with fake addresses, and they manipulated both

the loan documents and the ownership documents of the property. Accused Vicky Phillips Thomas was a co-borrower along with accused Manoj Kumar Sharma and Vandana Sharma. The Circus Entertainment Pvt. Ltd. availed a credit facility of Rs.1 crore 51 lakh, and accused Vandana Sharma was the mortgagor who executed the memorandum of deposit of title deeds.

2.2 The accused persons also availed a second loan of Rs.1,77,67,000/- (One Crore Seventy Seven Lakh and Sixty-Seven Thousand only) vide a sanction letter dated July 30, 2019. When the accused failed to repay the loan amount, it was discovered that they had forged the property papers of the mortgaged properties by misrepresenting themselves as purchasers and sellers. Based on the disclosure statements of co-accused, the petitioner was nominated as an accused in this case. He was in custody in FIR No.184 of 2021 of Police Station Palam Vihar, Gurugram, and was arrested in this case on production warrants on April 18, 2023. According to the disclosure statements of co-accused, the petitioner used to find purchasers for selling the plots of Ansal Company in Sushant Lok and Palam Vihar based on forged documents.

3. Learned counsel for the petitioner contends, among other things, that based on the same set of allegations and similar transactions, as alleged to have taken place in the present FIR, three more FIRs were registered at the instance of other complainants where the petitioner's name was also included as an accused based on disclosure statements of other accused. She further submits that while the petitioner has been granted bail in the other three FIRs by the learned Sessions Court, as evidenced by orders contained at Annexures P-3 to P-6 respectively, he was denied bail in the present FIR on the ground that some of the co-accused were yet to be arrested. She points out that the same situation exists in the three FIRs where some of the accused are yet to be arrested.

3.1 She contends that the yardstick adopted to decline bail to the petitioner on the ground of the non-arrest of other co-accused is arbitrary. She

further submits that as far as the petitioner is concerned, the investigation against him is complete as the challan has already been presented.

3.2 She urges that nothing is to be recovered from the petitioner, and he is not required for further custodial interrogation. There is no likelihood of the petitioner tampering with evidence and/or influencing prosecution witnesses.

3.3 Learned counsel for the petitioner further contends that co-accused Vandana Sharma, who is the main accused, has been granted interim anticipatory bail by this Court vide an order dated 01.05.2023 (Annexure P-2) passed by a Co-ordinate Bench of this Court in CRM-M-21912-2023. She argues that the petitioner's case is on a much better footing than that of his co-accused. Therefore, on grounds of parity, the petitioner deserves to be released on bail.

4. On the other hand, the learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. She submits that the allegations against the petitioner are serious, and some of the accused are yet to be arrested.

5. I have heard the rival contentions of learned counsels for the parties and have gone through the case file.

6. In response to a query from the Court, under instructions from ASI Pawan Kumar, the learned State counsel informs that challan was filed on May 29, 2023. Investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. At this stage, the allegations against the petitioner are subject to trial. Of the twenty-eight prosecution witnesses, none have been examined so far. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since April 18, 2023, for about 06 months.

7. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

8. Be that as it may, the offense allegedly committed by the petitioner is of a non-violent nature, and in that sense, his release on bail does not pose a threat to society at large by committing any violent crime. In any case, allegations against the petitioner are a matter of trial.

9. The petitioner is stated to be a 45-year-old family man. He has an old-aged mother, wife, and two children to look after who are living in sheer penury in his absence. Having a family and fixed abode, it is unlikely that he poses any flight risk and will flee from trial proceedings.

10. Co-accused Vandana Sharma has already been granted interim anticipatory bail by this Court.

11. Considering the overall scenario and without commenting on the merits of the case, I am of the view that no useful purpose would be served by keeping the petitioner in further preventive custody.

12. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

13. In case, petitioner is found involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.

15. Pending application(s), if any, shall also stand disposed of.

OCTOBER 05, 2023
Shalini

(ARUN MONGA)
JUDGE

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