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

+ **BAIL APPLN. 426/2015**

Date of Decision : September 21st, 2015

SUMEET MALHOTRA

..... Petitioner

Through: Mr.Chayan Sarkar, Mr.Karan Bindra
and Mr.Kumar Ankur, Advs.

versus

GOVT OF NCT OF DELHI

..... Respondent

Through: Ms.Arun K. Sharma, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present application has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1908 for the grant of ad-interim bail in FIR No.35/2014, Police Station-Barakhamba Road, under Sections 406 & 420 of the Indian Penal Code, 1806.

2. The allegations levelled against the accused are that he received a huge amount from the innocent public persons on the pretext of developing and providing flats to them. It is further alleged that the petitioner had no land or scheme in his name and had taken money from the innocent persons fraudulently. When those persons

demanded their money back, the petitioner did not refund the same. The petitioner had even agreed to pay a premium of Rs.500 per square feet plus principal amount, but he failed to do so.

3. The argument advanced by the counsel for the petitioner is that the present dispute is civil in nature. The petitioner was an underwriter of the project in Sector 95, Gurgaon and had to develop the project after buying it from one Pal Infrastructure. He had made the payment of Rs.6 crores for acquiring licenses to Pal Infrastructure which is still in the process of acquiring the licenses. The petitioner has already made the payment of Rs.5 lakh to the complainant as one of the instalments. The petitioner is in custody since 12.01.2015. No offence is made out against the petitioner in the charge sheet filed.

4. In support of the contentions, the petitioner has relied upon judgment in case of *Sanjay Chandra v. Central Bureau of Investigation (2012) 1 SCC 40*; *Hridaya Ranjan Pd. Verma and others v. State of Bihar and another, 2000 Cri.L.J. 2983*; *State of Kerala v. Raneef (2011) 1 SCC 784* and *Sukhwant Singh and others v. State of Punjab (2009) 7 SCC 559*. The ratio of the judgments cited is that “*bail is the rule and committal to jail an exception*”. It

was observed by the Hon'ble Apex Court that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India.

5. On the other hand, learned APP for the State has vehemently opposed the bail application on the ground that the petitioner usurped the money of the innocent buyers who booked the flat and invested their money. It is further submitted that the petitioner took money from the innocent persons for his personal use despite being well aware of the fact that he had no licence to develop any project, as claimed by him. Apart from the present case, a few more FIRs have been registered against the petitioner with the same allegations. He had taken the deposit of Rs.9 crores but did not develop any project.

6. It is apparent from the record that the petitioner/accused invited money from the innocent flat buyers and got the deposit of about Rs.9 crores. The claim made by the petitioner that he had to develop the project after obtaining 'buying rights' from Pal Infrastructure, is of no consequence in view the fact that despite not having any license to develop any project or having any land to develop, he kept taking money from the buyers under the inducement that flats would be

booked in their name. It is also apparent that the petitioner is taking money from the innocent persons since 2011 without any licence.

7. It has come on record that the petitioner had no authority/locus standi to develop the project or to provide flats to the customers, as replied by Director Town and Country Planning (DTCP), Chandigarh. Even the agreement between the petitioner and Pal Infrastructure was not brought to the knowledge of the DTCP, Chandigarh with regard to 'buying rights' by the petitioner from Pal Infrastructure. The claimed licence in favour of Pal Infrastructure was not transferable to any person or to authorize any other person to collect the amount for developing the project. In view of this position of the matter, the petitioner cannot get any assistance from the judgments as mentioned above.

8. In the facts and circumstances mentioned above, no ground is made out to release the petitioner on bail. Application is dismissed accordingly. However, it is made clear that the observations made shall not affect the merits of the case.

P.S.TEJI, J

SEPTEMBER 21, 2015
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