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

Reserved on: 13th November, 2014
% **Date of Decision: 24th November, 2014**

\+ BAIL APPLN. 334/2014 & Crl.M.A.16198/2014

SURYA KIRTI THAPAR ..... Petitioner
Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. K. Singhal and Mr. S.K. Thapar, Advocates.

versus

STATE OF NCT OF DELHI .....Respondent
Through: Mr. Feroz Khan Gazi, APP for the State with Inspector A.K. Singh, P.S. EOW.

\+ BAIL APPLN. 1039/2014

VIJAY KUMAR SHARMA ..... Petitioner
Through: Mr. K.K. Manan with Mr. Shailendera Singh, Advocates.

versus

STATE THROUGH: GNCT OF DELHI .....Respondent
Through: Mr. Feroz Khan Gazi, APP for the State with Inspector A.K. Singh, P.S. EOW.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

1. These are two applications filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') seeking regular bail in case FIR No.737/2007 under Sections 420/406/120B IPC registered at P.S. Connaught Place, New Delhi. Since, both the applications have arisen out of the same FIR, they are being disposed of by this common order.

2. Briefly stating the facts giving rise to the present applications are that the complainant had booked a plot on 28.11.2006 measuring 120 sq. yds. with M/s. VIAN Infrastructure Ltd. in their residential project namely 'VIAN City', Neemrana, District Alwar, Rajasthan. On 02.02.2007, when the complainant visited Neemrana City for some personal work, he was shocked to know from a section of property dealers that the said developer did not own any land in Neemrana. Thereafter, the complainant filed an application under Right to Information Act, 2005 before the concerned State Government office and the Sub-Registrar office. The aforesaid fact was also confirmed by the said government authorities. On 05.02.2007 a legal notice was served upon M/s. VIAN Infrastructure Ltd. asking them their position with regard to the quantum of land possessed by them for the said project. However, no reply to the said notice was received from M/s. VIAN Infrastructure Ltd. Thereafter, another notice dated 11.05.2007 was served on the company. The company in its reply to this notice assured the complainant that there is no need to panic and he would be allotted a plot at an appropriate time. Thereafter, trusting the version of the accused company the complainant made payment to the tune of

Rs.1,50,000/- (Rupees One lakh fifty thousand) i.e. 50% of the total sum of the plot. On 17.05.2007 the complainant inquired from the office of Sub-Divisional Officer, Behror, who in turn informed the complainant that the said Developer was not in possession of the desired quantum of land nor have they fulfilled any terms and conditions as laid down by the State Government for such project. It was also confirmed that no ground plan had been submitted regarding the said project. Consequently, on 21.05.2007 the complainant sent a letter through Fax to the concerned Managing Director and others to explain their position. The complainant received no reply but instead started receiving threats for dire consequences on behalf of the Director of M/s. VIAN Infrastructure Ltd. Subsequently, the complainant approached the police and FIR No.737/2007 under Sections 420/406/120B was registered at P.S. Connaught Place, New Delhi against the accused persons.

3. Learned counsel for applicant Vijay Kumar Sharma urged that the applicant has been falsely implicated in this case as no role has been assigned to the applicant. He further submits that the prosecution filed a charge-sheet on 03.10.2009 after almost 2 years of investigation after examining nearly 264 witnesses and 258 documents. However, the petitioner was not named as an accused in the aforementioned charge-sheet. He also submits that thereafter a supplementary charge-sheet was filed on 13.07.2012 having 2391 complaints against the accused company and 27 witnesses. The aforementioned applicant was made an accused in this charge-sheet. In addition to the aforementioned charge-sheets, a second supplementary charge-sheet

was filed on 04.07.2013 which further contained 451 complaints and 37 witnesses.

4. Learned counsel for the applicant, Vijay Kumar Sharma submits that the petitioner is not the owner, CMD or the Director of the accused company. He was neither working as Director (whole time/additional), or Managing Director or Secretary of the accused company nor was the applicant at any point of time in-charge of day to day affairs of the accused company. He further submits that the applicant was authorized as one of the signatories of the bank accounts of the accused company vide appointment letter dated 1.07.2006, the sole purpose of which was to facilitate the applicant in arranging and acquiring land for the accused company. He also submits that on 29.12.2007, FIR bearing No. 737 of 2007 under Section 406/420/120B of the IPC was registered with P.S. Connaught Place which was registered after about nine months from the date the applicant resigned as a Consultant from the accused company.

5. Learned counsel for the applicant, Vijay Kumar Sharma also submitted that on 14.05.2013, the applicant was arrested by the officials of Crime Branch in the present case and was sent to police custody for 10 days. On 27.05.2013, the petitioner was sent to judicial custody again. Aggrieved by the said order, the petitioner moved an application in the month of November 2013 before the learned ACMM, Patiala House Court, New Delhi, who dismissed the bail application of the applicant vide order dated 13.11.2013. Consequently, the applicant moved another bail application under

section 439 Cr.PC before the court of learned ASJ, Patiala House Courts, New Delhi, who vide order dated 22.01.2014 dismissed the same.

6. Learned counsel for the applicant Surya Kirti Thapar submitted that firstly, the applicant moved an application under Section 437 Cr.PC before learned Additional Chief Metropolitan Magistrate, New Delhi which was dismissed vide order dated 28.08.2009. He then moved another application under Section 439 Cr.P.C. which was also dismissed by learned District Judge-IV, New Delhi on 10.09.2009. The applicant, Surya Kirti Thapar moved yet another application under Section 439 Cr.P.C. before this Court bearing Bail Application No.1880/2009. On 14.10.2009, during the course of arguments on the said application, counsel for the applicant sought permission to deposit a sum of Rs.2 crores (Rupees Two crores) in Oriental Bank of Commerce, H-15, Connaught Circus, New Delhi in Bank account No.06331131000077. On 23.10.2009, counsel for the applicant Surya Kriti Thapar handed over three pay order Nos.031320, 031323 and 031322 for Rs.84 lakhs (Rupees Eighty four lakhs), Rs.3 lakhs (Rupees Three lakhs) and Rs.72 lakhs (Rupees Seventy two lakhs) respectively, all issued by South Indian Bank in favour of M/s. VIAN Infrastructure Ltd. with Oriental Bank of Commerce, Connaught Place Branch, New Delhi. On the same day counsel for the applicant also submitted that he will bring another pay order for Rs.41 lakhs (Rupees Forty one lakhs) on the next date of hearing so that the entire amount of Rs.2 crores (Rupees Two crores) could be settled.

7. However on 05.11.2009, the investigating officer informed this Court that on verification, it was found that the three pay orders which were handed over to him were not pay orders, but were coloured photocopies of three fixed deposit receipts (hereafter referred to as 'FDRs') issued by South Indian Bank Ltd. in favour of M/s. VIAN Infrasctructre Ltd. and a loan had already been taken on the strength of these FDRs. Based upon this revelation this Court observed that an attempt has been made to play a fraud not only on the prosecution and the victims but on the court as well. After considering the conduct of the applicant, the aforementioned bail application was dismissed on 05.11.2009.

8. In view of the aforesaid facts, another FIR No.270/2009 under Sections 420/467/468/471/120B IPC was registered at P.S. EOW wherein the applicant is one of the accused.

9. Thereafter, the applicant moved another application for bail before this Court bearing Bail Application No.1224/2011. On 08.09.2011, during the course of hearing on the said application, the counsel for the applicant did not press his prayer for regular bail. However, learned counsel for applicant submitted that the applicant was suffering from heart ailment and had been advised surgery by the doctors at G.B. Pant Hospital. After considering the submissions made on behalf of applicant, the applicant Surya Kirti Thapar was admitted to interim bail for a period of six months vide order dated 08.09.2011. However, due to his judicial remand in other cases, the applicant could not be released.

10. The applicant Surya Kirti Thapar moved a fresh application under Section 436-A Cr.PC which was dismissed by the learned ACMM-01/New Delhi vide order dated 17.09.2013. Aggrieved by the said order the applicant Surya Kirti Thapar moved another application under Section 437 of Cr.P.C. seeking bail in terms of order dated 25.04.2012 passed by this Court in W.P.(C) No.389/2011. The said application was also dismissed by the trial court vide order dated 12.11.2013. Thereafter, the applicant moved another application under Section 439 of Cr.P.C. before learned Additional Sessions Judge-02, New Delhi which was also dismissed vide order dated 22.01.2014.

11. Learned senior counsel for the applicant Surya Kirti Thapar has vehemently contended that the applicant is in judicial custody since 07.08.2009 and, therefore, his continued incarceration is not likely to serve any purpose since the investigation is already complete and charge-sheet has already been filed. In support of his submission learned counsel for the applicant has relied upon judgment in '**Arnesh Kumar vs. State of Bihar and Anr.**', *Crl. Appeal No.1277/2014 decided on 02.07.2014*; '**Chandraswami and Anr. vs. CBI**', *(1996) 6 SCC 751*; '**Sanjay Chandra vs. CBI**', *(2012) 1 SCC 40*; '**Ashok Dhingra vs. NCT of Delhi**', *(2000) 9 SCC 533*; '**Sanjay Dua vs. State NCT of Delhi**', *2007 (2) JCC 1070* and '**Anil Mahajan vs. Commissioner of Customs and Anr.**', *2000 Cri.L.J. 2094*, to contend that in the said cases the financial implication of amount for which the allegations of cheating were made were much higher and, if in those cases the accused could be released on bail, the applicant certainly deserves to be released on bail.

12. The applications have been vehemently opposed by learned APP for the State on the ground that both the applicants Surya Kirti Thapar and Vijay Kumar Sharma in a calculated, pre-determined and in a very sophisticated manner carried out an operation of gaining the trust of the members of general public, who are more than six thousand or so in number, and cheated them to the tune of Rs.200 crores (Rupees Two hundred crores) approximately. He also submitted that such persons show the repeated propensity to commit such offences again and have scant respect for law.

13. Learned APP for the State has also submitted that the *modus operandi* of the applicant is that the applicants' floated a number of companies by rotating names of Directors among themselves. He also pointed out that Vijay Kumar Sharma is Director in various companies like M/s. JVG, M/s. Yusuf Engineering, M/s. Ayushi Buildestates Pvt. Ltd. He is also authorized signatory of M/s. VIAN Infrastructure Ltd. and also authorized signatory of M/s. PSG Developers. The applicant Surya Kirti Thapar is also Director of various companies namely M/s. JVG, M/s. VIAN Infrastructure Ltd., M/s. GOGA, M/s. Yusuf Engineering and M/s. Ayushi Buildestates Pvt. Ltd.

14. Learned APP for the State further submitted that the applicant has a past history in which fraud was committed in the name of JVG group where various investors were duped fraudulently to the tune of crores of rupees. The said company is having linkage with M/s. PSG Developers and Engineers Ltd. against which a case vide FIR No.106/2007 under Sections 406/420/120B was registered at P.S.

Parliament Street, New Delhi on 25.06.2007 and in the said FIR both the applicants namely Surya Kirti Thapar and Vijay Kumar Sharma are accused. He also submits that applicant Vijay Kumar Sharma did not join investigation and he was declared proclaimed offender. Thereafter, he was arrested.

15. As per status report filed on behalf of State the applicant Surya Kirti Thapar has withdrawn about Rs.4 crores (Rupees Four crores) in cash through self-cheques from the account of accused company bearing account No.352701010111304 and an amount of Rs.3.5 crores (Rupees Three crores fifty lakhs) (approximately) was transferred in the account of the applicant. In addition to the said amount, an amount of Rs.9.66 crores (Rupees Nine crores sixty six lakhs) and Rs.11 crores (Rupees Eleven crores) were transferred to the accounts of M/s. Sajjad Properties and M/s. PSG Developers. Thus, it has been submitted that the gravity of the offence is so serious that it does not deserve to be a case where a benefit of bail should be granted.

16. I have carefully given my thoughtful consideration to the submissions made by learned counsel for applicants and learned APP for the State and have also gone through the material on record and the judgments cited by learned counsel for applicants.

17. No doubt that **Sanjay Chandra's** case (supra) and **Suresh Kalmadi's** CWG Scam, reinforce and revisit the basic principles of law with regard to grant of bail. However, it is important to pay due consideration to the phrase that 'bail is the real' and 'jail is exception' and further that while granting bail to the accused not only gravity of

the offences is to be seen, but also the fact as to whether accused would be available to face the trial or flee away from the process of law or he should not have propensity to win over the witnesses or tamper with the evidence. This Court is also cognizant of the fact that there is a fundamental difference between the said cases and the present case. In the said cases, no member of the general public was affected directly rather it was the public exchequer who was put to loss by not holding auction of government resources or by over invoicing lenders which is totally different from the facts of the present case where the applicants floated advertisement and made proposal for pre-launch of residential projects and collected hundreds of crores of rupees by inducing, misrepresenting and suppressing the material facts. The applicants were able to gain confidence of the public to invest money in their scheme by promising them to allot land in their various projects and was able to gain their confidence and subsequently cheated them of their hard earned money of about Rs.200 crores (Rupees Two hundred crores). This kind of activity ultimately shows a great deal of deliberation and preparation.

18. Furthermore, on 23.10.2009 at the time of addressing arguments on Bail Application No.1880/2009, coloured photocopies of three Fixed Deposit Receipts, which were already pledged by way of security for the loan taken by the applicant, under the pretext that these are pay orders for a total sum of Rs.1.59 crores (Rupees One Crore and fifty nine lakhs) alleged to be issued by South Indian Bank in favour of M/s. VIAN Infrastructure Ltd. were handed over to the Investigating Officer. The applicant further assured the court payment of Rs.41

lakhs (Rupees Forty one lakhs) towards full and final settlement of the entire claim of Rs.2 crores (Rupees Two crores) on the next date. This sham was exposed by the investigating officer on 05.11.2009.

19. The Apex Court in '**Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation**', *(2013) 7 SCC 439*, has held as under: -

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

20. The entire community will suffer if the economic offenders who ruin the economy of the State are not booked. A murder may be committed in the heat of moment upon passion being aroused but an economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequences to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which few white collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest.

21. The Apex Court in '**Prahlad Singh Bhati vs. NCT, Delhi & Anr.**', *(2001) 4 SCC 280*, laid down certain guidelines to be

considered by the Court while granting bail such as nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations.

22. In the instant case the gravity and implications of the offence have a far reaching effect and the applicants have cheated innocent persons to the tune of Rs.200 crores (Rupees Two hundred crores) (approximately).

23. Considering in totality the facts and circumstances of the case and the allegations against the applicants, the applicants do not deserve to be enlarged on bail. Accordingly, both the applications are dismissed.

24. Since, the applicants are in judicial custody, learned trial court is directed to expedite the trial by giving short dates and examine all prosecution witnesses at the earliest and preferably within a period of six months from the next date. The prosecution will ensure that all the material witnesses are produced in the court.

25. A copy of this order be sent to the trial court.

Crl.M.A.16198/2014

The application is dismissed as infructuous.

(VED PRAKASH VAISH)
JUDGE

NOVEMBER 24, 2014
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