

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **BAIL APPLICATION NO. 51 OF 2010**

+ Date of Decision: 12th April, 2010

DEVENDER KUMAR AGGARWAL ...Petitioner

! Through: Mr. Rakesh Kumar Khanna, Sr.
Advocate with Mr. Shailendra Singh and
Ms. Madhusmita Singh, Advocate.

Versus

\$ **STATE NCT OF DELHI** ...Respondent

^ Through: Mr. Sanjay Lau, APP

WITH

% **BAIL APPLICATION NO. 60 OF 2010**

DEVENDER KUMAR AGGARWAL ...Petitioner

! Through: Mr. Rakesh Kumar Khanna, Sr.
Advocate with Mr. Shailendra Singh and
Ms. Madhusmita Singh, Advocate.

Versus

\$ **STATE NCT OF DELHI** ...Respondent

^ Through: Mr. Sanjay Lau, APP

WITH

% **BAIL APPLICATION NO. 61 OF 2010**

DEVENDER KUMAR AGGARWAL ...Petitioner

! Through: Mr. Rakesh Kumar Khanna, Sr.
Advocate with Mr. Shailendra Singh and
Ms. Madhusmita Singh, Advocate.

Versus

\$ **STATE NCT OF DELHI** ...Respondent

^ Through: Mr. Sanjay Lau, APP

AND

% BAIL APPLICATION NO. 62 OF 2010

DEVENDER KUMAR AGGARWAL ...Petitioner
! Through: Mr. Rakesh Kumar Khanna, Sr.
Advocate with Mr. Shailendra Singh and
Ms. Madhusmita Singh, Advocate.

Versus

\$ STATE NCT OF DELHI ...Respondent
^ Through: Mr. Sanjay Lau, APP

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

ORDER

P.K.BHASIN, J:

The petitioner Devendra Kumar Aggarwal is claiming his release from jail on bail by filing four separate applications in respect of four criminal cases of cheating etc. arising out of four FIRs registered against M/s Lakshmi Vatika Ltd.('LVL' in short), of which he is the Chairman-cum Managing Director, and its other Directors. Since all the four cases came to registered under similar circumstances at the instance of different duped persons and these four bail applications involve common facts and were heard also analogously the same are being disposed of by this common order.

2. The aforesaid Company LVL and its Directors, including the petitioner, are being prosecuted for having duped thousands of persons who were dreaming of owning residential plots in different cities of crores of rupees. As per the complaint(in BA No. 51/10) of a large group of people who had paid money to LVL through its Directors the accused had collected over fifty crores of rupees towards registration/advance money by promising the people plots of various sizes in the city of Dehradun. It was allegedly represented to the public at large that LVL owned about 100 acres of land in Dehradun for developing there a dream project by the name of 'Drona City' but later on it transpired, when LVL had already collected crores of rupees, that this Company did not own even an inch of land there and even the Bhoomi Pujan ceremony was stage-managed and organized at a site in Dehradun which did not belong to the Company though the public persons who had been induced to enter into contracts of sale of plots and were escorted to that site in its own transport were represented that that site belonged to LVL. Similarly LVL through its Directors including the petitioner herein entered into sale agreements with various people for sale of plots in Mumbai, Mohali and Patna in respect of which transaction three FIRs were registered, when, in fact, the Company had no land there also. Various complaints came to be lodged with the EOW Cell of Delhi Police since LVL and its Directors/Managers etc. were based and have been operating from Delhi.

3. Bail application no. 51 of 2010 is in respect of FIR No. 647/07 registered at the instance of persons who had entered into agreements for purchase of plots in Dehradun. Bail application no. 60/2010 is in respect of FIR No. 494/07 lodged by the duped persons who had entered into agreements with LVL for the purchase of plots in Mumbai. Bail application no. 61/2010 is in respect of FIR No. 594/07 lodged by the persons who had entered into agreements for purchase of plots in Mohali and bail application No. 62/2010 is in respect of FIR No. 06/08 lodged by the persons who had entered into agreements for purchase of plots in Patna.

4. On behalf of the petitioner – accused learned senior counsel Mr. Rakesh Khanna advanced arguments in support of these applications for release of the petitioner – accused on bail. From the submissions made by Mr. Khanna it appeared that it was not being disputed that LVL had obtained crores of rupees from public at large while promising them allotment of plots of land of various sizes in different cities. However, the main reason for not fulfilling the promises and assurances by the said Company and its Directors etc., as could be made out from the submissions of the learned senior counsel, appears to be ‘global recession’. Because of the recession in the real estate market most of the investors had allegedly decided to cancel the agreements and had opted to ask for refund of the money paid by them and since there was exodus of such category of investors the Company became helpless in

going ahead with its various projects of development of lands and consequently the investors approached the police and the police, in turn, as per the petitioner's case had converted disputes of civil nature into criminal cases in order to pressurize the Directors of LVL to return the money to the investors which was not possible in one go since the money so obtained from the investors stood invested in the Company's projects. Mr. Khanna had contended that LVL has already floated a scheme for settlement of the claims of thousands of its investors and necessary petition under Sections 391/392 of the Companies Act was pending in this Court and most likely the scheme which was approved by most of the investors during the investors' meeting convened pursuant to the orders of the Company Bench of this Court would get approval of the Company Court also. Therefore, Mr. Khanna contended, there were no *mala fide* intentions of the petitioner and no case is, *prima facie*, made out for the offence of cheating etc. in respect of which the investigating agency has already filed charge-sheets mechanically without considering the factual aspects. It was further contended by learned senior counsel that the petitioner and his Company has already settled with many investors and for settling the claims of remaining lot he could even be released on interim bail. In the end it was also argued that the petitioner in any event deserves to be released on bail, even if the allegations of cheating etc. are considered to be, *prima facie*, having some force in view of the fact that he has now already remained in jail for over 16 months and under no

circumstances he can kept in jail for indefinite period. In support of the submissions that in order to have the matter compromised with the various investors the petitioner should be granted at least interim bail and regular bail because of his being in jail for over a year Mr. Khanna cited some bail orders passed by this Court in different cases where the accused persons of those cases under similar circumstances, as exist in the present case, were granted interim bail and in some cases regular bail.

5. Seriously opposing the grant of bail to the petitioner – accused Mr. Sanjay Lau, learned Additional Public Prosecutor contended that there are various striking features peculiar to the case of the petitioner which definitely disentitle him the relief of bail despite the fact that he has remained in jail for over 16 months now. It was contended that the petitioner is an expert in floating schemes for duping public persons by raising tall claims in newspaper advertisements of being in a position to give plots of land to them in various cities without having an inch of land in its possession. It was further contended that the petitioner has been floating schemes after schemes for sale of plots in various cities (reference to which cities has already been made) but had failed to fulfil his promises and assurances and which he in any event could not have fulfilled because his Company never had any land to sell to the public in Dehradun, Mohali, Mumbai and Patna nor had LVL any permission/licence of the government authorities of these cities to sell plots. Mr. Lau

further contended that the petitioner when moved an anticipatory bail application had been granted interim protection by this Court on his assurance that he would clear the dues of the investors and had then delivered post-dated cheques to some of the investors but those cheques were bounced. That had resulted in not only the rejection of his anticipatory bail application but also in initiation of criminal contempt proceedings against him. In the contempt proceedings he could not be served as he had gone underground by that time but he had to surface when a Division Bench of this Court (of which I was also a member) had directed the police to attach all the movable and immovable properties in the name of the petitioner as well as LVL and his wife and children etc. My attention was drawn to the orders in that regard. It was contended that if a person can play fraud even upon the Court and it becomes difficult to ensure his presence to face criminal proceedings he does not deserve to be released on bail.

6. I have considered the various aspects and in particular the conduct of the petitioner – accused as highlighted by the learned Additional Public Prosecutor Mr. Lau and I am in full agreement with him that there are circumstances which are peculiar to the present petitioner – accused and there is a reasonable possibility of the presence of the accused not being secured at the trial. This is one of the considerations which the Court has to keep in mind while dealing with a bail application in a case of non-bailable offence. This, in fact, was the view taken by the Supreme Court

way back in the year 1962 in the case of “**State vs. Cap. Jagjit Singh**”, AIR **1962 SC 253**. The following observations of the Supreme Court made in para no. 3 of its judgment would clearly show that if there are circumstances from which it is reasonable to infer that it would be difficult to ensure the presence of the accused seeking bail at the trial the relief of bail should not be granted.

“3. Whenever an application for bail is made to a court, the first question that it has to decide is whether the offence for which the accused is being prosecuted is bailable or otherwise. If the offence is bailable, bail will be granted under S.496 of the Code of Criminal Procedure without more ado; but if the offence is not bailable, further considerations will arise and the court will decide the question of grant of bail in the light of those further considerations. It should then have taken into account the various considerations, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State, and similar other considerations which arise when a court is asked for bail in a non-bailable offence. It is true that under S. 498 of the Code of Criminal Procedure, the powers of the High Court in the matter of granting bail are very wide; even so where the offence is non-bailable, various considerations such as those indicated above have to be taken into account before bail is granted in a non-bailable offence. This the High Court does not seem to have done.....”

7. In the present case, the petitioner – accused has by his own conduct, as highlighted by the learned APP, during the pendency of his anticipatory bail application, disentitled himself for the relief of bail despite the fact that he has been in jail for over 16 months now which factor might have weighed in his favour in normal circumstances. The petitioner – accused has also not been able to show as to why he should be given the relief of interim bail to make payment to the investors in

instalments. He has not been able to show as to where the money collected by him and his co-accused persons from thousands of persons has gone and why they were not in a position to repay them their money in lump sum. Considering all these facts and circumstances, all the four bail applications are dismissed.

P.K. BHASIN,J

April 12, 2010
sh