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

%   *Order delivered on: 19th January, 2015*

\+   **BAIL APPLN. 2123/2014**

SANJAY SHARMA ..... Petitioner

Through Mr.Manoj Ohri, Sr.Adv. with Mr.Jitender Verma & Mr.Vishv Nidhi, Advs.

versus

STATE ..... Respondent

Through Ms.Jasbir Kaur, APP for the State

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the above mentioned application for grant of bail. On the basis of the complaint filed by the complainant Sant Shri Krishna Swami, FIR No.340/2013 was registered against the petitioner and other accused persons under Sections 420/468/467/471/120-B/34 IPC. The relevant extract of the FIR reads as under:

> "I Sant Krishna Swami S/o Pandit Sh. Radha Mohan Mishr R/o A-29/22, Mahendra Park, Azadpur, Delhi and I want to open a Gaushala and School and for that purpose I was searching for a plot and I seen various plot and asked the different persons who are on visiting terms in my Aashra and Amir Chand Buttan, Ajay Buttan, Avinash Sood, were

regular visitors to the Ashram of the complainant and the accused Amir Chand Buttan told that he has retired as Director from DDA and he will get him allotted land on minimum rates from DDA within six months and his entire famly works in DDA and the LG is also known to him and he can get the plot allotted. He has already got allotted plots to Punjab Kesari, Haldi Ram Bhujia and all big peoples. At present Amir Chand Buttan told the complainant that his son-in-law is Director (Land Allotment) in DDA his son is an Senior Executive Engineer in DDA and they will get allot the land to me. In January 2012 on many occasions Amir Chand Buttan alongwith his wife Janak Buttan came to me for discussion and on 25th January, 2012, Amir Chand Buttan, Avinash and Ajay showed the plot of land measuring 1452 sq. mtrs. in Pushpanjali Pitam Pura to me and the deal was fixed at Rs.5 crores, out of Rs.5 crores a sum of Rs.1.50 crore will be deposited by the Trust with the DDA while remaining amount will be spent on the officers, LG and DDA Vigilance in between 30-40 persons. That apart from the money to be spent for taking the DD remaining amount will be given in cash. I sought donations from 500 disciples of the Ashram in Delhi and 1000 disciple from other part of India and seeks donations from Bhagwat Katha and other Satsangs and sold two plots in Vrindavan, one shop in Delhi of my daughter and also sold out gold and silver for collecting money. On 1st February, 2012 I gave the consent for the work. On 3rd February, 2012 Amir Chand Buttan, Avinash Sood, Ajay Buttan came in their Maruti A-Star Car No.DL-8CQ-4377 came and got the allotment form of DDA filled wherein the land use was mentioned as school and hospital and get the detail of bank account of the trust and told that in one month the land will be allotted and receive Rs.25,00,000/- and went away. On 25th February I demanded the allotment letter and on 2nd March, 2012 Amir Chand Buttan, Janak Buttan, Avinash Sood came and got me written one letter to DDA director and asked for more money then I told them that I will give money only after obtaining the letter of allotment. They discussed for some time and went away. On 3rd March, 2012 one letter on the letter pad on which the letter was of 3rd March, 2012 but the diary of the DDA was mentioned as 1678/1575 dated 2nd March, 2012 as I had doubted the letter as the diary no. was dated 2nd March, 2012 but they told that it is the mistake of clerk and DDA will allot you plot in Pitampura or Rohini wherever I deemed fit. We can also get you land in Pitampura I accept and on 3rd March, 2012 they gave me a letter of DDA with signature and stamp of director LCC (Industrial) and went away. They demanded Rs.50 lac and I called them after 5-10 days and I called them on 6th March, 2012 and gave Rs.50 lac to them. In such a fashion I gave a sum of Rs.75,00,000/- till 6th March, 2012. These persons constantly demanded the money but I refused due to unavailability yf money and told them that I am procuring the same and I assure them on 12th April, 2012, Avinash Sood, Sonia Sood and Bal Kishan Gupta came at the Ashram alongwith one DDA Letter Institutional Branch with diary No.1352/1752 in which the value of the land in Pushpanjali was mentioned as Rs.1,22,78,612/- at the rate of Rs.8456/- per sq. mtrs. and time was given of 90 days. I got worried and they told me that after receiving their amount they will deposit the amount in DDA and I have to give them DD. I inquired from Avinash Sood about the lady who has accompanied him and his associates then Avinash Sood told them that she is working in L.G. Office Bal Kishan Gupta introduced himself as Executive Engineer in DDA, and he has his own office at Shakti Nagar. He told me to visit me in the extra time after my duty. Sonia Sood asked me that he is demanding money and I requested for some time and after arranging the same on 18th April, 2012, I gave Rs.25 lac to Sonia Sood, Avinash and Bal Kishan Gupta. In this manner I paid a sum of Rs.1 crore. On 24th May, 2012 I got a bank draft of Rs.40,98,452/- in favour of DDA and to give them money quickly Sonia Sood and Avinash Sood brought along with them a female namely Manisha Wudan whom they introduced as the dealing clerk in DDA who stated that only when I will pay the money then LG will give directions to deposit the said DD in DDA. On 2nd June, 2012, I paid an amount of Rs.50 lac and then on 4th June, 2012 my demand draft was deposited in DDA. In this manner on 4th June, 2012 on deposit of one DD they started making demands for more money and two demand drafts. In this manner, I had paid an amount of Rs.1.5 crores. On 10th July, 2012 and 11th July, 2012 I got the said demand drafts made from bank and got Rs.50 lac in cash. Sonia Sood, Avinash Sood and Amir Chand Gupta took me in their car bearing No.DL 8CQ 9858 Ritz. They deposited one DD on 13th July, 2012 and another DD on 25th July, 2012. They kept on saying that the officers are demanding money. On 25th August, 2012 I paid Rs.30 lac to Sonia Sood, Avinash Sood and Ajay Buttan and on 26th August, 2012, I paid Rs.32,50,000/- to Amir Chand Buttan and Janak Buttan. In this manner, apart from demand drafts I had made them a payment of Rs.2,12,50,000/- only. They still kept demanding money. On 3rd October, 2012, they gave me an allotment letter bearing Serial No.516 dated 26th September, 2012 issued by DDA and authenticated by Notary Public. Amir Chand Buttan and

Manisha Buttan suggested giving the possession letter to me within thirty days and made further demand of money. On 4th December, 2012, they asked me to meet at the said plot in Pushpanjali, Pitampura on 14th December, 2012. That DDA Director and Junior Engineer will themselves give me the possession letter. I was told to bring all the previous papers alongwith me and make a payment of Rs.1 crore to the officers on spot and the remaining money was to be paid at the time of lease to which I stated to give the money on 14th December, 2012. In the afternoon of 14th December, 2012 Amir Chand Buttan, Janak Buttan and Avinash Sood came to meet me on site in Pushpanjali at the plot. In some time 2 more persons came in a white car bearing Regn. No.DL 4C AP 4802. Amir Chand Buttan and Avinash Sood got them introduced. One person was introduced as Sh. Sandeep Sharma posted as Junior Engineer with DDA and other person was introduced as Sh. <u>Sanjay Sir posted as Assistant Engineer with DDA. Thereafter, Sh. Sanjeev Sharma opened a briefcase, inspected the documents that were in my custody and handed over a possession letter to me.</u> Then they took my signature in their register. They wished me best of luck and asked me for more money. I gave them Rs.50 lac. They reprimanded me and asked for money to which I replied that I will give the remaining amount at the time of lease at which they reprimanded Avinash and left the spot. Avinash then told me that now I have got the possession of the plot and their job is finished and that I should quickly pay him the remaining amount. They asked me that I still own them Rs.1,14,50,000/-. Till then lease would not be executed. First the money was to be paid only then the lease would be executed. That on one day Amir Chand Buttan came to me along with Sanjay and Sandeep

Sharma and started demanding money and threatened me that they will sell the plot of land to someone else and intimidated me by saying they will get my file misplaced from DDA. I do no had any money at all. Manisha Buttan, Avinash Sood and mother of Avinash Sood told me that Swami Ji, you are a fraud and have misappropriated our money and they started an altercation saying that *rishwat ke kaam mai paisa pehle lagta hai aur aapke bhi saare paise doob gave* and Manisha and Sonia Sood started fighting with me stating that how I would neither get the plot nor get my money back. On 14th December, 2012 to 20th February, 2013, I waited to get the lease in my name and on not getting the DDA lease I went to DDA office and searched for all the aforesaid persons and on not finding anyone of them, I started getting worried as neither of them were at any of the post nor could find my file of documents. Thereafter, I talked to the DDA officials and made a written complaint to DDA on 27th February, 2013 to which I did not get any reply. I made rounds to the residence of Mr.Buttan and Avinash and workplace of Bal Kishan Gupta until 25th March, 2013. They did not even respond to my telephonic calls and when I informed them of my intent to take recourse to police remedies, then first Avinash Sood arranged a meeting with me and Avinash Sood and Mr. Buttan came and handed over me the ownership documents of their residence in Mayur Vihar and one plot of land in Rajpura and gave a cheque bearing No.2415/2013 of Indian Overseas Bank Kamakar of value Rs.50 lac. And for the remaining amount he executed an agreement in his own hand to pay the remaining amount, apart from the aforesaid cheque, which was to the tune of rupess three crore eighty five lac and fifty thousand. He also wrote and undertook to himself refund the amount deposited with DDA. The said agreement was signed by son-in-law Avinash Sood as a witness and from my side Mr.Ghanshyam Gupta gave his witness in the presence of my student Gaurav Sharda and Mukesh Kumar Garg as witnesses. On depositing the cheque, agreement and residence and plot documents, Mr.Buttan and Avinash Sood had assured to refund the entire amount within a time period of two months and take back the cheque, agreement and residence and plot documents then but they did not refund any money till 20th June, 2013. That the cheque got bounced and was returned by the bank. On this I filed a RTI with DDA on 20th June, 2013 and received a reply from DDA on 18th July and 23rd July of which copies are attached with this complaint. On 10th July, 2013, Amir Chand Buttan came to me and asked to present the cheque again which would get encashed this time. On presenting the cheque on 23rd July, 2013 it again got bounced. That Amir Chand Buttan and all aforesaid persons have cheated me and when I told them that I would approach the police then Ajay Buttan, Avinash Sood and Poonam Buttan had threatened me that they would get me and my family eliminated. And Amir Chand Buttan told me that he will get me and my family members kidnapped in the police station and court as well and get my family members kidnapped from my residence with help of goon. Therefore it is requested that to protect the Indian citizen and to save the administrative property and to take action against the culprit man and women and so that other trusts money be saved and to save my money and to protect me."

2. The respondent has filed the status report in the matter. It is stated that on the basis of the complaint the FIR was registered and

the investigation was conducted. So far, the petitioner introduced himself as the Junior Engineer in DDA. The possession letter was handed over to the complainant on 14th December, 2012. He visited the site at Pushpanjali Enclave for handing over the possession through vehicle which is owned by Nancy Sharma, daughter of the petitioner. During the investigation, he has admitted that a sum of Rs.30 to 35 lacs came to his share. He was present at the time of land deal as per the audio track of video coverage. When IO moved an application for polygraph test of the petitioner, he refused the same.

3. Learned Senior counsel appearing on behalf of the petitioner has relied upon the statement recorded under Section 161 Cr.P.C. of Sh.Mukesh, who is an eye-witness, wherein it is categorically stated that – "For giving possession Sanjay Sharma and Sandeep Sharma were introduced as DDA officials. When Swami Ji came Sh.Bal Kishan Gupta was sitting in a car who is accompanied by one person who was introduced to me as the director of DDA who has to give the possession and Bal Kishan told Swami Ji that his work is complete. Please give the amount to Sir and on asking of Bal Kishan, Swami Ji gave Rs.50 lacs to the said Sandeep Sharma of DDA inside the car itself. In the afternoon the DDA officer gave the possession of the plot in Pushpanjali, Pitampura to Swami Ji and left the place. That the person who has come as a director of DDA has come in the car bearing No.DL-4CAP-4802 and Sanjay Sharma was also accompanied in the said car and went back in the same car." It is

stated by the learned Senior counsel that in the photograph filed by the investigating officer in the charge sheet, there is a car bearing No. DL-4CAP-4802 and the said car has no linkage with the present petitioner and in view thereof and the material available, the I.O. got another supplementary statement recorded that number of the car is wrongly mentioned and confiscated the car bearing No.DL-5CE-1183 of petitioner only.

4. Learned Senior counsel has also referred the statement of Gaurav which was recorded under section 161 Cr.P.C. wherein he categorically stated that – "He has recorded in the memory card of the camera the photography and I copied the same in the pen drive and after that I deleted the contents from the memory card. After that Swami Ji told me that Avinash Sood, Amir Chand Buttan, Bal Kishan, Sanjay Sharma, Sandeep Sharma who has given the letter of possession of DDA was found forged and all the persons have cheated him." It is argued that the entire case is based upon evidence of spy camera which is a doctored one and the original was deliberately deleted. Hence, there is a serious doubt on the version of the complainant as well as investigating officer. Thus, the complainant has filed the false complaint under Section 200 Cr.P.C.

5. Learned Senior counsel has referred two decisions in support of his submissions. The same are as under:-

(i) ***Anvar P.V. v. P.K. Basheer and others***, 2014 (10) SCALE 660 and

(ii) ***Ashish Kumar Dubey v. State Thr. C.B.I.***, 2014 (142) DRJ 396.

6. Learned Senior counsel submits that the petitioner had not taken any money from the complainant against the allotment of land. The petitioner has no role and has been falsely implicated. The prosecution cannot rely upon the statement made by his client during the course of investigation. The same was made when he was in custody. As far as Section 120-B IPC is concerned, he says that no case is made out against the petitioner at present. The documents filed against the petitioner are false and fabricated. The said aspect is to be examined and to be considered after the trial. He says that the charge-sheet has already been filed. The petitioner has deep roots in the society and there is no likelihood of the petitioner either fleeing from the jurisdiction of this Court or absconding. He is the sole bread earner in the family. He is a chronic patient of liver disease and has been undergoing medication for the same. Medical documents are placed on record. It is submitted that this Court may put any condition upon his client and he would abide by the same.

7. Learned Senior counsel argued that even the story of the complainant is doubtful as he claims himself to get the allotment of land from DDA by paying alleged gratification which itself falls in the category of gross criminal offence by the complainant himself and such transaction falls in the category of illegal transaction and contract and the same cannot be legally enforced.

8. The Supreme Court in the case of ***Sanjay Chandra v. Central***

Bureau of Investigation, (2012) 1 Supreme Court Cases 40 in paras 21, 22, 23, 24, 40, 45, 46 after recording the facts and law has held as under:-

> "21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.
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> **22.** From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.
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> **23.** Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of

former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

- xxx-

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

- xxx-

45. In *Bihar Fodder Scam* (*Laloo Prasad v. State of Jharkhand, (2002) 9 SCC 372*) this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."

9. In the present case, the petitioner is in custody since 8th May, 2014. The charge-sheet against him has been filed. In the FIR, the complainant has not made any allegation that the petitioner received gratification from him. He surrendered himself before Court. He had also joined the investigation. He has made his statement before the IO. He has denied that he ever met the complainant. He has

challenged the statement recorded of eye-witnesses as well as the photograph, by relying upon the statement of Mr.Gaurav. As far as Section 120-B IPC is concerned, the same has to be proved by the prosecution at the time of trial. *Prima-facie*, from reading of FIR, it is evident that his role is different than other accused.

10. In view of the above discussion and without expressing any opinion on merits, the petitioner is released on bail, subject to his furnishing a personal bond for the sum of Rs.1 lac with two sureties each of the like amount to the satisfaction of the Trial Court and further subject to the following conditions:-

(i) The petitioner shall not directly or indirectly make any threat to any witness and tamper with evidence and shall remain present before Court on the dates fixed and shall take prior permission of the Court in case of unavoidable and unseen circumstances.

(ii) He would not dispute his identity as an accused.

(iii) He shall surrender his passport before the Trial Court if he has the same, and shall file his affidavit containing his latest address and all telephone numbers and undertake to inform the Court in case of change of his residence and phone numbers.

11. Liberty is granted to the prosecution to make an application for cancellation of bail in case of violation of any condition by the petitioner.

12. The present application is disposed of in view of abovementioned directions.

13. Copies of this order be given *dasti* to both the parties.

(MANMOHAN SINGH)
JUDGE

JANUARY 19, 2015