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

Judgment delivered on: 10th August, 2015

\+ **BAIL APPL. No.1416/2015**

VIJAY KUMAR SHARMA ..... Petitioner

Represented by: Mr.Salman Khurshid, Senior Advocate with Mr.Shailendra Singh, Mr.Mananjay Kumar Mishra and Ms.Samina Khatoon, Advocates.

Versus

STATE NCT OF DELHI ..... Respondent

Represented by: Mr. Ravi Nayak, Additional Public Prosecutor for the State with Inspector A.K.Singh, Investigating Officer, EOW, Delhi.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Present petition is the second bail application filed by the petitioner under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.").

2. Mr.Salman Khurshid, learned senior counsel appearing on behalf of the petitioner submits that the petitioner is in custody since 14.05.2013. There was neither any allegation in the FIR No.737/2007 registered at

Police Station Connaught Place, New Delhi, for the offences punishable under Sections 420/120-B of the Indian Penal Code, 1860 (IPC) nor in the chargesheet filed by the Investigating Agency against the petitioner, however, the petitioner has been falsely implicated in the supplementary chargesheet.

3. Mr. Khurshid further submits that the petitioner was appointed as a Consultant on 01.07.2006 and was relieved with effect from 31.03.2007. As Consultant, he was Authorized Signatory of the various Bank Accounts of M/s Vian Infrastructures Limited. There are no allegations against the petitioner that he withdrew money from the Banks for his own use or pleasure or deposited the same in his account. The petitioner was not signatory of any amount to be released in favour of anyone. Moreover, Survesh Chowdhary, who is the Managing Director of aforesaid Group remained in jail for six months and thereafter released on bail.

4. Mr. Khurshid submits that in the first chargesheet filed on 03.10.2009 against Surya Kirti Thapar, name of the petitioner was not mentioned even in Column No.12. Vide Resolution dated 31.03.2007, Board of Directors of M/s Vian Infrastructure Private Limited, powers of the petitioner seized to exist. He submits that allegations against the petitioner are that when the complainant visited the office of the said Company, at that time the petitioner was also present in the said office alongwith Survesh Chowdhary and Surya Thapar. During course of investigation, one of the witness, Sh. Setlur Ramaswamy Veeraraghavan was examined, who was employee of the Company mentioned above. In his statement recorded under Section 161 Cr.P.C., he stated that he had responded to an advertisement published in the 'Times of India', calling

suitable candidates for walk-in-interview for the post of General Manager (Finance) during the last week of November, 2006. Though he did not have any experience in the real estate section, he was interviewed initially by DGM (HR) and thereafter by Chairman Mr.Vijay Kumar Sharma, petitioner herein.

5. Mr. Khurshid further submits that petitioner was never remained Chairman of the said Company. Further allegations against the petitioner are that he is a habitual criminal and was a master mind in JVG Cases, PSG Cases and now in Vian Cases. Earlier the petitioner was involved in a number of criminal cases registered against NVG Group of Companies in all over India for cheating as he was the Director of the said Company. The petitioner was also involved as master mind in several other cases registered against M/s PSG Developers and Engineers Limited of similar type of cheating including FIR Nos. 106/2007, 135/2007 and 136/2007 for offences under Section 420/406/409/120-B IPC registered at Police Station Parliament Street, New Delhi.

6. Further allegations against the petitioner are that Mr. Surya Kirtichand Thapar, the Director of M/s Vian Infranstructure Limited authorized the petitioner as signatory in the Bank singly without any limit. Learned senior counsel submits that if the petitioner is involved in other cases, he will face the consequences thereof. Whereas in the present case, neither the petitioner was Director nor he has withdrawn any amount for his own benefit or deposited the same in his account or diverted the same, therefore, the petitioner cannot be blamed in the present case. Moreover, he submits that Surya Kirtichand Thapar, the Managing Director and whole-sole of the said Company, has remained in custody for only six months and the petitioner is in custody since 14.05.2013 and a settlement

has been arrived at between the petitioner and the aforesaid Company in CS(OS) No.2233/2008 before this Court, as has been recorded vide order dated 17.12.2008.

7. Learned senior counsel further submits that the petitioner offered himself in the investigation to the Commissioner of Police and during investigation he was arrested. He never tried to evade judicial process and he is a law abiding citizen of the country. For an unlimited period the petitioner should not be kept in the custody and he is entitled for bail.

8. On the other hand, Mr.Ravi Nayak, learned Additional Public Prosecutor appearing on behalf of the State submits that the petitioner is the main accused, he is the master mind of cheating in this case and other cases as well and has cheated more than 6000 investors along with other co-accused. Moreover, his conduct has been recorded by this Court in the order dated 24.11.2014, whereby the earlier Bail Application No.1059/2014 moved by the petitioner was dismissed. The relevant observations are as under:-

> *"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."*

9. Learned Additional Public Prosecutor further submits that vide aforesaid order, while dismissing the said bail application of the petitioner, bail application of Surya Kirtichand Thapar was also dismissed, which was challenged by Surya Kirtichand Thapar before the Supreme Court, however, could not succeed. There is no change of circumstances after order dated 24.11.2014. The petitioner was singly authorized signatory of the Bank accounts and had withdrawn an amount of Rs.22,14,09,892/- by self/cash, petitioner and his associates had withdrawn an amount of Rs.1,63,29,508/-, Shree Krishna, who is brother-in-law of the petitioner, had withdrawn an amount of Rs.48,18,900/-, Sajjad Properties withdrew an amount of Rs. 9,66,32,000/- and PSG Developers and Engineers had withdrawn an amount of Rs. 11,06,70,000/-, which belongs to the petitioner.

10. Learned Additional Public Prosecutor further submits that the petitioner was Authorized Signatory of the accused company in the following Bank Accounts:-

1.	*Axis Bank, Saket, New Delhi*	*160010200008945*	***<u>"SINGLE WITHOUT ANY LIMIT"</u>***
2.	*Axis Bank, Saket, New Delhi*	*160010200008426*	***<u>"SINGLE WITHOUT ANY LIMIT"</u>***
3.	*Axis Bank, Jaipur*	*010010200038872*	***<u>"SINGLE WITHOUT ANY LIMIT"</u>***
4.	*Axis Bank, Agra*	*086010200009713*	***<u>"SINGLE WITHOUT ANY LIMIT"</u>***
5.	*Axis Bank, Haridwar*	*358010200002332*	***<u>"SINGLE WITHOUT ANY LIMIT"</u>***
6.	*Axis Bank, Indore*	*043010200039145*	***<u>"SINGLE WITHOUT ANY LIMIT"</u>***
7.	*Kotak Mahindra Bank, GF-3A-3J, Ground Floor, Ambadeep Building, 14, K.G. Marg, New Delhi*	*01722010002031*	***<u>"SINGLE WITHOUT ANY LIMIT"</u>***
8.	*Yes Bank Ltd., Chanakya Puri Branch, New Delhi*	*000382000001074*	***<u>"SINGLE WITHOUT ANY LIMIT"</u>***

11. Learned Additional Public Prosecutor submits that accounts mentioned at serial Nos. 1, 2, 3 and 7 were opened by the petitioner himself and though for a limited time, he was the only authorized person to deal with these accounts. In other words, even the Directors were not authorized to deal with these accounts and it is substantiated from the certified copy of the Resolution dated 19.03.2007 passed by the Board of Directors of the accused Company.

12. Scrutiny of the chargesheet filed in this case reveals that the applicant/petitioner misused the funds and an amount of Rs.11.72 Crores were withdrawn in cash through self cheques, whereas, the total withdrawal is Rs.25.05 Crores in cash through self cheques. Besides, Rs.9.66 Crores and Rs. 11 Crores were transferred to the accounts of M/s Sajjad Properties and M/s PSG Developers.

13. Learned Additional Public Prosecutor further submits that the Directors of the Company in question are the Directors of these Companies too. The petitioner is one of the accused persons arrested in

the case registered against M/s PSG Developers.

14. After hearing learned counsel for the parties, it is established that modus operandi adopted by the petitioner is that he floats a number of companies and rotates the Directors, funds and MOUs between these companies to keep the innocent investors and Government Agencies in dark. The petitioner and other Directors are having interconnected links in several companies including M/s PSG Developers and Engineers Limited, M/s Vian Infrastructure Ltd., M/s JVG Groups of Companies, M/s Yusaf Engineering Ltd. etc. The petitioner and Directors of these companies in active collusion with each other rotated themselves in these companies and transferred/siphoned off or utilized the funds collected from the innocent investors by opening a large number of bank accounts in the name of these companies. The petitioner is the master mind behind all activities. The details of the accused persons and their links with other companies are as under:-

S. NO.	**NAME OF THE DIRECTORS**	**DETAILS OF THE COMPANY**
1	Vijay Kumar Sharma S/o Sh. Suraj Prakash Sharma R/o F-130-A, West Avenue Forest Lane Sainik Farm, New Delhi	Director in M/s JVG Director in M/s Yusaf Eng. Director in M/s Ayushi Buildestates Pvt. Ltd. Authorized signatory of the M/s VIAN Authorized signatory of the M/s PSG Developers
2	Surya Kirtichand Thapar W/o K.R. Thapar R/o B-243, Florance Elite, Sushant Lok-III, Sector-57, Gurgaon, Haryana	Director in M/s JVG Director in M/s VIAN Director in M/s Yusaf Eng. Director in M/s Ayushi Buildestates Pvt. Ltd.
3	Survesh Chowdhary S/o Rajender Singh Chowdhary R/1A-105, Sector 36 Noida, Uttar Pradesh	Director in M/s VIAN Director in M/s Yusaf Properties Director in M/s Mauve Farms Pvt. Ltd. Director in M/s Saffad Pro. Pvt. Ltd.

4	Janardan Prasad Sharma S/o C.P. Sharma R/o 43 Naugadh Anchal Nagar Distt. Gaya, Bihar. **(Proclaimed Offender)**	Director in M/s VIAN Director in M/s PSG Director in M/s Sajjad Director in M/s Yusaf Properties
5	Pranay Kumar S/o Gauri Shankar Sinha R/o RZB-116 A Street No.9, Dev Kunj Rajnagar-2, Palam Colony, New Delhi. **(Proclaimed Offender)**	Director in M/s VIAN Director in M/s PSG Director in M/s Sajjad Director in M/s Yusaf Properties Director in M/s Ayushi Buildstates Pvt. Ltd.

15. In view of the above, there are specific allegations against him. Complainant Sh.Yash Pal Arora has specifically alleged that when he visited the office of the accused Company, i.e., M/s Vian Infrastructure Ltd., at that time the petitioner was also present in the said office along with Survesh Chowdhary and Surya Kirtichand Thaper. By giving personal assurances, the petitioner induced the complainant that they already completed all required formalities including licence, NOC and land for Neemrana Project, whereas, it was otherwise.

16. As per the status report, one of the witnesses, namely, Sh. Setlur Ramaswamy Veeraraghavan stated that the petitioner was employee of M/s Vian Infrastructure Ltd. In his statement under Section 161 Cr.P.C., he stated that he had responded to an advertisement in the 'Times of India' calling suitable candidates for a walk-in interview for the position of General Manager (Finance) during the last week of November, 2006. Initially, he was interviewed by the DGM (HR) and thereafter by the petitioner. It establishes that the petitioner was very active person in the aforesaid Company. In addition to that, the petitioner is also involved previously in the following cases:-

1. FIR No.106 dt. 25.6.07 u/s 409/420/120B IPC PS Parliament Street, New Delhi.
2. FIR No.135 dt. 3.8.07 u/s 409/420/120B IPC PS Parliament Street,

New Delhi.

3. FIR No.136 dt. 7.8.07 u/s 409/420/120B IPC PS Parliament Street, New Delhi.
4. FIR No.251dt. 02.12.09 u/s 406/420/120B IPC PS EOW, New Delhi.
5. FIR No.39 dt. 02.03.09 u/s 406/420/120B IPC PS EOW, New Delhi.
6. FIR No.315 dt. 26.7.08 u/s 406/420/120B IPC PS IP Estate, New Delhi.
7. FIR No.239/98 u/s 406/420/120B IPC PS R.K.Puram, New Del hi.
8. FIR No.240/98 u/s 406/420/120B IPC PS R.K. Puram, New Delhi.
9. FIR No.103/10 u/s 406/420/467/468/471/506/120B IPC PS EOW, New Delhi.
10. FIR No.85/10 u/s 406/409/420/468/471/120B IPC PS EOW, New Delhi.
11. FIR No.94/12 u/s 420/120B IPC PS EOW, New Delhi.
12. FIR No.26/2010 u/s 406/420 IPC PS Crime Branch, Jammu, J&K.

17. Keeping in view the past record of the petitioner and the facts and circumstances of the case in hand, it is crystal clear that the petitioner is the master mind of all the cheatings, whereby more than 6000 investors have been cheated. Even in the first chargesheet, name of the petitioner is mentioned wherein stated that as accused Surya Thapar was in judicial custody and time limitation was there, hence, the said chargesheet was filed stating that investigation qua the petitioner, Sanjeev Malhotra, and other associates/remaining Directors/suspects will continue and after completing the investigation against them, supplementary chargesheet in this regard will be filed under Section 173 Cr.P.C.

18. Since the petitioner was evading arrest and was not available to the Investigating Authority, therefore, supplementary chargesheet, as noted above, was filed against the petitioner.

19. So far as the argument qua accused Survesh Chowdhary, the Chief Managing Director of the accused Company, that he has remained in

custody for only six months and has already been released on bail is concerned, before commenting upon the same, it is pertinent to mention the observations made by the learned Additional Sessions Judge while granting bail to him. The same reads as under:-

> *"8.0 The accused though was the authorized signatory in the various bank accounts, however, nothing has come out in investigation that the accused has drawn any cheque transferring any amount in his own account or in the bank account of any other co-accused or that he had withdrawn any cash amount from any of the accounts.*
>
> *9.0 During the arguments the IO who was present stated that during investigation nothing has come to notice showing transfer of any amount other than his monthly remuneration to the personal account of the accused.*
>
> *10.0 There is no allegations of siphoning off of funds by the accused and as such the accused did not earn any financial benefit."*

20. Thus, though accused Survesh Chowdhary was the Authorized Signatory of the Bank Accounts, however, neither any cheque was drawn by him nor he happened to be personal beneficiary of the funds. Moreover, in the entire chargesheet there is no evidence against him of siphoning off any funds from these companies and that the actual beneficiaries are the petitioner and Surya Kirtichand Thapar.

21. Moreover, vide Resolution passed at the meeting of Board of Directors of the accused Company held on 22.01.2007, held as under:-

> *" **WHEREAS** the Company is having current Account No. 160010200008426 with UTI Bank, Saket Branch, New Delhi which is currently being operated either **singly without any limit** by Mr. Vijay Kumar*

Sharma, Authorized Signatory of the Company or ***any two of following three, up to Rs.10,00,000/- (Rs. Ten Lakh) only****.*

(i) Mr. Sarvesh Chowdhry, Managing Director
(ii) Mr. Surya Thapar, Director
(iii) Mr. S.R. Veeraraghavan, Authorized Signatory

RESOLVED FURTHER THAT the limits of operation of the said current account be and are hereby changed and the above mentioned current account shall now be operated as following

(1) ***Singly without any limit*** *by Mr. Vijay Kumar Sharma, Authorized Signatory of the Company.*

(2) ***Singly up to Rs10,00,000/- (Rs. Ten Lakh) only either by*** *Mr. Sarvesh Chowdhry, Managing Director of the Company* ***or*** *by Mr. Surya Thapar, Director of the Company.*

(3) Jointly by or ***any two of the following three, without any limit***

(a) Mr. Sarvesh Chowdhry, Managing Director
(b) Mr. Surya Thapar, Director
(c) Mr. S.R. Veeraraghavan, Authorized Signatory."

22. Perusal of the aforesaid Resolution establishes that even the Chief Managing Director, other Directors and the Authorized Signatory of the accused Company were having limits of operation of the Bank Accounts upto Rs.10,00,000/- whereas, there was no limit for the petitioner and he was authorized to operate the same singly without any limit.

23. In addition to above, Sh. Sanjeev Bhargava (Managing Director) of Brain Bridge Advertising and Marketing Private Limited stated that:-

" That M/s Ambica Research & Development Private Limited through its Directors Ms. Anita. Sharma W/o V. K. Sharma & Mr. Nisha Rana W/o Y.S. Rana issued various release order for advertisement and same was duly published and bills were raised and acknowledged by M/s Ambica Research & Development Private Limited. When M/s Ambica Research & Development Private Limited started defaulting on payment Ms. Aneeta Sharma and Nisha Rana, further introduced us to Mr. V.K. Sharma of M/s Vijay Associates. Mr. V.K. Sharma, further represented that he is the chairman and person managing the affairs of M/s PSG Developers & Engineers Ltd. and further represented that M/s Ambica Research & Development Private Limited, M/ s Vijay Associates, M/s PSG Developers & Engineers Ltd .,and M/s Vian Infrastructure Limited are one and same and the management and all affairs are generally controlled by him (Mr. V.K. Sharma). Who further induced me to enter into arrangement dated 0l April 2006 as servicing agency to service his clients M/s PSG Developers & Engineers Ltd. and M/s Vian Infrastructure Limited and further promised to pay outstanding of Rs.26,49,982/- against M/s Ambica Research & Development Private Limited and Rs.2,80,719/- against M/s PSG Developers & Engineers Ltd. (It should be noted here that Vian Infrastructure was formed in August 2006 and Mr.V.K.Sharma signed the agreement on its behalf in April 2006.). A communication was also received from PSG Developers & Engineers Ltd. wherein it has been stated that further payments will be made by M/s Vian Infrastructure Ltd. Thereafter letter dated 25.9.2006, 28.11.2006, 23.12.2006 was received wherein from Vian Infrastructure Ltd. thereby making payment of M/s Vian Infrastructure Ltd., M/s PSG Developeers & Engineers. Ltd, M/s Ambica Research & Development Ltd. As such clearly shows that all the above said companies was duly run and managed by same V. K. Sharma. That further public notice was

published in the newspaper wherein the said notice was on behalf of PSG Developers & Engineers Ltd. and same was transmitted through the fax of M/s Vian Infrastructure Ltd. Several order to release ads were issued by Mr. V. K. Sharma and accordingly orders were issued by M/s Vian Infrastructure Limited for M/s PSG Developers & Engineers Limited. For example for India Today, issue dt. 18.1.2.2006 the order came from Mr. Vijay Kumar Sharma (V.K. Sharma). Same is evident from the advertisement published in India Today (Special Anniversary issue) dated December 18, 2006 wherein four page advertisement was published on the release order of Vian Infrastructure Ltd. Out of which three pages advertisement were of M/s Vian Infrastructure Limited and 01 page advertisement was of M/s Ambica Research & Development Private Limited. India Today billed this release as Vians release and accordingly as per instructions of Mr. V. K. Sharma all these 4 pages were billed to Vian Infrastructure Ltd. by us. Similarly there are other instances as well i.e. release order dated 31.10.2006 in 4D Women issue November 064 pages innovation and 3pages for Rs. 80,000/- were billed to M/s Vian Infrastructure Ltd.. and 4th page was free of cost to M/s Ambica Research & Development Ltd. Further RO No. 1284 dated 21.11.2006 was billed to M/ s Vian Engineers Ltd. Normally in business parlance in the case of publications only one RO (release order) is used for only one client unless the group is same. Further orders for advertisements were received on behalf of M/s Ambica Research and Development, M/s PSG Developers & Engineers Limited and M/s Vian Infrastructure Limited from Mr. V.K. Sharma and payments were made on behalf of M/s Ambica and M/s PSG Developers & Engineers Limited by M/s Vian Infrastructure Limited. It is further submitted that M/s Ambica Research & Development Private Limited's payment due for release upto 30.06.2006 was Rs. 40,98,353/-, this *payment was due in August 2006. In the account of M/s PSG Developers & Engineers Limited payment due for release up to 30.06.06 was Rs. 1,23,41,8.43/- this payment was due in August 2006 and similarly the paytnent due for release upto 30.06.06 in the account of M/s Vian Infrastructure Limited was Rs. 600832/- this payment was due in Aug 2006. So the total outstanding against M/s Ambica Research & Development Private Limited, M/s PSG Developers & Engineers Limited and M/s Vian Infrastructure Limited was Rs. 1,70,41028/- (One Crore and Seventy Lacs Forty One Thousand Twenty Eight only) whereas M/s Vian Infrastructure Limited made payment on behalf of M/s Ambica Research & Development Private Limited and M/s PSG Developers & Engineers Pvt. Ltd. through cheques from 15.07.2006 to 09.09.2006 totalling to Rs. 1,54,16596/- (Rs. One Crore Fifty Four Lakhs Sixteen Thousand Five Hundred Ninety Six only). Against Vian's due payment of Rs.6,00,832/-, Vian paid Rs.1,54,16,596/-. As such it is evident that all the three companies i.e.M/s Ambica Research & Development Private Limited, M/s PSG Developers & Engineers Limited and M/s Vian Infrastructure Limited were hand in glove to cause wrongful loss and was controlled by Vijay Kumar Sharma (V.K. Sharma) who to further inspire confidence issued cheques bearing his own signature. That one of the project launched by M/s PSG Developers & Engineers Ltd. and publication namely Hindustan Times dated 29.11.2006 wherein an advertisement the effect "PSG City Agra Shamsabad Road" was published and when the said project was unable to sell, same was re-launched in Hindustan Times by giving a new nomenclature "Vian City Agra". Further when the payments were not made by M/s Vian Infrastructure Ltd. for all outstanding, all media houses stopped further advertisement, then V.K. Sharma, Sanjeev Malhotra, Surya Thappar and other approached us to settle all the outstanding and offer*

> *was extended by the aforesaid persons in furtherance of criminal conspiracy to induce, offered land/villas to publication house or accept the outstanding instalments. Accused Sanjeev Malhotra, Director offered and induced us by showing various land registry at Haridwar in connivance with Mr. Surya Thappar who is the authorized signatory and induced us to publish advertisement of M/s Ambica Research and Development Private Limited and M/s PSG Developers & Engineers Ltd. on the release order of M/s Vian Infrastructure Ltd. Accused Vijay Kumar Sharma is the main culprit on whose instruction every act of omission and commission was done, and under the deceit and inducement, we published the advertisement which we would have not done if they have not included us and hence they committed cheating with us. I can prove my all submissions through documents and self attested copies of the same have already been submitted through my representation. Statement read over and explained to me and I find the same to be true and correct."*

24. In view of the above recorded facts, I am of the considered opinion that the petitioner does not deserve for any leniency as he has cheated the hard earned money of thousands of poor investors, his family is enjoying the fruits thereof, whereas the families of the said investors have been totally spoiled.

25. Keeping in view the aforesaid discussion and the facts and circumstances of the case, I am not inclined to grant bail to the petitioner.

26. The instant petition is dismissed accordingly.

SURESH KAIT
(JUDGE)

AUGUST 10, 2015
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