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

\+ **Date of Decision: 04.10.2016**

% **BAIL APPLN. 1230/2016**

URMILA GUPTA ..... Petitioner

Through: Mr. Manoj Ohri, Senior Advocate and Mr. Sumit Choudhary, Advocate.

versus

THE STATE (GOVT OF NCT OF DELHI) ..... Respondent

Through: Ms. Radhika Kolluru, APP along with SI Radhey Shyam, for the State.

Mr. Amit Kumar, Advocate for the complainant.

\+ **BAIL APPLN. 1193/2016**

DIKSHA GUPTA ..... Petitioner

Through: Mr. Manoj Ohri, Senior Advocate and Mr. Sumit Choudhary, Advocate.

versus

THE STATE (GOVT OF NCT OF DELHI) ..... Respondent

Through: Mr. Ashish Dutta, APP along with SI Radhey Shyam, for the State.

Mr. Amit Kumar, Advocate for the complainant.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. By this common order, I propose to dispose of the aforesaid two anticipatory bail applications. The petitioners in these two bail applications are two of the co-accused in case FIR No.610/2015 dated 19.07.2015 registered under Section 420/406/120-B IPC at PS Subhash Place, Dist. North-West, Delhi.

2. The case against the accused persons in the said FIR, registered on the complaint of Uma Shahi, wife of Amarjeet Singh is that she had entered into a memorandum of agreement for purchasing a plot bearing no.F-472 admeasuring 150 sq. yd. situated in a proposed project, namely, County Garden in Neemrana, Rajasthan and had paid Rs.3,41,250/- through cash and cheque to the developers M/s Om Krishna Developers Pvt. Ltd. as demanded by them. The complainant asked for the documents of the proposed projects, namely, sanction plan, approval etc. from the developers, but the same were not provided to the complainant. The complainant disclosed that no infrastructure had been developed by the builder as per the MOU at the site, and the builder continuously gave false assurances regarding the progress of the project. When the complainant asked for return

of her money, the directors of the builder company returned only Rs.85,000/- and did not return the balance. On the basis of the aforesaid allegations, the FIR in question came to be registered.

3. The submission of the petitioners is that the company M/s Om Krishna Developers Pvt. Ltd. was incorporated in November 2006 by the husband of the petitioner Urmila Gupta, who is also the father of the petitioner Diksha Gupta, with a paid up capital of 5 lacs shares. The petitioners state that 15,000 shares were allotted to the petitioner Urmila Gupta and 10,000 shares were allotted to the petitioner Diksha Gupta, whereas the remaining 475,000 shares were kept by the director/ promoter – the husband of the petitioner Urmila Gupta and the father of the petitioner Diksha Gupta. While Urmila Gupta states that she has never been involved in the day to day functioning of the said company, and she was not responsible for the conduct of its business, the petitioner Diksha Gupta states that she was only 21 years old at the time of incorporation of the company and she too was not never involved in the day to day functioning of the company, and was not responsible for the conduct of its business. The shareholding of the two petitioners was 2.99% (Urmila Gupta) and 1.99% (Diksha Gupta) in the said company run by Prem Shankar Gupta, the husband/ father of the two petitioners.

4. The petitioner Diksha Gupta further states that she was not an authorized signatory in the said company and she was not authorized to operate the bank accounts of the said company. The petitioner Urmila Gupta states that she neither executed any documents-sought to be recovered by the investigating agency in the instant case, nor she is in possession of

any such documents. Urmila Gupta further states that she is a lady aged about 58 years and is suffering from various old age related illnesses. On the other hand, Diksha Gupta states that she is not keeping well and suffering from chronic migraine attacks, of late, and she had to be admitted to ICU at Sant Paramanand Hospital on 09.11.2015 and she had been discharged only on 25.11.2015 on account of her brain related illness. She has sought to produce the medical documents in this regard.

5. The main accused Prem Shankar Gupta has already surrendered before the investigating agency and is in judicial custody. It is stated that all the relevant recoveries have been made from him and the applicants are not required for custodial interrogation. The petitioners further states that in the complaint/ FIR, there are no specific allegations made against them. No overt act has been attributed to either of them to say that the applicants have dishonestly/ fraudulently induced or misrepresented the complainant at any stage.

6. Reliance is placed by both the petitioners on the judgment of the Supreme Court in ***R. Kalyani v. Janak C Mehta***, (2009) 1 SCC 516. The petitioner states that there was no entrustment of money by the complainant to either of them, as the cheques were issued by the complainant in favour of the accused company. In this regard, reference is made to the decision of the Supreme Court in ***S.K. Alagh v. State of U.P.***, (2008) 5 SCC 662.

7. Both the petitioners state that they resigned from the directorship of the accused company way back on 12.10.2013. The cheques of the company, which were dishonoured, had been issued in April and May, 2014. They state that the accusation of cheating is also not tenable as it is not

revealed from the FIR that the applicants or any of the office bearers of the accused company had any dishonest intention at the time of entering into contract with the complainant. In this regard, reliance is placed on ***Thermax Ltd. & Ors. v. K.M. Johny & Ors.***, (2011) 13 SCC 412. Reliance is placed on ***Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors.***, (2011) 1 SCC 694 to submit that the applicants meet the criteria laid down by the Supreme Court for grant of anticipatory bail.

8. The applicant Diksha Gupta further states that she has recently got married on 07.12.2015 to one Ankit Mundra. She is now living with her matrimonial family at Noida. She states that her matrimonial life would suffer is she is put behind bars in the company of hardened criminals. The petitioners state that they are ready and willing to join the investigation.

9. Both the petitioners were granted interim protection by this court in their respective bail applications on the condition that they shall join the investigation. On 29.08.2016, it was pointed out by the learned APP that the petitioners did not cooperate in the investigation. In view of the answers given by Diksha Gupta during her interrogation regarding her relationship with her father and in relation to her marriage, it was directed that she should produce her marriage albums. The prosecution had pointed out that there were about 300 victims in this case who had been cheated, and the cheated amount was approximately Rs.40 crores. The court desired to see the scale and extent of the marriage celebrations conducted by the prime accused and the petitioner Urmila Gupta at the wedding of their daughter Diksha Gupta.

10. Today, when the matter was called out, the marriage album of Diksha Gupta has not been produced. Instead, a few selected photographs have been shown to the court, which do not cover the marriage functions.

11. During investigation, it has been revealed that Om Krishna Developers Pvt. Ltd., of whose the three accused were directors, received huge amounts of money from the investors for booking of flats at their proposed project "County Garden" at Rajasthan on false assurance of giving possession as per the MOU. However, the accused neither gave possession of the plots-to even a single investor, nor developed the infrastructure of the proposed project as per the MOU. When the investors came to seek return of their money, the accused absconded after closing their office. The status report states that the directors of the said company, despite notice, did not join the investigation and absconded. Non bailable warrants were issued against all the accused persons and raids were conducted at the possible address at Burari, Netaji Subhash Place (Pitampura), Neemrana, Noida and Haridway, but they could not be apprehended.

12. The trial court initiated proceedings u/s 82/83 Cr PC against them returnable on 08.06.2016. During this period, the accused Prem Shankar Gupta was arrested on 25.04.2016 and recorded his disclosure statement. The petitioners then approached the court to obtain anticipatory bail. Prem Shankar Gupta disclosed during his interrogation that he had purchased several properties including property no.F-215, 3rd Floor, Tagore Park, Model Town in the name of the co-accused Diksha Gupta and Urmila Gupta-the present petitioners. He also disclosed purchase of other properties at Haridwar in the name of M/s Shivastik India Pvt.Ltd. and at Kotputali,

Rajasthan in the name of another company, USP Developers Pvt. Ltd. from the cheated amount. Since the property at Tagore Park, Model Town, Delhi has been seized by Punjab National Bank, the properties situated at Haridwar and Rajasthan have been attached in the instant case. The accused Prem Shankar Gupta has also disclosed that Urmila Gupta and Diksha Gupta were also involved in the crime.

13. The investigation has also revealed that the petitioners Urmila Gupta and Diksha Gupta received remuneration of Rs.1.80 lacs and Rs.1.50 lacs respectively in 2009; Rs.4.20 lacs and Rs.3.00 lacs respectively in 2010; Rs.2.40 lacs and Rs.1.10 lacs respectively in 2011; Rs.7.20 lacs and Rs.6 lacs respectively in 2012 from the accused company. The scrutiny of the bank statements of the accused company and those of the respective petitioners reveals money transactions between the said accounts. The petitioner Urmila Gupta has signed many documents in her capacity as a director of the accused company. The bank transactions of the two accused with the company also shows that they were active directors. Both of them are shareholders of the accused company and have actively participated in the cheating. During investigation, approximately 200 out of the 300 victims have been examined, and many of them made direct and serious allegations against the petitioners.

14. The status report further discloses that Urmila Gupta is also one of the directors in USP Developers Pvt. Ltd., in which name the accused purchased lands by channeling the cheated amount. Urmila Gupta has 50% shareholding in the said company. The status report also discloses that Urmila Gupta did not cooperate during investigation. The status report

states that the custodial interrogation of the petitioners is required to find out the money trail of the cheated amount, and to recover the same and also to unearth the whole conspiracy.

15. The submission of Mr. Ohri, learned senior counsel for the petitioners is that the petitioners have already settled the claim of about 50 investors. He submits that the petitioners intend to settle the claim of the other investors too. He states that the matter may be referred for mediation. He submits that if the petitioners are also taken into custody just like the prime accused, they would not be in a position to settle the claims of the investors.

16. The two bail applications are opposed by the State as well as on behalf of the complainant and the other investors, who are present in court. It is pointed out that even though the accused company had land to develop only 300 plots, they took booking for 1200 plots, which too were not developed or delivered. The accused company had also not obtained the statutory clearances for development of their project. The prime accused was in the hiding and was apprehended from Haridwar. It is submitted that the case involves multiple victims who have been cheated of their life savings and hard earned money. The money collected by the accused in the name of accused company has been siphoned out and channeled into other entities. It is submitted that unless the petitioners are also taken into custody and interrogated, it would not be possible to unearth the entire conspiracy and discover the money trail.

17. Learned counsel submits that if the intentions of the petitioners were bona fide, they would have disclosed the manner in which the monies have been siphoned out and parked and consumed by them. It is further

submitted that mere resignation of the petitioners from directorship of the accused company in 2013 is neither here nor there inasmuch, as, the cheating and misappropriation took place when they accepted bookings and monies from the innocent investors-which happened between 2009 and 2013. Merely because the fraud was unearthed and subsequently FIR registered in 2015, it does not mean that the petitioners have no role in the case, on account of their alleged resignations in 2013.

18. Having heard learned counsels and perused the record, I am of the view that the custodial interrogation of the petitioners is absolutely essential in the present case. Though both the petitioners claim not to have had any role to play in the functioning of the accused company, both have drawn handsome salaries from the accused company during the relevant period from 2009 to 2012. If they had no role to play in the affairs of the accused company, it is unlikely that they would have drawn salary from the said company. If they actually did not have any concern with the business dealings of the accused company, then their drawing of salaries itself demonstrates their involvement in siphoning of funds of the accused company to cheat the investors. Moreover, there is material to suggest that the money collected in the name of the accused company by the accused persons, who were directors of the accused company, was siphoned off and utilized to purchase properties in the names of the accused/ petitioners as also in other companies, such as, USP Developers Pvt. Ltd., wherein the petitioner Urmila Gupta is a 50% shareholder and director. Though the petitioner Diksha Gupta claims that she had no role to play after her marriage, and that even her parents have no role to play in her marriage, the

photograph album of the said marriage has been suppressed from the court despite this court's specific direction to the petitioner to produce the same. Prima facie, the allegations of cheating appear to be made out inasmuch, as, the allegation is that as against availability of 300 plots, 1200 bookings were taken and money collected. Even the developments to be undertaken under the project were not done and not a single plot was delivered to any of the investors. A very large body of innocent people about 300 have been taken for a ride by the accused persons including the petitioners, and the amount involved is also very large i.e. about 40 crores. Prima facie, it cannot be said the project in question promoted by the accused failed to take of, or that it is a case of a business failure, since the accused do not even appear to have obtained the requisite clearances and permissions from the concerned authorities for the project.

19. The submission of Mr. Ohri that the petitioners have already settled the claims of 50 odd investors is wholly unsubstantiated. Not a shred of paper has been placed on record before this Court, and even the State counsel and the IO have not been provided with any information with regard to the alleged settlement. No particulars of the investors whose claims are claimed to have been settled, have been disclosed. By claiming that the matter may be referred for mediation and during the said period, the interim protection granted to the petitioners continue, it appears to this court that the petitioners are merely seeking to buy time.

20. The submission that the petitioners are ladies does not impress me either. It is not their case that they are illiterate or uneducated. Both of them appear to be actively involved in the business, since they were deriving

substantial salaries from the accused company. In fact, their quitting the accused company on the same day in 2013 after the fraud had been perpetuated is a pointer to their involvement, and not otherwise.

21. Reference may be made to ***Ramesh Kumari Vs. State of NCT of Delhi,*** *Bail Application No. 626/2015 decided on 25.07.2016***,** wherein this Court has held that there is a qualitative difference between interrogation of the accused while in custody and while he is enjoying protection against arrest. In the present case, while enjoying courts protection against arrest, the petitioners have not cooperated. Thus, their custodial interrogation is considered necessary.

22. In ***Dr. Rajesh J Aeren v. State of NCT of Delhi***, in Bail Appl No.1491/2015 decided on 19.07.2016., this court has elaborately considered the similar submissions as those advanced by the petitioners in the present cases. The facts of these cases are similar and on the same premise, I am of the view that the petitioners are not entitled to any relief. Their custodial interrogation is considered absolutely necessary to unearth the money trail and the entire conspiracy hatched by the accused persons. The accused, who are apparently sitting over a huge pile of money collected from about 300 investors, must cooperate and make a complete disclosure. They cannot enjoy the liberty and go about their daily routines as if nothing has happened.

23. Reliance placed by the petitioners on ***R Kalyani*** (supra), ***S.K. Alagh*** (supra), ***Thermax Ltd.*** (supra), as taken note of herein above, at this stage, is premature. On a plain reading of the FIR, it cannot be said that no

cognizable offence is made out against the petitioners under the provisions invoked therein.

24. The nature and gravity of accusations against the accused, in my view, is serious. The grant of anticipatory bail in a case of such large magnitude affecting a very large number of people would also have an adverse impact not only in the progress of the case, but also on the trust in the criminal justice system that the people repose. In case the petitioners are granted anticipatory bail, it is also likely that they may tamper with the evidence/ witnesses, or even threaten them considering that the stake for the accused persons is high.

25. For all the aforesaid reasons, the aforesaid anticipatory bail applications are dismissed.

VIPIN SANGHI, J

OCTOBER 04, 2016
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