

* IN THE HIGH COURT OF DELHI AT NEW DELHI

(1) BAIL APPLN. No. 2205/2009 & CRL.B.A. No. 863/2010
& CRL.M.A. No. 7928/2010

(2) BAIL APPLN. No. 2371/2009

(3) BAIL APPLN. No. 2454/2009 & CRL.B.A. No. 864/2010 &
CRL.M.A. No. 7929/2010

Reserved On: 19th July, 2010

%

Date of decision: 23rd July, 2010

SMT.SNEH AGGARWAL.. Petitioner in Bail Appln. No. 2205/2009
VIJAY DESHWAL ... Petitioner in Bail Appln. No. 2371/2009
SUBHASH AGGARWAL&ORS..Petitioners in Bail Appln.No.
2454/2009

Through Mr. K.K. Sud, Sr. Advocate with Mr.
Jayant Sud, Mr. Kunal Malhotra and Ms. Nandita
Abrol, Advocates.

Versus

STATE GOVT. NCT OF DELHI Respondent
Through Mr.Arvind Kumar Gupta, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J.:

1. These applications under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C., for short) have been filed by Mr. Subhash Aggarwal, Ms. Sneh Aggarwal, Mr. Naresh Lakra and Mr. Vijay Deswal. The said applicants have been arrested in FIR No. 104/2009 under Section 406/420/120B of the Indian Penal Code (hereinafter

referred to as IPC, for short) which has been registered and investigated by Economic Offences Wing of the Delhi Police.

2. Learned counsel for the applicants have submitted that the accused have already been in police custody/judicial custody since June, 2009 and no useful purpose will be served by further detaining them. It is pointed out that the maximum sentence for an offence under Section 406, IPC is three years. My attention is also drawn to the fact that the applicants have made payments to several persons/creditors. It has been submitted that they have already made payment to 82 persons and settled with them. The total amount due and payable to these 82 persons was Rs.4,60,79,000/-. It is submitted that Mr. Subhash Aggarwal and his wife, Mrs. Sneh Aggarwal had purchased some properties in the period 2007-2008 and these properties can be sold for making payment of dues to the remaining creditors. Reliance is placed on decisions of the Supreme Court in *Ashok Dhingra versus GNCT of Delhi* 2000 (9) SCC 533, *C.R. Patil versus State of Gujarat and others* 2005 (11) SCC 119 and Order dated 11th August, 2003 passed in Crl.M.M. No.1464/2003, *Dileep Sudhakar Pendse versus State, NCT of Delhi*.

3. The allegations and charge against the applicants are that they have duped and cheated a large number of persons from the middle and lower middle class, who were tempted by the false promises made and being gullible were made to part with their money. The total amount payable to these persons as per the complaints made by 325 persons to the police to whom payments have not been made is about Rs. 15 Crores and 12 lacs. As per the

investigation made by the police, these persons had made investments/deposits in VGS Investment Services Pvt. Ltd. of which Mr.Subhash Aggarwal was/is one of the Directors and in StopLoss Commodity Solutions Pvt. Ltd., of which Mr. Subhash Aggarwal, Ms.Sneh Aggarwal, Mr. Naresh Lakra and Mr.Vijay Deswal were/are Directors. With regard to the 82 affidavits filed by the applicants in support of their contention that the applicants have made payment to the depositors, it is noticed that the affidavits do not specify the amount paid to the said depositors/deponents. The affidavits have been cleverly drafted and only state that the matter has been settled/compromised and the depositors/deponents had received the amount. When the police tried to verify the amount paid to the said depositors, the said 82 depositors did not state or mention the amount paid to them.

4. In the status report filed in the case of Mr.Vijay Deswal, it is pointed out that he had made payment to 17 persons out of which six persons are residents of Haryana and known to Mr.Vijay Deswal. One person, Mrs. Bimla Deswal is mother of Mr. Vijay Deswal. It may be stated here that Mr. Vijay Deswal has stated that he had paid Rs.82 lacs out of his personal account to the depositors. However, it transpires that both Mr.Vijay Deswal and Mr.Subhash Aggarwal have included/mentioned the said amount of Rs.82 lacs in their bail applications, as the amount paid by them towards settlement.

5. Thus, even if one has to believe and accept the case of the applicants, it is apparent that they have made or settled their claims viz. 82 creditors to

whom Rs.4,60,79,000/- was payable and are yet to settle the matter with another 325 creditors who have claims of more than Rs.15 crores.

6. Mr. Vijay Deshwal in his written submissions has stated that he has made payments to creditors from his personal accounts and is only responsible to make payment to creditors for cheques which bear his signatures. The contention is not acceptable as his liability cannot be restricted upto the amount specified in the cheques signed by Mr. Vijay Deshwal. Allegations have been made against Mr. Vijay Deshwal by the complainants regarding inducement and assurances. As per the prosecution, a major chunk of investment was made by the investors in M/s Stoploss Commodity Solutions Private Limited and the figure of Rs.5.21 crores as alleged in the written submission filed by Mr. Vijay Deshwal as the total investment by investors in the said company is a gross understatement and false. It is pointed out that there is no basis for the said statement especially when a chart has been prepared on the basis of complaints made by investors. The chart gives names, addresses as well as the amount deposited by the unpaid 325 investors in the two companies. The total amount is more than Rs.15 Crores and 12 Lacs.

7. In the case of Mr. Vijay Deshwal, it is submitted that his elder brother is a patient of Thalassemia major and his father is a psychiatric patient. Mother of Mr. Vijay Deshwal is residing in the same premises and he also has a brother Mr. Rakesh Deshwal. The said applicant has also not placed on record details of ailment and the nature/type of psychiatric treatment his father is taking.

8. The contention of the applicants that if they are granted bail, they will be able to sell off and dispose of their properties or help the Court to sell and dispose of their immovable properties and pay off the creditors appears attractive and reasonable, but on consideration merits rejection. The details of the properties of the applicants are as under:-

“(i) B-64/3, Satya Enclave, Prem Nagar-III, New Delhi in the name of Subhash Aggarwal.

(ii) B-64/1, Satya Enclave, Prem Nagar-III, New Delhi in the name of Vineet Aggarwal s/o. Subhash Aggarwal.

(iii) A-16, Pandey Enclave, Prem Nagar-III, New Delhi in the name of Sumit Aggarwal s/o Subhash Aggarwal.

(iv) B-59, Satya Enclave, Prem Nagar-III, New Delhi in the name of Subhash Aggarwal.”

9. During the course of argument, it was accepted that these properties are located in an unauthorized colony and the total market value of these properties would be Rs. 75-90 lacs (approx.). Thus the total market value of the properties is not even 10% of the amount due to the balance 325 creditors.

10. Ms. Sneh Aggarwal had remained on interim bail from 15th October, 2009 to 18th April, 2010. Thereafter, Mr. Subhash Aggarwal and Mr. Naresh Lakra were granted interim bail and remained on interim bail for more than 30 days from 16th March, 2010 to 18th April, 2010. Thus, the applicants were granted interim bail to enable them to make payment to the creditors. However, except for selling one property 1196, Sec. 9, Bahadurgarh, Haryana in the name of Sneh Aggarwal w/o. Subhash Aggarwal measuring 213 square yards vide sale deed dated 18th December,

2009 for Rs.25,70,000/-, no concrete steps were taken for payment to creditors, 325 in number, to whom more than Rs.15 crores are payable. It is also pointed out that the sale deed for the plot at Bahadurgarh was executed at the circle rate prescribed for the said sector. As per the status report dated 22nd January, 2010, enquiries from local property dealers have revealed that the market rate in the Sector 9 was around Rs.15,000/- to Rs.18,000/- per square yards, depending upon the location of the plot and, therefore, the market value of the plot was between Rs.35 lacs to Rs.38 lacs. It may be also noted that the so-called payment to the creditors was made directly by the applicants. There are allegations of selective payment and force/pressure in case a creditor wanted any payment.

11. Keeping in view the conduct of the applicants, I do not think the decisions in *Ashok Dhingra (supra)*, *C.R. Patil (supra)* and *Dileep Sudhakar Pendse (supra)* are applicable to the facts of the present case. Mere oral statements that the applicants are desirous of making payments are not sufficient. In the present case, as per the allegation against the applicants, they have duped and cheated a large number of persons from the public. Most of these persons are not well off and were made to believe the false statements/promises made to them by the applicants. The misery and suffering of these persons who have been cheated or deprived of their money, as per the allegations cannot be ignored. Investigation in this case has taken time because of lack of experience, time required for scrutiny and verification of records. Invariably the accused get the benefit of the said delay. Accused take advantage of the fact that public memory often

fades and depositors do not follow up when the matters get delayed and there is no scope for payment. A single Judge of this Court in ***Mukesh Jain versus CBI***, 2010 (1) JCC 417 has held that economic offences, which affect and cause losses to public at large and specially those belonging to middle or lower middle classes, have to be viewed seriously and do not deserve any indulgence or sympathy. These offences are calculated with the eye on personal gain and many of them even do not come to the surface.

12. As per the allegations made by the police, the money has been siphoned away or transferred and no clues are presently available as to where the money has gone. Some allegations have also been made that the money was used in speculative transactions in commodity trading. It is stated that examination of bank statements during the period 1st April, 2008 to 31st March, 2009 have revealed the following payments/withdrawals from the banks:

PARTY NAME	RELATION WITH COMPANY	AMOUNT
SHUBHASH AGGARWAL	DIRECTOR	15072166
SNEH AGGARWAL	DIRECTOR	4750700
VIJAY DESWAL	DIRECTOR	795000
NARESH LAKRA	DIRECTOR	2912250
VINEET AGGARWAL	SON OF SHUBHASH AGG.	2707580
SUMIT AGGARWAL	SON OF SHUBHASH AGG.	1381500
AJAY DESWAL	BROTHER OF VIJAY DESWAL	37000
RAKESH DESWAL	COUSIN OF VIJAY DESWAL	1724150
BIMLA	MOTHER OF VIJAY DESWAL	330600

SHANKAR AGGARWAL	CASHIER OF STOPLOSS COMM.	2518410
SELF WITHDRAWALS	ALL DIRECTORS OF THE CO.	44169500
	TOTAL	76398856

13. It is stated that a Chartered Accountant has been appointed to prepare a proper cash flow statement, track transfer of money and identify how funds were siphoned away and withdrawn and why the money is not available today to be paid to the creditors.

14. It may be noticed that in the written submissions filed on behalf of Mr. Vijay Deshwal he has alleged that Mr. Subhash Aggarwal and others were indulging in commodity tradings and were earlier shareholders in M/s Bonanza Commodity Brokers Private Limited and M/s VGS Investment Services Private Limited was made a sub-broker. This is an aspect for the police to investigate and examine.

15. In these circumstances, I do not find any merit in the present applications for bail and the same are dismissed. All pending applications are also dismissed.

(SANJIV KHANNA)
JUDGE

JULY 23, 2010
P/VKR