209 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34136-2024
Date of Decision: 05.09.2024

Amrita Nath ..... Petitioner

Versus

State of Haryana ....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Gurmandeep Singh Sullar, Advocate,
Mr. Devaki Anand Sullar, Advocate and
Mr. Haneesh Kumar, Advocate, for the petitioner.

Mr. Sumit Jain, Addl. AG, Haryana.

Mr. P.S. Ahluwalia, Advocate and
Mr. Keerat Dhillon, Advocate, for the complainant.

Rajesh Bhardwaj, J.

1. The petitioner has approached this Court praying for granting her anticipatory bail in a case FIR No.186, dated 22.05.2024, registered under Sections 120-B, 406, 420 IPC, at Police Station Sushant Lok, District Gurugram.

2. Succinctly, the case of the prosecution as enumerated from the facts and circumstances is that the complainants, namely, Mr. Arjun Mehta, Mr. Satish Kumar Mehta and Mrs. Benhur Singh lodged complaint against Amrita Nath (petitioner) and Asha Nath before the Police. It was alleged that they were looking for purchasing a residential property in Gurugram for their self occupation. In December, 2023 through broker Mr. Varun Arya, the accused met the complainants regarding the sale of the residential property bearing No.PND-074 located on the 7th floor, Block D, The Pinnacle, DLF City Phase V, Gurugram, measuring 4095 sq. ft. On the assurance that title of the accused persons regarding property was free from all encumbrances, both the accused entered into the agreement to sell with

the complainants on 14.12.2023. The property was jointly owned by both the accused and total sale consideration was agreed to be a sum of Rs.8,40,00,000/-. The complainants transferred a sum of Rs.1,68,00,000/- by way of cheques and the date of the sale deed was agreed to be on or before 15.03.2024. However, after having been transferred the earnest amount of Rs.1,68,00,000/-, the complainants found that the accused Asha Nath i.e. the mother of the petitioner had transferred her right, title and interest in the property to accused Amrita Nath on 01.09.2016 by way of transfer deed bearing No.15229 of 2016. Hence, the complainants objected to the same and on doing so, both the sides agreed to enter into a fresh agreement dated 21.12.2023, which was only between the petitioner and the complainants. An amount of Rs.84,00,000/- returned by accused Asha Nath to the complainants and was transferred by the complainants in the account of the petitioner, namely, Amrita Nath. It was agreed that Rs.2,32,00,000/- would be transferred on or before 31.01.2024. Hence, a sum of Rs.1,03,66,000/- each was transferred by Satish Kumar Mehta and Arjun Mehta on 24.01.2024 and on 31.01.2024, Arjun Mehta transferred a sum of RS.24,68,000/-. It was alleged that the complainants had duly informed the accused that they would be availing a loan for a part of total consideration and the accused persons assured them for all possible assistance. On 03.02.2024, the complainants were sanctioned a loan of Rs.4,50,00,000/- by the SBI subject to further verification and completion of the documents. However, in second week of March, 2024, the complainants were informed about the defective title of the property by the bankers as the General Power of Attorney dated 21.01.2016 executed by Asha Nath i.e. mother of the petitioner in favour of the petitioner did not specify about the property. It was informed immediately by the complainants to the accused for signing the rectification deed, which was required for the registration of the sale deed by 15.03.2024. On 12.03.2024, the complainants paid a sum of Rs.8,40,000/- against the sale deed consideration and on 13.03.2024, they paid stamp duty of Rs.52,08,000/-. However, on 14.03.2024, accused persons refused to execute the rectification deed and hence, the complainants could not avail the loan from the Bank and thus, were illegally restrained from executing the sale deed by the accused persons after having been received the part payment of Rs.4,00,00,000/- (Rupees Four Crores). It is alleged that the accused persons intentionally created the circumstances for collapse of the agreement to sell and thereafter, put the condition of renegotiation at the current market price for the purchase of this property. It was thus alleged that the accused persons had clandestinely entered into the agreement with the complainants to usurp their hard earned money with a clear intention not to execute the sale deed for which they had entered into the agreement to sell. Hence, it was prayed that the accused having committed the offence of cheating, legal action be taken against them. On the basis of the complaint lodged, the FIR was registered and investigation commenced. Apprehending arrest, the petitioner approached the Court of learned Additional Sessions Judge, Gurugram for grant of anticipatory bail, however, after hearing both the sides, the Court finding no merit in the same, declined the petition filed by the petitioner vide his order dated 19.06.2024. Aggrieved by the same, the petitioner is before this Court praying for grant of anticipatory bail.

3. Learned counsel for the petitioner has vehemently contended that from the facts and circumstances of the case, it is apparent that the dispute among the parties is purely of civil nature, however, just in order to usurp the property of the petitioner, the complainants have given a colour of criminal nature to a purely civil dispute existing between the parties. He has submitted that first agreement to sell was executed between the parties on 14.12.2023, however, as there was an objection regarding the transfer deed made by the mother of the petitioner in her favour, second agreement to sell was duly signed by the petitioner in favour of the complainants on 21.12.2023. He submits that as per the terms and conditions of the agreement to sell dated 21.12.2023, it was agreed that an amount of Rs.2,32,00,000/- shall be paid by the purchasers to the sellers on or before 31.01.2024 and the residue amount of Rs.4,40,00,000/- shall be paid by the purchasers to the sellers on or before 15.03.2024. The last date for completion of the sale transaction was 15.03.2024 and in the event of any parties failing to fulfill their obligation, the parties shall be entitled to exercise their respective rights as provided under Clause 17 of the agreement. He has submitted that as per Clause 17 of the agreement, the aggrieved party would have the right to get the sale completed through specific performance of the agreement through the Court of law at the cost and expenses of the defaulting party. He thus submits that the petitioner and her mother had executed the first agreement dated 14.12.2023, however, thereafter to rectify the mistake as pointed out by the complainants, fresh agreement dated 21.12.2023 was duly executed. It is submitted that raising the loan from the Bank by the complainants, is solely the responsibility of

the complainants and the petitioner is not responsible for the same. The petitioner was ready to execute the sale deed in accordance with the terms and conditions of the agreement to sell. He submits that the rectification deed as alleged by the complainants is without any justification and the petitioner was not bound to sign the same as it was never the part of the agreement to sell, entered between the parties. He went on to argue that non-signing of the rectification deed had no bearing on the sanction of the loan by the Bank and this issue has been created by the complainants to create impediments in the execution of the sale deed by blaming the petitioner for violating the terms and conditions of the agreement. He submits that the complainants failed to fulfill the terms and conditions of the agreement on or before the agreed date i.e. 15.03.2024 and thus, the agreement arrived at between the parties had collapsed and if the complainants are keen to purchase this property, then they have to enter into a fresh agreement with the petitioner at the current market price. It is submitted that on one hand the complainants failed to comply with the terms and conditions of the sale deed by the due date and thereafter, they want to purchase the valuable property of the petitioner at a throw away price. He has relied upon the judgments of Hon'ble Supreme Court in Radheyshyam and others vs. State of Rajasthan and another, in Criminal Appeal No.3020 of 2024 decided on 22.07.2024, A.M. Mohan vs. The State represented by SHO and another, Law Finder Doc Id # 2524814, Gulam Mustafa vs. State of Karnatka and another, 2023 SCC OnLine SC 603, Kunti and another vs. State of Uttar Pradesh and another, (2023) 6 Supreme Court Cases 109, Vesa Holdings Private Limited and another vs. State of Kerala and others, (2015) 8 Supreme Court Cases

293, Paramjeet Batra vs. State of Uttarakhand and others, (2013) 11 Supreme Court Cases 673 and judgment of this Court in Charanjit Sharma and another vs. State of Punjab and others, in CRM-M-47809-2018 decided on 15.11.2023. He submits that no *prima facie* case as alleged is made out against the petitioner in the facts and circumstances of the case and thus, the petitioner deserves to be granted anticipatory bail.

4. Per contra, Mr. P.S. Ahluwalia, Advocate, for the complainants has vehemently opposed the submissions made by counsel for the petitioner. It has been submitted by counsel for the complainants that the petitioner right from the beginning entered into the agreement with a malafide intention. It is submitted that first agreement to sell was entered into between the parties on 14.12.2023, whereby the complainants were given due assurance that the property is free from all encumbrance, however, when the complainants approached the Bank for the sanction of the loan, title of the property was found to be defective, as Asha Nath, i.e. mother of the petitioner, was found to have executed a transfer deed in favour of the petitioner. Though the complainants were assured that the title is free from any defect, however, this fact was concealed by the accused. He submits that on the request made by the complainants, the accused entered into a fresh agreement with the complainants. He submits that it was duly informed by the complainants to the petitioner that for the part payment the complainants would have to raise a loan from the Bank. The Bankers promised to sanction the loan subject to verification of the documents of the property. It was found that the General Power of Attorney, which was executed by one of the accused, does not specify about the property involved in the present case,

hence, rectification deed regarding the title was drafted and the same was sent to the petitioner. He submits that the petitioner refused to sign the rectification deed and thus, the petitioner deliberately created a hurdle for the complainants so as to make it impossible for them for availing loan, which would result into collapse of the agreement arrived at between the parties. He submits that immediately after the expiry of the due date, the petitioner invested the money received from the complainants in shares, debentures etc. and not only this, she further mortgaged the property in dispute, so as to create as many as hurdles as she could have, to restrain the complainants from availing their further remedy. He submits that if intention of the petitioner had been to obey the terms and conditions of the agreement, the same could have been extended as well on the terms and conditions already existed, but refusal of the petitioner to continue with the agreement and enter into a fresh agreement on the basis of the current market price clearly speaks about the malafide intention of the petitioner while entering into the agreement to sell with the complainants. He submits that the Investigating Agency has also initiated the investigation and as per the investigation, *prima facie* case as alleged is made out against the petitioner. He submits that co-accused in the present case i.e. the mother of the petitioner, is already involved in two more cases and thus, the antecedents of the petitioner also substantiate the allegations of complainants of being cheated by the petitioner. He submits that there being a strong *prima facie* case having made out against the petitioner, grant of anticipatory bail to her would scuttle the on going investigation and thus, there being no extra ordinary circumstances having been existed, she does not deserves the grant of anticipatory bail. Thus, he submits that the present petition being devoid of any merit, deserves to be dismissed with exemplary costs.

5. Learned State counsel has equally opposed the submissions made by counsel for the petitioner. He has drawn the attention of this Court to the status report filed by way of affidavit of Susheela, HPS, Assistant Commissioner of Police, Head Quarter, Gurugram. He has submitted that the investigation has already commenced in the present case. First agreement to sell was entered into between the parties on 14.12.2023 for a consideration of Rs.8,40,00,000/-, however, there being a defect in the title another agreement to sell was entered into between the parties on 21.12.2023. He submits that it has come in the investigation that the complainant had prepared a rectification deed from their broker Varun Arya and sent to the accused on 12.03.2024, however, this rectification deed was not signed by the petitioner, which has resulted in cancellation of approved loan of the complainants on 14.03.2024. It is submitted that an amount of Rs.4 crores received from the complainants, has been used by the accused-petitioner and her mother for their personal purpose and has been invested in mutual funds and purchasing new property in the months of January and February, 2024. He submits that the petitioner had not only misappropriated Rs.4 crores received from the complainants, but also mortgaged the property in dispute with the Axis Bank and additionally taken a loan of Rs.4 crores on the same. The amount so received by the accused has been invested in the mutual funds. He submits that as per the investigation done so far, the petitioner alongwith her mother had committed fraudulent acts. He submits that mother of the petitioner i.e. Asha Nath has been found to be involved in two

other cases i.e. FIR No.140 of 2016, under Sections, 403, 406, 149, 420, 467, 468, 471 and 120-B IPC at Police Station APMC Yard, Belagavi City, Karnataka and FIR No.318 of 2016, under Sections 403, 406, 419, 420, 467, 468, 471, 120-B IPC at Police Station Market, Belagavi City, Karnataka. He thus, submits that no exceptional circumstances are made out in favour of the petitioner and granting anticipatory bail to her would prejudice the on going investigation.

6. Heard.

7. After hearing learned counsel for the parties and perusing the record, it is apparent that the case in hand primarily relates to the purchase of the property by the complainants from the petitioner. At the initial stage, first agreement to sell was entered on 14.12.2023. On one hand, the petitioner and co-accused i.e. her mother as the sellers and on the other hand, the complainants as the purchasers. It was assured to the complainants that the property under consideration is free from any dispute. However, finding the dispute of title, the complainants approached the petitioner for rectification of the same and the petitioner/seller having expressed an inadvertent mistake entered into a fresh agreement to sell on 21.12.2023. However, *prima facie*, it has been found that this fact was concealed by the petitioner and her mother. It is apparent from the record that out of total sale consideration of Rs.8,40,00,000/-, Rs.4,00,00,000/- were paid by the complainants as per the terms and conditions of the agreement arrived at between them. It was duly informed by the complainants to the petitioner that for the part payment, the complainants would have to avail a loan from the Bank, for which the petitioner had assured to provide all assistance as required for sanctioning of the loan on this property. As the appointed date

for the execution of the sale deed drawn closer, further defect in the title of the property was noticed by the Bank, as the General Power of Attorney executed by mother of the petitioner in favour of the petitioner, did not specify about the property which was being purchased by the complainants. Hence, rectification deed was drawn to be signed by the petitioner seller, but the petitioner refused to sign the same and hence, essential loan for the execution of the sale deed could not be availed by the complainant. Obviously, the due date for the execution of sale deed elapsed.

8. Counsel for the petitioner on one hand has raised the argument that the petitioner had no malafide intention as they were ready to execute the sale deed in terms of the agreement to sell, whereas, on the other hand, he argued that signing of the rectification deed is not part of the agreement to sell, thus, the petitioner is not ready to execute the same. He failed to point out any prejudice caused to the petitioner, if the petitioner was seriously ready to execute the sale deed. Specific stand taken by counsel for the petitioner before this Court is that even now the petitioner is ready to enter into a new agreement but the same would be at the current market price. Double stand taken by the petitioner reveals about the intention of the petitioner while entering into the agreement to sell. The petitioner after having taken a hefty amount of Rs.4 crores from the complainants, has not only invested it further, but had also mortgaged the property further. The argument raised by counsel for the petitioner to enter into a fresh agreement at the current market price creates a doubt on her intention. Had the Reality market crashed after having entered into the agreement, the stand of the petitioner in that situation would have been otherwise, as is evident from the

facts and circumstances of the case. There is no doubt that one of the aspects of the case in hand, is of civil nature, however, in the facts and circumstances of the case, the criminal aspect arising therein cannot be ignored.

9. In all its humility, there is no doubt regarding the law relied upon by counsel for the petitioner, however, in the facts and circumstances of the present case, the same are distinguishable. The present case is for the grant of anticipatory bail. The petitioner is to make out exceptional circumstance for exercising the power by the Court and to invoke its extra ordinary power in her favour.

10. Hon'ble Supreme Court in **State represented by CBI Vs. Anil Sharma,** (1997) 7 SCC 187 has held as under:-

> "6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disintering many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disintering offences would not conduct themselves as offenders."

11. Hon'ble Apex Court in plethora of judicial precedents including

<u>Gurbaksh Singh Sibbia Vs. State of Punjab</u>, AIR 1980 SC 1632, has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of his fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which should be exercised in the extraordinary circumstances.

12. As per law settled in catena of judgments of Hon'ble Supreme Court, custodial interrogation is not the only factor for the consideration of the anticipatory bail, but it is one of the factors. The Court is to see whether there is a *prima facie* case made out against the petitioner as alleged in the FIR.

13. Weighing the facts of the case on the anvil of the law settled, it is apparent that the complicity of the petitioner has been *prima facie* established. The investigation is at its threshold. Thus, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

14. In view of the facts and circumstances of the present case, this Court is of the opinion that the petitioner does not qualify for exercising the extraordinary power by this Court in her favour. Resultantly, the petition being devoid of any merit is hereby dismissed.

15. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

05.09.2024
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/Nos