



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

% Judgment reserved on : 25.08.2023
Judgment pronounced on: 29.08.2023

+ BAIL APPLN. 1794/2023, CRL.M.B. 1205/2023 & CRL. M.A.23086/2023

ANIL KUMAR Petitioner
versus

STATE (NCT OF DELHI) Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Mohit Mathur, Sr. Advocate with
Mr. Naginder Benipal, Mr. Ankit Mr.
Sahaj Garg, Ms. Harithi and Mr. Raj
Bhati, Advocates

For the Respondent : Mr. Ajay Vikram Singh, APP for
State with SI Amit Kumar, PS Special
Cell
Mr. Tanveer Ahmed Mir, Ayush Jain,
Mr. Tushar Thakur, Mr.
Yashovardhan, Mr. Shashwat Sarin
and Mr. Aashish Pandey, Advocates
for complainant

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]



1. This is a bail application filed under Section 439 Cr.P.C. seeking release of the Applicant in FIR No. 14/2022 dated 19.01.2022 registered at P.S.-Special Cell, Delhi, u/s 406, 420, 467, 468, 471, 170, 120-B IPC, under which the present applicant is in judicial custody since 28.11.2022, barring the spans of interim release on bail on various medical grounds.
2. It is alleged that the applicant alongwith other accused persons had conspired to cheat the complainants by committing fraud upon them in respect of the non-existent properties of the DDA, which the DDA had purportedly put up for auction and that the applicant would get those plots allotted to intended purchasers and consequently defrauded the complainants of Rs.11 crores by way of various demand drafts and Rs.40 crores in cash.
3. It is specifically put forth in the chargesheet that the modus operandi employed by the applicant and other co-accused persons was, *firstly* by identifying those persons who had in fact made an actual bid for auctioned properties and 5% Earnest Deposits made by them against their bids were forfeited by the DDA and *secondly*, creating a false website of DDA portal and the creation of a false list of non-existent properties or properties not belonging to DDA and inducing the complainants to part with money in the form of demand drafts or cash by promising the easy allotments of such non-existent



plots as also assuring them that their forfeited Earnest Deposit would also be simultaneously adjusted.

4. That it is also alleged that apart from being an active member at every stage of the conspiracy, the present applicant is stated to have impersonated as an officer of the DDA while inducing and alluring the complainants to part with their monies. Thereafter, the applicant would allure and induce the complainants to part with demand drafts in the name of DDA on its account on the promise that the said amounts are going to be deposited towards the plots selected by the complainant for the impending allotments. However, the said monies were never deposited towards such plots, but were, instead, diverted to some other plots on some other person's names. Similarly, even huge amounts of cash were also collected by the applicant and his associates on similar pretext and for services of similar kind etc.

5. It is thus alleged that the applicant alongwith the co-accused persons are stated to have duped and cheated many such persons including the complainants. Neither such plots were allotted in the names of the complainants nor the monies so parted with, was ever returned to them.

6. The chargesheet is detailed and the modus operandi of the accused persons, including the applicant, who is alleged to be the kingpin, has been elaborately explained.

APPLICANT's ARGUMENTS

Signature Not Verified

Digitally Signed
By: VINOD KUMAR
Signing Date: 29.08.2023
18:15:01

BAIL APPLN. 1794/2023

Page 3 of 16



7. Mr Mohit Mathur, learned Senior Counsel opens his arguments by attacking the date of registration of the FIR, in that, the alleged transactions are stated to have occurred between 01.01.2018 to 31.12.2020, yet the FIR was registered only on 19.01.2022. He submits that the delay of a little more than 1 year in registration of the FIR creates a doubt upon the prosecution version coupled with the fact that there is no explanation at all, much less a reasonable explanation for the immense delay in lodging the FIR.

8. As a second limb of his argument, learned Senior Counsel submits that it is not the case of the prosecution, nor has it placed any evidence on record to show that any of the money alleged to have been collected by the applicant, by way of cash or otherwise came back to the applicant in some form or the other. According to learned Senior Counsel, there is no money trail leading back to the applicant. Infact, he vehemently submits that even the amounts alleged to have been collected in the form of DD's are admitted to have actually been deposited in the account of the DDA. 11 of such DD's are admitted to have been actually deposited in the account of the DDA. If that is so, learned Senior Counsel submits, then what benefit, illegal or otherwise, has flown to the applicant. According to the learned Senior Counsel, there is neither any explanation nor any rationale in such frivolous allegations and further contends that in any case, apparently



no benefit has accrued to the applicant from the amounts covered by the demand drafts.

9. Learned Senior Counsel submits that keeping in view the aforesaid arguments regarding lack of money trail and any benefit accruing to the applicant, the motive or *mens rea* for the applicant to commit such offence is completely absent.

10. Taking further the above argument, learned Senior Counsel also submits that there is neither any apparent link between the applicant and the complainants on the one hand, nor between the applicant and the other co-accused persons on the other. He submits that there is no apparent reason why the name of the applicant has been included in the FIR or the chargesheet. He further submits that at this stage of bail, this Court need not examine the evidence in detail which in any case shall be considered by the trial court. According to the learned Senior counsel, the applicant is entitled to bail on the above ground.

11. The other limb of the argument of Mr. Mathur, learned Senior Counsel is that, barring section 467 IPC, 1860 where the stipulated punishment is maximum upto Life Imprisonment, all other sections charged against the applicant are bailable. He supplants the said argument with the fact that the offences are being tried by the Court of A.C.M.M., hence, the maximum punishment that can be imposed by the Court of ACMM would be 7 years. On that premise, learned Senior Counsel submits that applicant is being detained only due to



the alleged offence under section 467 IPC. Such detention, according to the learned Senior Counsel is not justified, particularly, when all the other offences are bailable in nature.

12. Learned Senior Counsel also next referred to the status report filed by the State. Particularly, to the table of cases/previous cases stated to be pending adjudication or where the applicant has been acquitted or convicted, to submit that in one case, the applicant is on bail, in one of such cases the FIR was quashed, one was cancelled and only in one the applicant was convicted. According to learned Senior Counsel, the number of cases pending or of conviction would not impede the grant of bail to an accused person, provided the Court is of the opinion that the applicant is entitled to the same.

13. Learned Senior Counsel also referred to the alleged entries stated to have been made in the hand of the applicant which Book/diary was allegedly seized by the prosecution alongwith challans and forged property documents which were sent for forensic examination. According to the learned Senior Counsel, the FSL has opined that it was not possible to express any opinion on the questioned documents and signatures with the specimen writings and signatures. Thus, he submits that even documentary proof so collected, does not support the version of the prosecution. He further submits that even the mobile phones of the complainants, which were alleged to have audio and video recordings of the incidents of



transactions between the applicant and the complainants, were seized and though sent to the FSL, no report has been filed on record regarding the examination. Thus, he contends that presently there is nothing to connect the applicant to the crime.

14. Learned Senior Counsel submits that when the documentary proof has been examined and does not show any link to the applicant, the ratio in the case of the Hon'ble Supreme Court in the case of *Sheila Sebastian v. R. Jawaharaj*, reported in (2018) 7 SCC 581, would be squarely applicable and the offence under section 467 IPC would, resultantly, fail.

15. Learned Senior Counsel submits that the applicant was arrested on 29.11.2022 however, was released on interim bail in June 2023 which has been extended from time to time by this Court and has lastly been extended by the Supreme Court w.e.f. 16.8.2023, when he was directed to surrender by this Court, for a further period of two weeks. He submits that the applicant has clean antecedents and has his roots well entrenched in the society and has not misused the interim bail granted till date. Learned Senior Counsel submits that the applicant is entitled to be released on bail.

STATE's ARGUMENTS

16. *Per contra*, Mr. Ajay Vikram Singh, learned APP for the State submits that the offences alleged against the applicant are very serious in nature involving swindling of huge amounts of monies belonging to



the complainants; that the applicant has pervious involvements in offences of similar nature: that the applicant has already been convicted in one such similar case filed by the CBI; that the cases which the applicant claimed were quashed, were only on the basis of settlement agreement arrived at with the complainants in those cases; that the DDs which were collected from the complainants and others were never deposited towards the alleged plots supposed to be allotted to the complainants and were diverted elsewhere in other unknown accounts; that the applicant alongwith the other co-accused persons has cheated the complainants and others of Rs.40 crores in cash and Rs.11 crores in the form of Demand Drafts diverted to accounts not belonging to the complainants; that the audio and video recordings of the applicant engaged in offences as alleged have been sent to the FSL for forensic examination and the report is awaited; according to one instance, applicant is also alleged to have diverted one such DD and handed over the same to his own counsel for the counsel to pay to the DDA towards the conversion charges of his own house; there is one more instance where one such DD was also allegedly deposited by the applicant in the name of his own son and that there is a challan to show such fraudulent transaction; that the officials of DDA are being investigated too to find out how applicant and others had access to their offices and the computer system etc. and as such the applicant may influence the witnesses or tamper with the evidence.



17. In view of the aforesaid innumerable allegations and instances of the offences of similar nature, learned APP submits that the applicant does not deserve any indulgence by this Court.

COMPLAINANTS' ARGUMENTS:

18. Mr. Tanvir Ahmed Mir, learned counsel for the complainant, at the outset, refers to pages 115 and 116 of the bail application, which is a part of the chargesheet, to submit that the modus operandi of the applicant and the co accused persons have been clearly delineated by the prosecution and reiterates such contentions. That apart, he further submits that the applicant had audaciously, even impersonated as an Officer of the DDA, in order to create a facade of genuineness to the entire fraudulent transaction. The creation of a false website of the DDA, the inducement done by creating non existing properties, the false promises and assurances of adjusting/setting off the 5% earnest Money Deposits, illegally diverting the DDs procured from the complainants, collecting huge amounts of cash for services rendered etc. were executed with the sole objective to commit large scale fraud, cheating and siphoning and swindling of hard earned monies of the complainants.

19. Mr. Mir, learned counsel also submits that a plain reading of the statements of the complainants and other victims under section 161 Cr.P.C., 1973 and annexed to the chargesheet would clearly indicate the complicity and culpability of the applicant in all the offences as



alleged. According to learned counsel, the present case is *akin* to the ponzi scheme and a multi-victim scam which cannot be treated lightly. He further submits that monies as well as the money trail is yet to be investigated and proof thereof be collected, which, in case the applicant is released on bail, shall be effectively effaced. He also submits that the applicant is a convicted felon and that too for a similar offence and thus, does not deserve any leniency.

20. Mr. Mir relies upon the following judgements in support of his submissions:

- (i.) *Central Bureau of Investigation vs. V. Vijay Sai Reddy (AIR 2013 SC 2216) ; Para 34*
- (ii.) *Prasanta Kumar Sarkar vs. Ashis Chatterjee & Ors. (2010) 14 SCC 496 ; Para 9-11*
- (iii.) *Neeru Yadav v. State of Uttar Pradesh (2014) 16 SCC 508 ; Para 14, 16, 17*
- (iv.) *The State of Bihar & Ors. vs. Amit Kumar (AIR 2017 SC 2487) ; Para 8, 9, 12*
- (v.) *Sunil Grover v. State (2012) 3 DLT (Cri) 861 ; Para 11, 12*
- (vi.) *Sunil Dahiya v. State (2016) 4 DLT (cri) 593 ; Para 55*

OPINION & DECISION OF THE COURT:

21. This Court has heard Mr. Mohit Mathur, learned Senior Counsel for the applicant, Mr. Ajay Vikram Singh, learned APP, Mr.



Tanvir Ahmed Mir, learned counsel for the complainants at length and perused the record with the able assistance of the learned counsel.

22. At the outset, it is to be noted that the applicant was arrested on 29.11.2022 and was incarcerated for a period of around 7 months. The applicant was released on interim bail on medical grounds from 16.06.2023 which was extended from time to time. Though this Court had directed the applicant to surrender on 16.08.2023, the Hon'ble Supreme Court has by the order dated 14.08.2023 in SLP (Crl) No. 9631/2023 granted two weeks extension of interim bail.

23. The substratum of the arguments of Mr. Mathur, learned Senior Counsel was that there is no connecting factor or interlinking evidence to establish that the applicant had benefitted from the entire transaction and as such, the prosecution has been unable to even *prima facie* show motive or *mens rea*. At the first blush, the said argument appears to be very attractive, however, on a deeper scrutiny of the allegations in the chargesheet as to how the applicant impersonated as the officer of DDA, the manner in which a fraudulent and fictitious website of the DDA was created and the false information in respect of the non-existent properties and properties over which DDA had no authority were projected as not only being available, but also offered as auctionable properties, itself appears at this stage to be sufficient to this Court to, *prima facie*, show the complicity of the applicant in the fraudulent transactions as alleged.



24. All the complainants and those appearing as witnesses, in their statements under section 161 Cr.P.C., 1973 have unequivocally stated the manner in which they were duped and how monies, both in the form of demand drafts as well as cash were taken from them, none of which were ever deposited in the DDA towards the said plots, which were non-existent, nor ever returned to them. The witnesses as well as the investigations have detailed as to how the complainants were induced and allured to handover demand drafts of various amounts in the name of DDA and instead of being deposited against the properties so called allotted to them and in their names, were illegally and fraudulently diverted in the names of other persons. The fact that monies were collected from the complainants against the deposits for allotment of auctionable properties against non-existent properties itself, *prima facie*, shows culpability of the applicant. Moreover, learned Senior Counsel has not been able to show from the record or otherwise as to where the demand drafts alleged to have been collected from the complainants were deposited. If it were deposited in DDA against the properties which were to be or were allotted to the complainants, then such documents could have been submitted to the investigating agencies under section 91 Cr.P.C., 1973. There is no such document on record before this Court.

25. In fact, the chargesheet mentions one instance where a demand draft from amongst 11 DDs worth Rs.3,50,000/- was found credited



against a property which belonged to the father of the lawyer of the applicant. The said lawyer has given a statement that the applicant had handed over this DD in lieu of his fee which he deposited with the DDA to clear the charges of the properties which lie in the name of his father. Though the investigations in this regard are stated to be underway, however, the said demand draft appears to be issued by one of the complainants. The complainants were also lured by the false promise and assurance that the 5% Earnest Money Deposit made by the complainants on earlier occasions too would be adjusted against the auctionable properties, which were non-existent.

26. Similar allegations are in respect of the monies received in cash. Though, in respect of the said transactions, this Court restrains itself from making any observations, lest it prejudices either of the parties.

27. Yet another argument put across by learned Senior Counsel was regarding the previous cases. Mr. Mathur, learned Senior Counsel had submitted that out of the four cases, the applicant is on bail in one of the cases, one has been quashed, one cancelled and the fourth one ended in conviction. In respect of the case ending in conviction, learned Senior Counsel submitted that there are no instructions inasmuch as the applicant is presently hospitalized and he has not been able to furnish any information in this regard. However, learned APP as well as Mr. Mir, learned Counsel for the complainants have



submitted that the applicant was convicted in the said case prosecuted by the CBI in respect of the similar offences and that too, regarding the Delhi Development Authority. It has also been informed that the appeal against the conviction is pending adjudication in this Court. So far as the case which is stated to have been quashed, learned APP has handed over the order dated 11.03.2015 passed by the coordinate Bench of this Court in CrI.M.C. No.964 of 2015 whereby the FIR No.12/2014 u/s 420/120B IPC, 1860 was quashed on the basis of settlement agreement arrived at between the parties and not on merits.

28. Though Mr. Mathur, learned Senior Counsel, elaborated that pendency of other cases and conviction in one of them cannot be the sole factor to disentitle the applicant from being enlarged on bail. There is no doubt about the proposition of learned Senior Counsel, however, the previous involvements and that too conviction, moreover in a case which is similar to the allegations in the present case, would definitely lend credence to the presumption that the applicant has a propensity to commit such offences. It also creates a doubt as to whether the applicant will not commit such similar offences once released. In the view of this Court, this is definitely one of the factors, that too a serious one to be considered in the present case. All the cases appear to be for similar offences of cheating etc.



29. Another factor which may not work to the benefit of the applicant is the large number of persons who have been cheated of their hard earned money.

30. The chargesheet also refers to the complicity of the officials of DDA too in the present offences. That may be a relevant factor to consider inasmuch as, *prima facie*, the applicant could not have impersonated as DDA officials and have access to the office and computer systems without the aid and assistance of some insiders.

31. The argument of Mr. Mathur learned Senior Counsel with regard to the ingredients of section 467 IPC not being made out is concerned, it is too early in the day to conclude with definite observation that merely because the FSL report has not given any conclusive finding on that aspect, there may not be any other evidence to prove or corroborate the said allegation. At the stage of consideration of bail, it may not even be proper for this Court to embark upon returning a finding upon such issue. Suffice it to observe that the same would be subject matter of trial. The judgement of the Hon'ble Supreme Court in *Sheila Sebastian (supra)* relied upon by the applicant for this proposition is concerned, in view of the above observation this Court need not consider the same. However, it is to be noted that the said judgement was rendered in an appeal arising out of conviction and not a proposition that can or should be considered at the stage of bail.



32. Keeping in view the above, this Court is of the considered opinion that the applicant cannot be released on bail and the present bail application alongwith pending applications, if any, are dismissed as such.

33. The applicant is directed to surrender immediately upon the expiry of the extension period as granted by the Supreme Court in its order dated 14.08.2023, as noted above.

34. Needless to state that any observation made hereinabove shall not tantamount to expression on merits.

TUSHAR RAO GEDELA, J.

AUGUST 29, 2023

rl