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

Judgment delivered on: 8th September, 2015

\+ **BAIL APPLN. 1893/2013**

PAVAN DATTA ..... Petitioner

Represented by: Mr. Anurag Jain, Mr. Rajat Gaur & Mr. Ravi Prakash, Advs with petitioner in person.

versus

STATE ..... Respondents

Represented by: Mr. Ravi Nayak, APP for the State with SI Satya Prakash, EOW in person.
Mr.Vineet Malhotra, Mr.Vishal Gohri and Mr.Shubhender Kaushik, Advs for complainant Nos.36 to 38.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of this petition filed under Section 439 of the Code of Criminal Procedure, 1973, petitioner seeks direction thereby directing the Investigating Officer concerned to release the petitioner on bail in case FIR No.215/2011 registered at police station EOW, New Delhi for the offences punishable under Sections 467/120B/468/471/420 of the IPC.

2. Vide order dated 10.10.2013 this Court granted interim relief and released the petitioner on bail on his furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of

learned Trial Court.

3. Learned counsel appearing on behalf of petitioner submits that petitioner remained in judicial custody for 55 days. Thereafter, he moved the application before learned Trial Court for bail, however, the same was dismissed vide order dated 30.09.2013. Initially, there were about 15 investors and the total amount claimed by them was Rs.4.32 Crores. Thereafter, the Investigating Officer was directed to verify the same from the investors, however he filed the status report and reported that the amount is Rs.3,41,26,120/-. It is further reported that the verified amount is Rs.1,99,80,870/- as deposited by different investors.

4. The petitioner has deposited an amount of Rs.1,34,38,765/- in the name of Registrar General of this Court pursuant to the order dated 15.12.2014. In addition to above, an amount of Rs.90,51,121/- was paid to 15 investors / initial complainants, thus, the petitioner has paid a total amount of Rs.2,24,89,885/-. Thus, more than Rs.1.00 Crore has been paid by petitioner from his personal account.

5. However, subsequently, 42 more complainants approached the Investigating Officer and joined in this FIR. Vide order dated 18.08.2011, passed by the Company Court, a liquidator was appointed for M/s Lakshish Habitats Ltd and now the assets are with the liquidator. The petitioner himself filed the title documents of 261 acres of land before the liquidator, whereas co-accused Gagandeep Chawla and Arvind Khosla have not deposited any documents and are not cooperating and not appearing before the company liquidator. Accordingly, recovery proceedings are initiated against them; whereas, the petitioner has not

received any notice or demand from the Company Court.

6. Ld. Counsel further submitted that vide order dated 18.09.2014, the Company Court appointed the auditor to assess the assets and liability of the company, however, till date the said exercise has not been completed. Moreover, the petitioner has filed the revival scheme before the Company Court and same is pending consideration. As per the status report, amount invested by complainant Nos.36, 37 and 39 have not been verified by the Investigating Officer and the petitioner from the year 2011 till 2015 had joined the investigations on various occasions and has not fled from the process. Therefore, the petitioner being law abiding citizen is ready to whatever conditions imposed by the Court and to join the investigations and proceedings before the Company Court.

7. Learned APP appearing on behalf of State as well as learned counsel for claimant Nos.36 to 38 submit that in the order dated 11.12.2014, this Court recorded that the investors at Sr Nos.36, 37 & 39 had paid the amount mentioned in the claim through regular banking channel as long as December, 2007; eight years have elapsed they are willing to take back the principal amount which had been transferred from UK sterling into Indian Rupees, even then it would result in specific loss due to favourable exchange rate, they are ready to forgo interest and compensation, provided they are paid the amount forthwith.

8. It is admitted case that the petitioner has not paid any amount to the aforesaid investors. Vide the order dated 15.12.2014, this Court directed learned counsel for petitioner to take instructions with regard to the complainants as on date including, those who have come after initial 15

complainants mentioned in the FIR in question. However, petitioner has not come forward in response thereto till date.

9. Vide order dated 30.07.2013, learned Additional Sessions Judge, granted bail to the petitioner on the assurance given by the *Parokar* of the petitioner that he will pay an amount of Rs.4.82 Crore within six months in lieu of the assets received by the investors without admitting any liability for the purpose of this FIR. Since, this order was not complied with by the petitioner, his interim protection was cancelled vide order dated 30.09.2013.

10. The aforesaid case was registered against the petitioner and co-accused persons on the complaint of Sh Chaman Lal Arora, wherein the accused partners of firm M/s Lakshish Infrastructure and Town Planners and directors of company M/s Lakshish Habitats Ltd cheated the victims of their hard earned money by way of inducement and misrepresentation by getting the payments for the proposed township projects under 'pre-launch' scheme with the allurement of developing the projects with world class amenities. Two different projects in the name of 'Bollywood City' off Mumbai-Pune Expressway and 'Amara Retreat' off Mumbai-Goa Highway, both in District Raigad, Maharashtra were proposed by the abovesaid firm and company respectively. The buyers/investors were not delivered promised residential units and the money collected by them was misappropriated by the directors/partners of the alleged firm and company for their personal gains. The petitioner herein was at the helm of affairs and managing and controlling both the alleged company and firm being 50% partner of former and chairman and managing director of the later.

11. As per the status report filed on 18.02.2015, it is submitted that no endeavour was made by him as well as his associate directors / partners in developing the proposed projects and the victims were made to suffer wrongful loss who were made to part with their money on false assurances. So far, total 57 complaints of investors/buyers of both the above mentioned projects have been received wherein the amount claimed to be involved is about Rs.7.90 Crore. The investors were assured by the directors / partners of aforesaid company/firm that they own more than 600 acres of land and development work is about to commence. The legal report mentioned the status of the land and approvals of the project proposed by the company M/s Lakshish Habitats Ltd and was sent to the investors to further assure them. The said report was got prepared by the directors of the alleged company without having the requisite approvals for the development of the project. After lapse of considerable time period no development work was started at the site and when the investors enquired about the status, they were not given any satisfactory response and the alleged directors / partners vanished from the scene after closing their offices.

12. During investigations, the petitioner was asked to provide the details of funds collected and utilisation thereof, but he did not provide the same. He simply tried to pass the onus of the wrongdoing on the other directors / partner. In order to subject him to custodial interrogation to unearth the whole conspiracy and to ascertain the diversion of the funds, the petitioner was arrested on 07.06.2013. Later on he was granted interim bail for 60 days by learned Additional Sessions Judge vide order dated 30.07.2013 on the conditions that he will refund the entire amount taken

from 15 investors alongwith interest within six months paying at least two investors every month starting with the complainant Sh Chaman Lal Arora. The petitioner backtracked from the undertaking given before learned Additional Sessions Judge and did not fulfil the conditions imposed in the order vide which interim bail was granted and applied for the regular bail which was dismissed by the said Court vide order dated 30.09.2013. More than 1½ year has passed since the order dated 30.07.2013, but the petitioner has not complied with the conditions laid down in the order which were put on the basis of the undertaking given by his *Parokar*. Instead of complying with the order, he is making every effort to divert the issue and delay the refund by questioning the amount claimed to be invested by the complainants. In case of any ambiguity in respect of the amount claimed and amount actually received, the petitioner could have refunded even the admitted and mutually agreed amount, but even that has not been done so far.

13. Moreover, the petitioner as well as other partner/directors have not provided the ledger books and other records pertaining to the funds collected from the investors. Neither any returns nor balance sheets were filed by the company with regard to income and expenses which shows that company and firm were running in un-professional manner.

14. As per the investigation, the funds collected from the investors or buyers were misappropriated by the petitioner for purchasing the assets in their personal names instead of in the name of company.

15. Learned counsel appearing on behalf of petitioner has disputed the status report and submitted that the Investigating Officer has not verified

the payments made by the investors. This plea of the petitioner cannot be entertained for the reason that the petitioner being the managing director of the company used to manage the accounts of the firm / company has each and every details of the investors and the petitioner is the best person to come forward with the clean hands and state what is the amount they have received. The details of the amount received and the invested in the company or for other purposes has to be submitted by the petitioner, which he has failed to do till date.

16. In view of the facts recorded above and the seriousness of the allegations, I hereby recall the interim protection granted to the petitioner vide order dated 10.10.2013 and finding no merits in the instant application, the same is dismissed.

17. The petitioner is accordingly directed to surrender before learned Trial Court within two days.

18. A copy of this order be given dasti to the learned counsel for the parties.

Crl.M.A.Nos.685/2014, 687/2014, 19112/2014, 19134/2014, 2861/2015 and 10750/2015

Dismissed as infructuous.

SURESH KAIT
(JUDGE)

SEPTEMBER 08, 2015
M/RS