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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 16.10.2023

Manoj Kumar Sharma

....Petitioner

V/s

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present: Mr. Aman Pal, Advocate for the petitioner.

Mr. Karan Garg AAG Haryana.

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**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 420, 467, 468, 471, 419 and 120-B of the Indian Penal Code, 1860 (IPC) at the Sushant Lok Police Station in Gurugram.

2. According to the prosecution's case, an 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 the accused Manoj Sharma (petitioner herein), 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

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property. Accused Vicky Phillips Thomas was a co-borrower along with petitioner Manoj Kumar Sharma and Vandana Sharma. The Circus Entertainment Pvt. Ltd. availed a credit facility of Rs.1 crore 51 lakh, and co-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) via 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. 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. The petitioner has been in custody in this case since March 02, 2023.

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, SIT is probing into thirteen more similar cases. He further submits that, in fact, the petitioner is the real victim in the present case as the bank officials have completely failed to conduct a proper inquiry before sanctioning the loan. Moreover, the bona fide of the petitioner can be seen from the fact that until January 2020, the petitioner was regularly paying the installments against the sanctioned loan. However, on account of Covid-19, the petitioner's business suffered, and he was unable to pay the installments.

3.1. Learned counsel for the petitioner relies on Apex Court's judgment in case titled **Sanjay Chandra versus CBI**<sup>1</sup> to canvass that, being a Magisterial trial, given the sheer duration of the custody as an undertrial, petitioner is entitled

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<sup>1</sup> AIR 2012 SC 830

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to concession of bail *de hors* the merits of the case. Imprisonment before conviction has a substantial punitive content, contends the learned counsel.

3.2. Furthermore, it is submitted that there is no substantial evidence against the petitioner. The petitioner's counsel also contends that there is no need for further custodial interrogation of the petitioner, as nothing remains to be recovered from him. Moreover, there is no indication that the petitioner would tamper with evidence or influence prosecution witnesses.

3.3. Learned counsel for the petitioner further contends that co-accused, namely Vandana Sharma and Prabhat Sanotra, have been granted interim anticipatory bail and regular bail by this Court via orders dated 01.05.2023 (Annexure P-10) passed by a Co-ordinate Bench in CRM-M-21912-2023 and 05.10.2023 (Annexure P-11) passed by this Court in CRM-M-47919-2013. He further 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.

3.4. He further states that as this is a Magisterial trial and the petitioner has already undergone seven months in preventive custody. He further argues that the petitioner is not required for custodial interrogation. Yet, the petitioner has been in custody since March 02, 2023. The challan has already been presented before the competent Court. The conclusion of the trial will take a long time. Thus, no useful purpose would be served by keeping him behind bars.

4. On the other hand, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. He further submits that the allegations against the petitioner are serious, and some of the accused are yet to be arrested. He further submits that petitioner is involved in another case of similar nature.

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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 March 02, 2023, for about 07 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 47-year-old family man. He has a wife and two children (one is a special child), 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 and Prabhat Sanotra have already been granted the concession of interim anticipatory and regular bail by this Court.

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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.

(ARUN MONGA)  
JUDGE

October 16, 2023  
*Ajay*

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