

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

+ BAIL APPL. 445/2012

Date of Decision: 01.06.2012

SANJAY GAMBHIR

..... PETITIONER

Through: Mr. Vikas Singh, Sr. Advocate
with Mr. Anish Dhingra, Advocate
versus

STATE

.....RESPONDENTS

Through: Mr. M.N. Dudeja, Ms. Fizi Husain, APPs with Investigating Officer Sub-Inspector Kumar Kundan, Economic Offences Wing, New Delhi.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The petitioner seeks bail in case FIR No. 43/2011, under Sections 409/420/120B IPC, registered with Economic Offences Wing (EOW), Crime Branch, New Delhi.

2. The allegations against the petitioner are that he being the Director of M/s. D.D. Infrastructure, New Delhi along with the co-accused persons had launched certain projects of development of townships in Faridabad, Sonapat, Zirakpur and Mohali in the year 2005/2006 and had started receiving the booking amounts from general public for those proposed townships of the accused company and other group companies. It is alleged that the amounts running into crores of rupees from the general

public was collected fraudulently and dishonestly since none of the proposed projects was licensed or approved from the concerned authorities. The public at large was lured to part with their hard earned money based on the false and fraudulent misrepresentations, concealment of material facts and on false assurances by way of advertisements as also other modes. Since none of the projects could be commenced and the amounts of money invested by the public was not refunded, a large number of investors led by Santosh Goel made complaint to EOW, New Delhi based on which the present FIR came to be registered against the petitioner and other co-accused persons including his wife, son and others. The petitioner was alleged to be one of the main Directors of the group companies and directly involved in the decision making process as also misrepresentations, assurances etc. During investigation, it came to be revealed that even the Letter of Intent of Faridabad Project was issued only in December, 2009. During investigation, it also came to be revealed that one of the group companies namely D.D. Housing, soon after launching the Faridabad Project, received FDI and pledged its equity to M/s. Beekman Helix India Consulting India Pvt. Ltd. vide various deeds and ultimately the said FDI Company acquired the entire land of the said company. It further came to be revealed that this FDI company transferred the entire equity holding to another company M/s. BPTP and in this way, the entire holding of the accused company and group companies got transferred to M/s. BPTP. On scrutiny of the documents executed in this regard, it came to be revealed that all these documents including various agreements as also the resignations of directors etc. were executed by the petitioner and other co-accused persons. The

transfer of the shares of the company by the petitioner and other co-accused persons for huge consideration running into about 230 crores of rupees without the knowledge or even communication to the investors, was alleged to be fraudulent and deceitful act of the petitioner and his co-accused persons. In the status report, it is alleged that the magnitude of the transactions executed by the petitioner and other co-accused persons was so high that even a Chartered Accountant had to be employed by the investigating agency to look into the aspect of utilization of funds. It has been further alleged in the status report of the department that similar story emerged for the proposed projects of Zirakpur and Mohali where also the accused company received FDI and transferred its entire interest to the FDI company.

3. It has been alleged that the department has also received information from the Town & Country Planning, Haryana that as per the provision of Section 7 (i) of Haryana Development and Regulation of Urban Areas Act 1975, no person including property dealer, was authorized to sell/transfer or agree to transfer in any manner any plot/colony or make any advertisement and receive any amount without obtaining the licence from the department and similarly, the Town and Country Planning & Land Department of Punjab has also informed that no project at Zirakpur in the name of any of the group companies had been ever approved by the department. It has been further alleged that on receiving the booking amounts from the general public by way of concealment of facts is one aspect of the fraudulently cheating, whereas diversion and misappropriation of funds received as FDI and

misappropriating the same is another aspect of fraudulently cheating the general public at large. In the status report, it is alleged that uptill now, 167 complainants have lodged their complaints with the department and though the details of the investments had not been provided by the accused persons, and large number of complaints are pouring in, a sum of Rs. 8.20 Crores approx. is seen to be invested by these 167 complainants.

4. It is next alleged that the present petitioner was the mastermind of the entire fraudulent activities and is involved in various cases. As many as eight cases are stated to be registered against him at Faridabad and one more FIR with EOW against him is also pending investigation. It has been submitted that the petitioner is an influential person and can destroy the available evidence and influence the witnesses. It has been submitted that the present case was at the crucial stage of investigation and even the conduct of the petitioner would manifest his dishonest intention in that despite withdrawal of protection by this court on 22.12.2011, he did not surrender and could only be arrested after issuance of proclamation under Section 82 CrPC.

5. The main contention of the learned senior counsel for the petitioner was that the petitioner and his co-accused persons have bona fide intention in refunding the entire money of the investors and in the process, have also made some refunds. It was submitted that it was due to financial hardships of the accused company that the money could not be arranged. It was submitted that as per the undertaking given by BPTP to the Town and Country Planning of Haryana, the money was to be

refunded by it to the investors.

6. Per contra, the counsel appearing for different sets of investors/complainants as also the learned APP vehemently opposed the grant of bail to the petitioner alleging him to be the mastermind in cheating the innocent public of their hard earned money running into several crores of rupees. They vehemently submitted the bona fide of the petitioner to be doubtful in that he and other co-accused persons have transferred the shares of the company to FDI without even the knowledge of the investors. They alleged that the bona fide of the petitioner could be assessed from the fact that the consensual mechanism evolved by this court at the time of his anticipatory bail for making refunds to the investors, was abruptly terminated by them. With regard to the liability of the BPTP, it is submitted that before the Town and Country Land Department of Haryana, the complainants were different and in any case, the transfer to BPTP was provisional subject to compliance of certain conditions within six months. It was submitted that in any case, there being no privity with BPTP, the complainants could not enforce their claims against it.

7. So far as the facts are concerned, these are not in dispute. It also could not be disputed that the group companies of the petitioner had launched projects in Faridabad, Zirakpur, Mohali and Sonapat for proposed townships and had made bookings of plots from the public by giving various advertisements in different newspapers. The bookings were made directly as also through the property dealers and started in the

year 2005 and continued for number of years thereafter. At the time of launching of those proposed townships, none of the projects was approved or licensed from the competent authority of Haryana and Punjab. It was only in the year 2009 that for the first time, the Letter of Intent was issued by Government of Haryana for Faridabad project. Even the licence for the project of Faridabad could be obtained only in the year 2010. What is astonishing and shocking is not that the petitioner and his co-accused persons had lured the public to make investments in the so-called projects and thereby collected several crores of rupees, but the most deceitful act of these accused persons was in having executed various agreements of transfer of their interest in those lands in favour of a foreign company M/s. Beekman Helix India Consulting India Pvt. Ltd. for huge consideration, even without the communication or knowledge of the investors, what to talk of their consent. The said FDI company also further transferred its entire equity in favour of BPTP for valuable consideration.

8. The plea that BPTP had undertaken to Town and Country Planning, Haryana to refund to the investors, is entirely extraneous and irrelevant so far as the present complainants and investors in these projects are concerned. The permission that was granted by Town and Country Planning, Haryana to transfer a part of the project of the group companies of the petitioner to M/s. New Age Town Planners Ltd. was subject to terms and conditions stipulated in the licence No. 30 dated 01.04.2010. As per this, the transferee company was also to get the deposits by existing complainants refunded within six months from M/s.

D.D. Buildwell and M/s. D.D.Infrastructure Ltd. Firstly, it would be noticed that as per this the transferee company was M/s. New Age Town Planners and it nowhere stipulated the liability of the transferee company to make refund to the investors. Secondly, the refunds were to be got made from M/s. D.D. Buildwell and D.D. Infrastructure within six months. Thirdly, those refunds were to be made to the complainants in the said projects and not to the complainants of the present case. Fourthly, the names of the complainants in the said project have not been furnished till date. Assuming for the sake of arguments that this transferee had undertaken to get the money of the complainants refunded within six months, no amount has so far been refunded to any of the investors of the present complaint in terms of aforesaid permission of transfer. Undisputedly the complainants could not enforce their claims against the third party BPTP. When confronted with this, learned counsel sought to argue that they have filed a civil proceedings against BPTP and that their liability would be determined in due course. This was an extremely irrelevant, misplaced and extraneous submission that was sought to be pressed. This would rather reflect the dishonest intention of the petitioner in finding one after other excuses.

9. In the light of all that has been noted above, the conduct of the petitioner can also be noted from the previous proceedings conducted by this court at the time of anticipatory bail application filed by the petitioner and other co-accused persons. Moved by the submission of the learned counsel then representing the petitioner and co-accused persons that they had bona fide intention to refund the money of the investors, a consensual

mechanism was evolved by this court taking into account various factors and interests as noted in those previous orders. In pursuance thereto, Sh. Bharat Parashar, Joint Registrar of this Court was appointed as Court Commissioner. To have a glimpse of those proceedings which ultimately had to be terminated, the operative part of the order dated 22.12.2011 can be looked at. It was like this:

“In terms of order dated 04.11.2011 followed by the order of 29.11.2011, a mechanism was evolved with the consent of all parties and certain directions were given for the reasons stated in those orders. It was despite the fact that APP, all the complainants and investors had been opposing the bail applications and asking for custodial interrogation of the petitioners. In pursuance of the order, Shri Bharat Parashar, Joint Registrar of this Court was appointed as Court Commissioner and he has submitted his report faulting petitioners on various counts in making any progress in the mechanism for refund of money to the investors. In his report the Joint Registrar has specifically noted that despite repeated oral and written requests, the petitioners have not deposited any amount after the first deposit of Rs. 5.00 crore which is already exhausted. In fact vide his proceeding dated 1.12.2011, petitioners were instructed to ensure compliance of this Court’s directions to maintain minimum balance of Rs. 1.00 crore and other directions relating to the mechanism of refund, but the petitioners who appeared before the Joint Registrar along with their counsels failed to do so. He stated that petitioners do not seem to be inclined in depositing any further amount and hence the mechanism agreed upon for refund to the investors cannot possibly function any more.

On the pointing out by learned counsel for the complainants and APP, some of the terms not complied by the petitioners are noted:

(1) The advertisements which were to be given by the petitioners in terms of order dated 04.11.2011 were not of the size as agreed and subsequently as per order of 29.11.2011 also no advertisement, as agreed, has been given by the petitioners.

(2) Sign boards and hoardings which were to be displayed at office premises have also not been displayed.

(3) Affidavits, which were to be filed by the petitioners giving details of their investments etc. with various investors with their dates of investments etc., as stipulated in clause 8 of order dated

29.11.2011 have also not been given.

(4) The condition to maintain a balance of Rs.1.00 crore in the account has also not been complied with.

(5) Various irrelevant objections were raised by the petitioners before the Court Commissioner in making refund to the investors.

Learned Senior Counsel appearing for the petitioners could not deny or controvert the non-compliance of above terms. It was stated by him that the money which was to come from some sources could not be received in time and he states having filed an application being Crl.M.A. 19796/2011 in this regard. Most of the averments which are part of this application relate to the terms and conditions which formed part of the aforesaid orders and were conditions of the interim protection against arrest. However, by filing the aforesaid application, the petitioners seem to be trying to manipulate the things by bringing FDI related averments which are apparently extraneous for the consideration in present proceedings. By filing of this application, the petitioners seem to be trying to justify non-compliance of terms/conditions or wriggle out of those and also disputing their liability and attributing the same to FDI of M/s. Beekman Helix India Consulting Pvt. Ltd. and M/s. Rose Infracon Ltd. In the given facts, having noted that many of the terms and conditions remained uncomplied, the conduct of the petitioners post orders dated 4.11.2011 and 29.11.2011 does not seem to be bona fide. Not only that, as per the last order, they were directed to be present in this court in person so as to know their bona fide personally as different versions were being presented by different counsels representing them. Despite directions for appearance, they are not present in person. The application filed by petitioner Sanjay Gambhir vide Crl. M.A. 19878/2011 seeking exemption on the ground that he has threat to his life, is highly misplaced and untenable. When he was on protection of this Court and was made to appear in the Court, there could not be any apprehension of any threat. The learned senior counsel appearing for the petitioners could not give any satisfactory reply for their non-appearance. This creates further doubt in the bona-fide of the petitioner's statements which were made at the time of seeking interim protection vide orders of 4th and 29th November, 2011. No satisfactory reason could be given as to non-compliance of the terms, some of which are noted above. In fact, nothing has been averred or stated to demonstrate bona fide of the petitioners even at this stage except the bald statements made that funds could not be received and they are interested to settle the matter.

On the other hand, the learned APP and the Investigating

Officer also informed that there are large number of complaints still pouring in after the previous orders. It was specifically stated that earlier, there were 76 complaints which have now risen to 101, but till date, only 18 of those complainants could be repaid. Of course, in addition to those 18, some more investors have also got refunds, but that number is very small. Some investors were also present today in the court stating that they were issued post-dated cheques by the petitioners, which on presentation have also been dishonoured. This could not be controverted or rebutted by the petitioners' counsel.

At this stage, learned APP again strongly maintained that in the given facts and circumstances and in furtherance of the reasons stated by her in the earlier application, as mentioned in Para (12) of the order dated 29th November, 2011, custodial interrogation of the petitioners was required for proper investigation.

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Having regard to the entire factual matrix and the conduct of the petitioners, the fact that till date Sanjay Gambhir has not appeared before this court and it is not known as to the number of investors and the amounts invested by them with dates etc. and the amounts refunded and the circumstances under which FDI came to be involved and the case being of mass public fraud and cheating, I do not think the petitioners to be entitled for any further interim protection. In view of the above, the interim protection granted to petitioner Sanjay Gambhir against arrest is hereby withdrawn. For all these reasons, there is no reason made out by other petitioners for grant of liberty to file fresh anticipatory bail applications. The APP may file reply to the aforesaid application confined to the matter as indicated above within four weeks”.

10. In view of all above and having seen that the number of complainants/investors rising on every following day and the amount of their investments considerably rising and the fact that all the complainants/investors have been raising hue and cry for having been duped of their hard earned money and the APP as also the investigating agency pressing for custodial interrogation for the investigation of the

FDI amount of about 230 Crores, which had been received by the petitioner and his co-accused persons as valuable consideration towards the transfer of their rights in the projects, and the bona fides of the petitioner not only being honest, but extremely dishonest and deceitful, the petitioner is not entitled to be enlarged on bail. The offences which have been committed by the petitioner with other co-accused are of high magnitude of mass public fraud and cheating and such offences being on high rise in the city, the petitioner does not deserve any indulgence of this court. In view of all this, the petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

JUNE 01, 2012/akb