

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

Judgment reserved on: January 31, 2011
Judgment delivered on: February 03, 2011

+ **BAIL APPLICATION NO. 12/2011**

VIJAY KUMAR SHARMA

....PETITIONER

Through: Mr. Shanti Bhushan, Sr. Advocate with
Mr. Shailendra Singh, Advocate.

Versus

GOVT. OF NCT OF DELHI

.....RESPONDENT

Through: Mr. Jaideep Malik, APP for the State.
Mr. Brijesh Sharma, Advocate for
complainant and some of the investors.
Mr. V.K. Malik, Advocate with Mr.
Chandan Singh & Mr. Rahul Raj Malik,
Advocates for some of the
victims/investors.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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 Digest ?

AJIT BHARIHOKE, J.

1. Vijay Kumar Sharma, the petitioner herein vide this petition is seeking anticipatory bail in case FIR No.737/2007 under Sections 420/406/120B IPC registered at P.S. Connaught Place, New Delhi.

2. Briefly stated, allegations against the petitioner are that he entered into a criminal conspiracy with Surya Kirtichand Thapar and others to cheat innocent investors by luring them to invest their hard

earned money in fake development projects. In furtherance of the conspiracy, deceitful advertisements were issued in various newspapers on behalf of M/s. Vian Infrastructure Limited floated by the accused person whereas the company neither had any land in its ownership or possession for development nor there were necessary approvals or sanctions in favour of M/s. Vian Infrastructure Limited for developing specific land area for residential projects. Pursuant to the aforesaid advertisements, hundreds of people deposited money with M/s. Vian Infrastructure Limited for booking of plot but till date, the investors have neither been allotted plots nor their money has been returned. It is alleged that the petitioner and his co-conspirators have siphoned out the money deposited by the investors for allotment of plots through an intricate web of companies floated by them.

3. Learned counsel for the petitioner submitted that the petitioner has nothing to do with the offence as he was only an employee of M/s. Vian Infrastructure Limited. It is submitted that the petitioner was employed by aforesaid company as a Consultant for procuring land for development and for that purpose, he was given authority to operate the bank accounts of the company and he was not a beneficiary of any withdrawal. Learned counsel submitted that in fact, the petitioner acted on the instructions of the Board of Directors of M/s. Vian Infrastructure Limited and in the year 2007, when the petitioner realized that the affairs of the business of company were not going in the proper direction, he made suggestions to the top management of

the company, which were turned down and he was told that his job was only to arrange the land for the company and he need not interfere in their internal business affairs. The petitioner, seeing no improvement in the affairs of the company, decided to resign and asked the Chairman of the company to clear his dues. He was relieved of his services as Consultant on 31st March, 2007 but his dues were not cleared. It is submitted that M/s. Vian Infrastructure Limited filed a civil suit for injunction against him, claiming that he and his associates be restrained from representing the company in any manner. The said suit was ultimately compromised on 17th December, 2008. From the aforesaid sequence of events, it is submitted that one can safely infer that the petitioner was only an employee of M/s. Vian Infrastructure Limited and he has nothing to do with the alleged cheating. Learned counsel submitted that there is no material on record to show involvement of the petitioner in the crime to justify his arrest. Thus, he has urged for grant for anticipatory bail to the petitioner. In support of his contention, learned counsel for the petitioner has relied upon the judgments of Supreme Court in the matters of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others**, 2010 XII AD (SC) 340, **Joginder Kumar Vs. State of U.P. & Others**, (1994) 4 SCC 260 and **Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab**, (1980)2 SCC 565.

4. Learned Prosecutor, as well as the counsels appearing for the interveners/investors, has strongly opposed the bail application.

Learned APP submitted that the investigation has revealed that the petitioner Vijay Kumar Sharma and his co-accused persons had created an intricate web of companies with a view to cheat the investors by issuing deceitful advertisements in leading newspapers regarding their proposed development projects at various places in the country, including Neemrana, with a view to cheat the investors, who intended to purchase land for constructing their houses. One such project related to Neemrana, regarding which M/s. Vian Infrastructure Limited collected money for allotment from a number of investors despite of the fact that the company had no land whatsoever for development nor it had any permission for approval of plans to develop a residential project at the specified site at Neemrana. It is contended that the petitioner Vijay Kumar Sharma is wrongly claiming that he was an employee only. In fact, he was the authorized signatory for eight different bank accounts of M/s. Vian Infrastructure Limited and there was no limit or restriction on his authority to withdraw the money from the bank accounts. It is further argued that the petitioner was the only person authorized to deal with the aforesaid bank accounts and even the Directors of the company were not authorized to deal with the bank accounts, which clearly indicates that the status of Vijay Kumar Sharma in the company was much above the Directors and he was not a mere employee. Learned APP further argued that the investigation conducted so far reveals that the petitioner Vijay Kumar Sharma and other Directors have misused the funds collected from the investors

and a sum of ₹ 11.72 Crores was withdrawn by the petitioner against cheques drawn in favour of self. It was further contended that investigation has revealed that one company M/s. Yusuf Engineering Private Limited was an equity shareholder of M/s. Vian Infrastructure Limited and the petitioner Vijay Kumar Sharma, his wife and his brother-in-law Y.S.Rana are Directors of said company. Investigation has revealed that M/s. Vian Infrastructure Limited maintained a bank account at 'Yes Bank Limited', Chanakyapuri wherein a resolution passed by M/s. Yusuf Engineering Private Limited dated 03rd January, 2007 was submitted claiming that M/s. Vian Infrastructure Limited was a unit of M/s. Yusuf Engineering Private Limited. Learned APP submitted that investigation has also revealed that the petitioner and Directors of M/s. Vian Infrastructure Limited have interconnected links with other companies namely P.S.G. Developers, J.V.G. Group of Companies and M/s. Yusuf Engineering Private Limited etc. and they all, in collusion with each other, have siphoned out the money collected from the investors through the intricate web of various companies floated by the accused persons. Learned APP submitted that from the facts so far revealed by the investigation, active involvement of the petitioner in cheating of thousands of investors is disclosed. Thus, learned Prosecutor urged for dismissal of the anticipatory bail application for the reason that custodial interrogation of the petitioner is necessary to reach at the bottom of the truth and also to recover the money of the investors.

5. I have considered the rival contentions and perused the authorities cited by the learned Senior Advocate.

6. In the matter of Siddharam Satlingappa Mhetre (supra), the Supreme Court has culled out the factors and parameters to be taken into consideration while dealing with the anticipatory bail application as under:

“122.

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

7. From the facts revealed in the investigation so far, complicity of the petitioner in conspiracy to cheat thousands of investors of their hard-earned money is prima facie disclosed. Investigation also prima facie discloses that the petitioner and his co-accused persons have siphoned out the money deposited by the investors through an intricate web of companies and bank accounts. The offence committed by the petitioner is too grave to be ignored and it impacts the savings of thousands of people. Not only this, the petitioner is absconding from law since the registration of case in the year 2007. Custodial interrogation of the petitioner is necessary to reach at the bottom of the case and also to trace and recover the cheated money. Therefore, in the light of parameters enunciated by the Supreme Court noted above, I do not deem it appropriate to release the petitioner on anticipatory bail at this crucial stage of investigation.

8. Bail Application is accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

FEBRUARY 03, 2011

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