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

Sr. No.235

**CRM-M-54004-2024(O&M)
Date of decision : 06.11.2024**

Sarjeet

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. S.K. Tripathi, Advocate, for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.283 dated 24.08.2023, under Sections 420, 467, 468, 471 & 120-B IPC registered at Police Station Sector-5, Gurugram, District Gurugram.

2. The relevant part of the FIR is reproduced below:-

“That the complainant had given a complaint against the above accused persons to the Police Commissioner, Gurugram which is under consideration in Sector 5 and the diary No. of the same is 16396/CP/2022 dated 20.10.2022, whose investigation is being done by ASI Pardeep Kumar. Investigating Officer is not doing any action even in the serious case of forged registry. Accordingly complainant wants to get arrested the accused persons involved in the forged registry at the earliest after loading the case against them, otherwise the accused persons will run after leaving the India. Accordingly, the complainant is being given for taking earliest action by the Police Administration. 2. That one house of the complainant bearing No. 96/21/3-12 is situated in Village Gurugram measuring 200 square yards and the complainant is owner in

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possession of the above vide will Vasika No. 15 dated 12.05.1983 and on basis of the mutation No. 49451 sanctioned on 16.12.2012. The documents of the house are annexed with the instant complaint. 3. That the above house is continuously coming in the name of deceased Hira Lal in the record of Municipal Corporation Gurugram since the year 2008-2009 and in the name of complainant since 2017-2018. That the house of the complainant is situated in Khasra No 3918/2265 and the same is duly recorded in the revenue record vide mutation No. 49451 sanctioned on 16.12.2012. 5. That on dated 25.02.2020 the telephone had come to the complainant of some person that in your house the antisocial persons had taken the possession after breaking the locks, regarding which the complainant had given the complaint against the accused persons on dated 26.02.2020 and 29.02.2022 to the DCP but the police of police station Sector 5 had not taken any proceeding against the accused person and thereafter the complainant had given one complaint No 1428 dated 13.03.2021, diary No. 173-5P dated 16.02.2021, police station sector 5 diary No 275-SP dated 15.03.2021, 5710-D dated 29.09.2021, 1224 SP dated 30.09.2021 and complaint No 661-5A dated 15.07.2021 and the complaints were given to SHO sector 5 and higher official and stated that the action may kindly be taken against the accused persons involved in the forged registry. 6. That in spite of the house/plot of the complainant recorded in the revenue record in Khasra Number, accused Sher Singh even after not the owner of the plot/house had sold the same after deep conspiracy and after showing the house within the Lal dora on the basis of the false report of Tehsildar and the Patwari of Municipal Corporation to the Naveen Kumar son of Ramesh Kumar vide sale deed No 33120 dated 07.03.2012. 7. That the investigation of the above complaint was got done by SI Rattan Pal, Police station Sector

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5 Gurugram and during the investigation the complainant her husband were being called in the police station many times by the investigating officer and the investigating officer had personally enquired from Naveen Kumar, Neeraj Arora, Sarjit Patwari, Mahender Sharma, Virender Kumar and had recorded the statements and the collective statements were being recorded of the persons living adjoining to the house but it was revealed during the enquiry that the house of the complainant had been sold by Sher Singh while showing actual owner and after in conspiracy with Tehsildar and Sarjit Patwari and the house was sold to Naveen Kumar, the copies of the statements are annexed. 8. That the investigating officer instead of loading the case against the accused person on the complaint of the complainant, the complaint was got dismissed by saying that the complainant is not being involved in the investigation even after repeated calling. While the investigating officer had recorded the statement of the complainant and had enquired and there are due signature of the complainant of the same. 9. The Investigating Officer instead of loading the case the possession of the house was got delivered back to complainant from Naveen Kumar after calling him in the police station but no case was lodged against the accused persons for executing forged registry after conspiracy and fraudulently while Sher Singh son of Ram Chander was not having any document of ownership for the purpose of registry. 10. That during the enquiry the statements which were being recorded by Sarjit Patwari and Neeraj Arora in the same they had accepted that Sher Singh had got done the above wrong act from us while giving greed and while cheating. 11. That in this regard Naveen Kumar had duly given his affidavit in the police station for giving the possession to the complainant that Sher Singh etc had committed forgery but Naveen Kumar had not taken any legal action against the above accused person Sher Singh,

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meaning of the same is that both are in connivance with each other. All the accused persons who are involved in the above forged registry the case may kindly be lodged against each of them. 11. That in the above forged registry the duplicate owner Sher Singh, purchaser Naveen Kumar, the Patwari who had done signature on the report, Tehsildar and all the witnesses of the registry are involved. 12. That when the complainant had taken the information about the progress of her complaint then it was revealed that investigating officer Rattan Pal instead of loading the case against the accused persons, the complaint had close on the pretext that the complainant is not being involved in the investigation even after asking which is incorrect. So it is requested to your good self that appropriate legal proceedings may kindly be taken against the above accused person for doing forged registry by showing the house of the complainant within Lal Dora in a fraudulent manner and for taking illegal possession and the strictest action may kindly be taken against all the accused person who are involved in the above criminal conspiracy. Dated 1.1.2023, Sd/- complainant Phoolwati d/o Late Sh. Hira Lal and wife of Sh. Krishan Lal.”

3. Learned counsel for the petitioner *inter alia* submits that the allegation against the petitioner, who is a Patwari, is that the petitioner has prepared a false report without physical verification of the lal dora. He further submits that the plot in question is now with the complainant. He also submits that the petitioner has been falsely implicated in this case. The petitioner has undergone an actual custody of 04 months and 18 days and there is no other criminal case registered against him. The petitioner has clean antecedents.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the

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petitioner was actively involved in the commission of the offence. He has filed custody certificate in Court and as per custody certificate, the petitioner has undergone an actual custody of 04 months and 18 days, however, he submits that there is no other criminal case registered against him. He on instructions from the concerned investigating officer submits that the charges were framed on 08.10.2024 and out of a total of 20 prosecution witnesses, none has been examined till date. He however, contends that in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

6. Admittedly, the petitioner has undergone custody period of 04 months and 18 days and there is no other criminal case registered against him. The petitioner has clean antecedents. The investigation is complete and out of a total of 20 prosecution witnesses, none has been examined till date. It would be unjust to keep him behind bars looking at the condition of the jails which are not conducive for rehabilitation process and detaining the accused persons in jails would also tantamount to violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle "Bail is a rule, jail is an exception" as elucidated in the judgment of Apex Court in **"Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22"**.

7. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending

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trial/appeal cannot be unduly long. The Apex Court in “Abdul Rehman Antulay and others v. R.S. Nayak and another”, 1992(2) RCR (Criminal) 634 observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

8. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Further, considering the aspect that the trial will take a considerable time to conclude, this Court is of the considered view that further incarceration of the petitioner will not serve any purpose.

9. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.

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- (V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.
11. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.
- Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)

JUDGE

06.11.2024

Ramandeep Singh

Whether speaking / reasoned

Whether Reportable

Yes/No

Yes/No