

2023:PHHC:152270
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.101

CRM-M-59331-2023
Date of decision:29.11.2023

Gouri Oberoi and others

...Petitioners

Versus

State of Haryana

...Respondent(s)

CORAM: HON’BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Nikhil Ghai, Advocate for the petitioners.

Mrs. Sheenu Sura, DAG, Haryana.

Mr. V.K. Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate for the complainant.

N.S. SHEKHAWAT, J.

CRM-49576-2023

Application is allowed, as prayed for. Exemption sought is granted.

Main case

1. The present petition has been filed under Section 438 Cr.P.C. with a prayer to grant anticipatory bail to the petitioners in FIR No.618 dated 24.10.2023 registered under Sections 406/420/120-B IPC at Police Station City Jagadhri, District Yamuna Nagar.

2. The FIR in the present case was registered on the basis of a complaint filed by Sanjay Kumar son of Dhan Parkash against the

petitioners and others. As per the complainant, on 15.06.2023, Sunil Kumar Oberoi-petitioner No.2 came to the office of the complainant and stated that he had to return the bank's payment and last date for making the payment to the bank was 16.06.2023. He told the complainant that he required money and therefore, he wanted to sell his plot measuring 2000 square yards situated at Mauzaa Gadhi Mundo, Jagadhri. The complainant asked petitioner No.2 as to who was the owner of the plot. He informed the complainant that the plot was in the name of petitioner No.2 himself, his wife (petitioner No.2), his nephew (petitioner No.3) and his brother Ashwani and made him to meet with them. The complainant entered into an agreement with the petitioners and other accused and five registered sale-deeds were executed on 16.06.2023 at Jagadhri. Before registration of the sale-deeds, the complainant told the accused that he wanted to get the plot measured, however, the accused told him to rely on them and assured him that they would deliver the possession of plot measuring 2000 square yards. Thereafter, the complainant requested the accused to get the plot measured but they kept on delaying the matter on one pretext or the other. Ultimately, the complainant got the plot measured from someone and got the site plan prepared and came to know that the size of the plot was 1480 square yards. On this, the complainant party asked the accused about this and then they told the complainant that sale-deeds have been executed and they did not have any other land. The complainant requested them to return the money or to complete the area but the accused threatened him that in case he demanded the money, they would either get him implicated in a false case or would get him eliminated. The accused, in connivance with each other, had executed the sale-deeds fraudulently by stating that the plot in question was of 2000 square yards, whereas on the

spot, it was found to be of only 1480 square yards. Now the accused were threatening the complainant to kill him or to get him implicated in a false case. With these broad allegations, the FIR in the present case was registered.

3. Learned senior counsel appearing on behalf of the petitioners submits that the petitioners have been falsely implicated in a criminal case. He further submits that an application was made by Ashwani son of Santa Ram regarding the demarcation of the area on 06.04.2017 and vide report (Annexure P-2) made by Patwari that the area in dispute was measuring 1999.66 square yards. Even the petitioners had secured loan from the bank and Yamuna Engineers and Valuers had given in their report that the area at the spot was 1999.66 square yards and the report of the valuer was enclosed as Annexure P-3. Still further, the petitioners were not able to pay the bank loan and in the e-auction, Kotak Mahindra Bank had also stated in the e-auction notice (Annexure P-4) that the plot was measuring 1999.66 square yards. Still further, the State Bank of India had also issued credit facilities to the tune of Rs.6 crores, which was sanctioned on 28.04.2017 and even in the report, they had fairly mentioned that the plot, which was given as collateral security, was 1999.66 square yards. Learned senior counsel further contends that even in the sale-deeds, it has been mentioned that the possession of the plot has been handed over to the complainant at the spot and it is unbelievable that the complainant made payment without getting the plot measured at the spot. Learned senior counsel further stated that even the mandatory provisions of the law have not been followed and the petitioners deserve to be granted the concession of anticipatory bail by this Court.

4. On an advance notice, learned State counsel has appeared in the present case. Even the prayer made by learned senior counsel for the petitioners has been vehemently opposed by learned senior counsel appearing on behalf of the complainant.

5. Learned State counsel has submitted that the police had written to the Tehsildar, Jagadhri regarding the demarcation of the plot in question and as per the same, it has been found that the plot measuring 1487 square yards was there at the spot, whereas the complainant side had purchased 2000 square yards of area. Learned senior counsel for the complainant submits that the petitioners were well aware about the fact that the plot at the spot was measuring 1487 square yards, still the petitioners and other co-accused executed the sale-deeds of the plot measuring 2000 square yards and duped the complainant of lakhs of rupees. He further submitted that as per Section 55 of the Transfer of the Property Act, 1882, the seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover. Still further, the seller is also under a legal obligation to hand over the possession of the property to the purchaser. Apart from that, by showing false documents, the sale-deeds were executed by the accused fraudulently in favour of the complainant.

6. Since the petitioners claimed, on the strength of documents, Annexures P-2 to P-5, that the area of plot in dispute was 1999.66 square yards (2000 square yards), so learned senior counsel for the petitioners was asked to offer the possession of 2000 square yards to the complainant, however, learned senior counsel for the petitioners expressed his inability to

it stands established that the documents Annexures P-2 to P-5 were managed by the petitioners, just to cheat the innocent buyers, that is the present complainant.

7. Even otherwise, I have heard the learned counsel for the parties in length and perused the case file minutely. It appears that the petitioners are habitual offenders. The averments made by the petitioners in para 18 of the petition would substantiate the said observations and para 18 thereof is reproduced below:-

- i) Complaint Case No.650/2022 u/s 138 of N.I. Act.
(Lodged against petitioner No.1)
- ii) Complaint Case No.397/2022 u/s 138 of N.I. Act
- iii) Complaint Case No.2701/2019 u/s 138 of N.I. Act
- iv) Complaint Case No.3014/2019 u/s 138 of N.I. Act
- v) Complaint Case No.3013/2019 u/s 138 of N.I. Act
- vi) Complaint Case No.2704/2019 u/s 138 of N.I. Act
- vii) Complaint Case No.2455/2019 u/s 138 of N.I. Act
- viii) Complaint Case No.834/2020 u/s 138 of N.I. Act
- ix) Complaint Case No.630/2020 u/s 138 of N.I. Act
- x) Complaint Case No.57/2020 u/s 138 of N.I. Act
- xi) Complaint Case No.56/2020 u/s 138 of N.I. Act
(the above-said complaints were lodged against petitioner No.2).
- xii) FIR No.108 dated 22./04.2023 u/s 174-A IPC P.S. Sector-17, HUDA, Jagadhri.
- xiii) FIR No.109 dated 22./04.2023 u/s 174-A IPC P.S. Sector-17, HUDA, Jagadhri.
- xiv) FIR No.111 dated 24.04.2023 u/s 174-A IPC, P.S. Sector-17, HUDA, Jagadhri
- xv) FIR No.112 dated 24.04.2023 u/s 174-A IPC P.S. Sector-17, HUDA, Jagadhri.

(Petitioner No.2 was declared proclaimed person and above-said FIRs were registered against him.)

xvi) Complaint Case No.3014/2019 u/s 138 of N.I. Act.
(lodged against petitioner No.3).

8. Having heard the learned counsel for the parties and after perusing the record, this Court is of the considered opinion that the conduct of the petitioners is deplorable and they have duped the complainant of his hard earned money of lakhs of rupees. It is apparent that the petitioners have not only cheated the present complainant but several other criminal complaints have been filed against them. Apart from that, it is also established that petitioner No.2 was declared a proclaimed person and four FIRs were registered against him in this regard. Thus, there are chances that the petitioners may abscond from the process of law.

9. Considering the peculiar facts and circumstances of the case noted above and keeping in view the gravity of the offence, the custodial interrogation of the petitioners would be required in the present case and accordingly, the present petition stands dismissed.

29.11.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO