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

Judgment reserved on: 05.08.2016

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Judgment delivered on: 18.10.2016

+ **BAIL APPLNS. 1212/2016, 1221/2016 and 1222/2016**

SUNIL DAHIYA

..... Petitioner

Through: Mr. Arvind Nigam, Sr. Adv. with
Mr. Raghu Tandon, Advocate.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel
with Ms. Radhika Kolluru, APP for
State.

Mr. A.K Singla, Sr. Adv. with
Mr. Bharat Gupta & Varun Tyagi,
Adv. for the complainants/
applicants in CrI. M.A. Nos.
10388/2016, 10390/2016 and
10392/2016.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The Applicant herein, Mr. Sunil Dahiya has filed three applications for regular bail under Section 439 of the Code of Criminal Procedure (*hereinafter* "CrPC") pertaining to the respective FIRS, wherein he is one of

the accused. The allegations in all three FIRS are of the same nature and all three applications have been heard together and are being disposed of by this common order. The applicant accused is applying for regular bail in respect to the cases registered in consequence of the following FIRS:

Bail App. No.	FIR No.	Registered with	Under Section
1222/2016	108/2014	PS-EOW, Qutub Institutional Area behind Qutub Hotel, New Delhi	409/ 420/ 423/ 120-B
1212/2016	109/2014	PS-EOW, Saket, New Delhi	409/ 420/ 467/ 471/ 120B IPC
1221/2016	110/2014	PS-EOW, Mandir Marg, New Delhi	409/ 420/ 467/ 471/ 120B IPC

2. It is the complainants' case that they have invested monies into the projects of the applicant accused to the tune of around 600 crores which have been siphoned off by the accused by colluding, conspiring, ganging up with his family members and illegally benefitting from the complainants' money on the false pretext of providing lucrative returns. The Applicant had invited applications for investment in two projects for construction of IT parks, one in Gurgaon and the other in Manesar. The complainants have filed applications in each of the aforesaid Bail Applications, seeking permission to intervene in the matter on behalf of the "Investors Sanghars

Samiti”, with a view to oppose the grant of bail to the applicant/ accused. These applications are:

- (i) CrI. M.A. No. 10390/2016 in Bail Appln. No.1212/2016;
- (ii) CrI. M.A. No. 10392/2016 in Bail Appln. No.1221/2016; and,
- (iii) CrI. M.A. No. 10388/2016 in Bail Appln. No.1222/2016.

3. Charge-sheets in the subject FIRS have been filed on 29.12.2014. Supplementary charge-sheets have also been filed, adding Mr. Sanjay Dahiya, brother of the applicant and Mr. Daryao Singh, father of the applicant as co-accused on 20.04.2015. The Ld. ASJ (South) Saket Courts, New Delhi has dismissed the bail applications of the applicant under Section 439 CrPC vide order dated 10.09.15 in all three subject FIRS. The applicant accused has been in judicial custody since 30.10.2014 and the present application has been filed by his wife who is holding a power of attorney executed by the applicant on 19.05.2016.

Background:

4. The Applicant states that he is in the business of real estate and in the construction of State-of-the-Art I.T. Parks in Gurgaon and Manesar. The Applicant along with his brother and his father has incorporated the following companies in this regard:

- a) M/s Vigneshwara Developers Private Limited
- b) Vigneshwara Developwell Private Limited

c) M/s Aquarius Buildcon Pvt. Ltd.

5. The Applicant submits that apart from the aforesaid companies, he and his family have incorporated other companies to carry out the objective of the parent companies. Together, all these companies are referred to as "Vigneshwara Group of Companies" (*hereinafter* "**VGC**"). The Applicant, his brother and father are all directors in VGC, wherein the Applicant is the Managing Director, his brother is the Finance head, and father is the Chairman.

6. The Applicant was involved in the construction of two projects, namely, "Aquarius" and "Darsons and Kisson I Valley" in Gurgaon, Sector 74 and IMT, Manesar respectively. The development rights of the project "Darsons and Kisson I Valley" at Plot No. 2, Sector-8, IMT Manesar, Gurgaon , Haryana (**Project-1**) vested in M/s Vigneshwara Developers Pvt. Ltd. and the development rights of "Aquarius" at Sector 74, Gurgaon (**Project-2**) vested in M/s Vigneshwara Developwell Pvt. Ltd.

7. It is the case of the applicant that pursuant to receiving approval from the concerned authority i.e. Haryana State Industrial & Infrastructure Development Corporation (HSIIDC) for Project-1 and Directorate of Town & Country Planning, Government of Haryana for Project-2, the applicant invited applications from general public to invest in the said projects for booking built-up space on lease hold basis. The applications were invited through advertisements in print media, TV and FM radio. The Applicant also states that the said projects were funded by Punjab National Bank (PNB) by showing interest to invest, vide a comfort letter dated 28.09.2007.

8. The investment options available under various schemes were down payment, barter agreement, construction linked program, and advance full payment by investors. The investors invested, inter alia, through the barter scheme or through advancing full payment. The barter scheme was in the nature of exchange of immovable property with a unit (s)/space in the projects of the applicant. The Applicant executed two kinds of agreements with the investors, namely, the Developer-Anchor-Unit Agreement and the Developer Anchor Option Agreement-Assured Return Plan. These agreements were entered into somewhere between the years 2006-2008. All these agreements were executed by the applicant on behalf of the aforesaid companies.

9. The Developer assured the investors that the construction will be completed within a period of sixty months from the date of the agreement and after receipt of the completion certificate from government authority. The investors were also guaranteed assured return at the rate of 9% to 12% per month. As per the agreements, on the expiry of the period, the Developers were to hand over the booked units to the investors and the units, post construction, were to be rented, and the rent shared in the ratio 65:35 between the Developer and the respective investor. In the event of the company failing to offer possession of units within the stipulated time i.e. 60 months, accused were to pay back to the investors/complainants sums of money as agreed.

10. It is the grievance of the complainants/investors that more than 60 months have lapsed since their investment, and the accused have not completed the construction at the project sites, let alone delivered

possession. The accused have failed to pay the assured returns from April, 2014 onwards. They are alleging that the accused have siphoned off more than Rs 600 crores by colluding, conspiring and illegally benefitting from the complainants money. They are, thus, liable for cheating, forgery and criminal breach of trust.

Gist of the FIRs:

11. FIR No. 108 pertains to complaints made by investors who invested in both Project 1 and Project 2 by opting for the barter system. It is alleged that the accused purchased various properties owned by the complainants, and the amount paid to the complainants was then got invested by the accused in their projects. It is further alleged that these properties were bought at a low sale consideration on the assurance that the complainants would be compensated adequately with the allotment of a property equivalent to the value of the property bought. They were also promised a 12% per month assured return on the actual agreed price and not the lower sale price consideration till the delivery of the constructed unit. FIR No. 109/2014 pertains to Project No. 1 and is with respect to agreements executed other than through the barter system. FIR 110/2014 pertains to Project No. 2 at the site of Sector 74, Gurgaon, Haryana, wherein after collaboration with the farmers, the Applicant was building a project on the land owned by farmers.

12. The Complainants allege that the accused did not complete the construction in time and there is no construction activity at all at the project sites since the year 2013. They submit that despite a lapse of 6 to 7 years, possession of the booked units has still not been offered. As regards Project

No. 1 only two towers are partially built out of the six, and Project No. 2 has still not seen daylight and only a ditch exists there. It is the case of the complainants that the accused have stashed the money in their individual accounts or accounts of persons, firms, companies owned and/or controlled by them.

13. It is further alleged that the assured returns which the applicant had assured to pay haven't been given since February 2014, despite demands. At times, it is alleged, the complainants have been shunted out by the bouncers of the accused with threat of dire consequences. It is alleged that the accused had delivered some post dated cheques of July 2014 - March 2015 to the complainants to pay the pending assured returns, which have also started getting dishonored.

14. The Complainants allege that the accused has illegally collected service tax and land enhancement cost from the complainants on the undertaking of paying the assured return. This was done with an intention to make the complainants part with more money to pay off their dues to the Service Tax Department. It is also their case that the persons who have paid the amount prior to 01.07.2010 were not even liable to pay the service tax under law. The accuse applicant has not deposited TDS deducted from the amount of assured return paid to the complainants in the previous years.

15. The Complainants have further alleged that the applicant accused has forged the agreements by changing the main clause dealing with refund of invested amount. The accused has also falsely used unauthorized names and styles of nationalized banks in their advertisements, to instill confidence in

mind and heart of the public to invest their money in the projects of the accused. The Complainants have referred to an advertisement in Navbharat Times (Hindi) dated 12.04.2009 and Times of India (English) dated 14.04.2009 wherein the accused has stated that their project has been rated by PNB and Bank of India (BOI), which is false and misleading.

16. The Complainants allege that the applicant and his family members are habitual offenders and have been accused of cheating several investors in several FIRS. Following additional FIRS stand registered against the Applicant:

Sr. No.	Date of the FIR	FIR No.	Sections
1.	19.02.2010	FIR No. 27/10	409/420/120B IPC
2.	19.02.2010	FIR No. 28/10	409/420/120B IPC
3.	19.02.2010	FIR No. 29/10	409/420/120B IPC
4.	04.05.2010	FIR No. 65/10	409/420/120B IPC
5.	04.05.2010	FIR No. 66/10	409/420/120B IPC
6.	12.06.2010	FIR No. 94/10	409/420/120B IPC
7.	16.05.2013	FIR No. 144/13	409/420/120B IPC
8.	27.08.2014	FIR No. 949/14	420/406/34 IPC

17. The Complainants allege the accused/ applicant along with the other directors has, by making false assurances and misrepresentation, induced the complainants to purchase the units and sell their properties. They have committed the offence of breach of trust, and cheating, and played fraud which is punishable under Section 406, 420, 467, 468 and 471 read with Section 34 IPC. It is further alleged that all three directors are the persons from the same family and are incharge of and responsible for day to day affairs of the said company. They deliberately did not carry out the construction at the desired pace in order to further rotate the money invested by the complainants and other investors.

Gist of the Charge-sheets:

18. As per the charge-sheets, an initial investigation has revealed that there are more than 1500 investors and the total amount received from the investors may go upto Rs 400-500 crores. Approximately 560 complainants have been received at the office of the EOW and total cheated amount has already gone upto 230 crores.

Project-1 @ IMT Manesar

19. With respect to this project it has been ascertained that the project was launched in the year 2005-2006 and allotment was made by HSIIDC to Vigneshwara Developers Pvt. Ltd. on 10.05.2006 and an agreement was executed on 17.05.2006. It has been informed by HSIIDC that basic cost was deposited by the applicant's company, however, when enhanced compensation was demanded, the company deposited only part payment of Rs 1 crore and thereafter moved the Punjab and Haryana High Court and

Supreme Court against the demand notice. It has been further revealed that M/s Vigneshwara Developers Pvt. Ltd. was not permitted to lease or sell the property in question. The analysis of the bank accounts reveal that the directors received Rs. 9,98,10,952/- from the investors before 17.05.2006, which is before the date of agreement between HSIIDC and the applicant. As per the agreement, it was agreed between the corporation and the accused that the breakup of the project implementation shall be as follows:

Time-period	Percentage
Two years	30%
Three years	50%
Five years	75%
Extension of 2 years	100%

20. It is stated that more than eight years have lapsed, and project is just 40-50% complete and for the last several months is in an abandoned condition as no construction activity has taken place. Further, as per the terms and conditions of agreement and clause 13.2 of EMP-2011, for booking of built space on lease rental basis during construction stage, the accused/ applicant were to seek permission from the corporation in a prescribed format, which was not sought.

Project 2 @ Sector 74, Gurgaon

21. The charge-sheet reveals that the license in respect of this project was obtained in the name of local villagers through Aquarius Buildcon Pvt. Ltd. Aquarius Buildcon Pvt. Ltd. had entered into a collaboration agreement with the local villagers in respect of the said land in the year 2007. The license came in the year 2009, given by DTCP Chandigarh. Site inspection shows that there has been no construction activity, except the digging of a ditch.

22. The charge sheet states that the concept of barter agreements were very much alien to the main or ancillary objects as enumerated under the Memorandum of Association and, therefore, the directors have acted beyond the scope of the objects of the company. It is also disclosed that the applicant's company has been incorporated with a minimal share capital of Rs 1 lac, but the directors have received the share application monies in huge amounts without increasing the authorized capital. It is revealed that for the year 2009-2010 share capital amount received was Rs 21.14 Cr. The Police had appointed an auditor to make a report on the amounts siphoned. It is revealed that huge amounts have been transferred into the individual account of the applicant's father, and also into the account of the sole proprietorship firm of the applicant's father and brother, as well as the applicant. The details of which are mentioned and discussed later.

23. The charge sheet further states that *"The present accused in the capacity of the Director of the company was not only acting as an agent of the company but also was a trustee of the assets of the company. If the corporate veil is further lifted, as is necessary for the purpose of this investigation related to fraudulent act of director, it is quite evident that it was the present accused Sunil Dahiya along with his father, Daryao Singh*

and brother, Sanjay Dahiya who were carrying out day to day affairs of the company as well as planning the long term policies”.

Applicant's Submissions:

24. The Applicant submits that the present is a case of non-completion of the project and non-payment of assured returns, which is purely civil in nature. It is, at best, a case of breach of the agreements entered into by the accused company with the investors. The contents of the FIR at best demonstrate an alleged breach of contract and cannot be termed as cheating. He submits that the contract between the investors and the applicant provides recourse to arbitration in case of any dispute arising from the contract. The applicant also relies upon the bail orders in FIR Nos. 28/10, 29/10, and 65/10, wherein the accused has been granted bail and the Ld. ASJs have enlarged the applicant on bail on the ground that the dispute is of civil nature.

25. The Applicant further submits that the accused company has diligently paid the assured return since inception. To evidence the same, the Applicant has relied upon a verification report of Dun and Bradstreet verifying the performance of all projects. The Applicant submits that since the assured returns were diligently paid from inception, there is no intention to cheat and *mens rea* to constitute criminal offence is absent in the present case.

26. Mr. Nigam, learned senior counsel submitted that there was no dishonest intention on part of the Applicant regarding the implementation of the projects, since the project at IMT Manesar is on the verge of completion

and the company has obtained extension of two years from HSIIDC vide office order dated 20.09.2013. As regards project at Sector 74, Gurgaon, the Applicant submits that the company could not proceed further for want of relevant sanction and approvals from the appropriate government authorities. The zoning plan was approved by the Directorate of Town & Country Planning, Haryana on 01.08.2014 and thus the implementation of the projects got delayed.

27. Ld. senior submits that the applicant from inception had *bonafide* intentions to carry out the project. The applicant has made payments to the investors to the tune of Rs. 2,137,842,537/- from 2006 till 31.03.2013 towards assured returns. He submits that the two towers at the project in Manesar are nearing completion, and only internal fit outs are required. The Applicant is fully inclined to develop the same and honour his part of the commitment.

28. The Applicant submits that as per the agreements, the allottees (investors) were to pay all government levies, taxes and charges. He submits that this was further backed by the Circular No. 122/03/2010-ST dated 30.04.2010 of the Ministry of Finance, titled “Clarification regarding availment of credit on input services”. Applicant submits that he was forced to bear the service tax liability on behalf of the investor in the project, as they were not too keen on payment of the tax dues, nor did they pay the same. The accused company had also filed a writ petition against the coercive steps taken by the Service Tax Department for recovery of Service Tax. The Applicant submits that in the light of the orders passed in those proceedings, the companies requested all its investors not to encash their

cheques for the month of March 2014 as some amount will be adjusted against their services tax dues. It is submitted that the real estate industry was facing recession and thus the Applicant's company offered their investors additional space in place of the assured returns for the months of April 2014- December 2015 and assured to continue to pay the assured returns from January 2016 onwards. The Applicant also submits that the Police Authorities got all the bank accounts of all VGC attached which left the Applicant paralyzed and brought the functioning of its company to a standstill. This action of the Police Authorities affected the payment of assured returns and caused dishonour of cheques issued by the Applicant.

29. Ld. Senior further submits that the charge-sheet in the case has already been filed, and around eleven months have passed since the order rejecting bail under Section 439 passed by the learned Additional Sessions Judge. The applicant has been in judicial custody for over twenty one months now. Thus, no purpose will be achieved in unnecessarily keeping the applicant in jail during pendency of the trial. Ld. Senior furthermore states that the trial is likely to take considerable time since there are around 400 complainants. The taking on record of statements of the prosecution witnesses and the documents relied by the prosecution is bound to take long. It is highly improbable that the trial will get completed within the limitation of sixty days from the first date fixed for taking evidence as provided under sub section (6) of Section 437 of CrPC. He submits that the right to automatic bail under the said provision stems from the fundamental right of personal liberty as enshrined under Article 21 of the Constitution. It is

violative of Article 21 if an undertrial prisoner is detained in judicial custody for an indefinite period.

30. Ld. Senior Counsel has relied upon ***Sanjay Chandra v. Central Bureau of Investigation***, (2012) 1 SCC 40, in support of the aforesaid submission

“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”.

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.”

31. Mr. Nigam states that an Official Liquidator has already been appointed who is in possession of all the records. Thus, the apprehension that the applicant, if let out on bail, will tamper with the evidence is negated.

32. Mr. Nigam submits that complainants have no right to intervene and be heard in the bail applications. It is the State which is prosecuting the case, and the Public Prosecutor is the sole incharge of the prosecution. Section 301 CrPC entitles the Public Prosecutor or Addl. Public Prosecutor to appear and plead in a case undergoing inquiry, trial or appeal, and no private pleader can intervene. At the most, he can assist the Public Prosecutor and act under his directions. A private pleader is permitted to submit written arguments after the evidence is closed in a case, provided prior permission of the Court is obtained. In this regard, reliance is placed on the following cases:

1. ***Sundeep Kumar Bafna v. State of Maharashtra***, 2014 (16) SCC 623
2. ***Praveen Malhotra v. State***, 1990 (18) DRJ 192
3. ***Kuldeep Singh v. State of Haryana*** 1980 Cri LJ 1159
4. ***P.S. Saravanbavanandam and Ors. v. S. Murugaiyyan & Ors*** 1986 Cri LJ 1540
5. ***Shiv Kumar v. Hukum Chand*** (1999) 7 SCC 467

33. The Bail Applications are opposed by the learned APP. She submits that in respect of the project at Manesar, only one out of the six towers has been constructed. She relies upon the charge-sheet which reveals that

“During the inspection of the project site, it has been found that the project at Manesar is partly constructed and at present no construction activity is going on. The iron rod was found rusting, suggesting thereby that construction activity has not taken place since long. Out of the six proposed towers, only one tower is nearing completion and other towers are partly built. The intent of the directors of the company was never to complete the project in time bound manner.”

34. As regards, the project in Gurgaon, Ld. APP submits that the applicant did not have a license and, therefore, construction could not be commenced at the site. Reliance is placed on the charge-sheet wherein the investigation disclosed *“On the site inspection, it has been found that there has been no construction activity on this site except digging a ditch. The general public was assured that possession would be handed over within the five years. However, despite the lapse of five years, construction is yet to start.”* Ld. APP has also placed reliance on the photographs filed by the applicant in the present applications, which are indicative of the construction activity commenced at the two respective sites.

35. Learned APP submits that apart from the invested money, the applicant took payment against land enhancement, service tax and for furnishing the units. This was done before the projects were even completed, and are enough to demonstrate the fraudulent intent of the directors of the company. Ld. APP has drawn the attention of the court on the conduct and attitude of the applicant during the ongoing investigation. She submits that instead of repaying the landowners and investors their invested amount, the applicant has been found to be lavishly living off the investments of the

complainants/ investors. Reliance is placed on the charge-sheet which reveals that the applicant/accused has splurged crores of rupees for his personal luxuries and comforts by suing the funds collected from the investors in the two accused companies.

36. It is further submitted by the Ld. APP that the applicant in collusion with his brother and father has siphoned off the monies of the complainants by incorporating 15 other companies. It is submitted that the management of all these 15 companies has remained common and run from the same address. The object and nature of business being carried out by the companies is also the same. All the three directors are sitting under one roof i.e. at Orchid Centre, Gurgaon, managing the affairs of these companies. The applicant herein, as mentioned above, is the managing director in all these 15 companies. Ld APP submits that an Auditors Report, referred to in the charge-sheet, establishes that huge amounts were transferred and rotated from the accused companies, i.e. Vigneshwara Developers Pvt. Ltd and Vigneshwara Developwell Pvt. Ltd. to its other group companies, and also to accounts of other directors with the aim and object of siphoning the money.

37. Ld. APP has relied upon *Sunil Grover v. State* 2012 SCC Online Del 3539, which distinguished *Sanjay Chandra* (supra). She submits that in the present case general members of the public have been directly put to loss by floating of advertisements and invitation of offers from the public to invest money into the projects of the applicant by promising them assured lucrative returns. This is unlike *Sanjay Chandra* (supra) wherein it was the public-

exchequer that was put to loss by not holding auction of government resources.

38. Mr. Singla has also advanced his submissions with the permission of the Court. Looking to the very large body of investors involved and concerned in the matter, I have permitted him to do so. He supports Ld. APPs submission by stating that out of an area measuring 10 lac sq.ft., only 2.35 lac sq.ft. has been constructed and 7.60 lac sq.ft. is left. Mr. Singla further submits that as per the Memorandum and Articles of Association, the company's authorized capital is Rs 1 lac/-. There has been no increase in the authorized capital, inspite of the accused receiving share application money to the tune of Rs.21.14 Crores. Mr. Singla relies upon the auditors findings as mentioned in the charge-sheet, which reveals that during the year 2009-2010, the company received share application money to the tune of Rs. 21,14,70,980/-.

39. Mr. Singla submits that around 13 other FIRs have been lodged against the applicant and other accused since the year 2010. These FIRs are all similar in nature and substance and have been filed by the Investors. The FIRs are all under Section 409/420/120B of IPC attracting maximum sentence of life imprisonment. The applicant is a habitual offender. He has duped around 1500 investors to invest in his projects on the promise of lucrative returns.

40. Mr. Singla furthermore submits that cheating and dishonesty on the part of the applicant is evident from the forged and falsely used names and logos of the Nationalized Banks in the advertisements of the applicant's

projects. The accused have stated in their advertisements that Bank of India and Punjab National Bank have rated their projects, which is not the case. He relies upon the response from the said banks to RTI Applications, wherein BOI and PNB have indicated that M/s Vigneshwara Developers have published the names of the bank without the permission of the banks.

41. Mr Singla submits that about 60 winding up petitions have been filed against Vigneshwara Developers Pvt. Ltd. and Vigneshwara Developwell Pvt. Ltd. before the company court for winding up of the said companies. Mr. Singla relies upon the following two company petitions:

1. *Sh. Naresh Chand Gupta & Anr. v. Vigneshwara Developers Pvt. Ltd.* Co. Pet. 534/2015
2. *Col. P.K. Uberoi (Retd.) & Anr. v. Vigneshwara Developers Pvt. Ltd.* Co. Pet. 885/2015,

wherein the applicant/ director had been directed by this court to disclose the details of the properties purchased in his name on affidavit, but inspite of sufficient opportunity, no effective response has been received from the applicant. This court has thus, vide order dated 22.07.2016 in the aforesaid petitions, admitted the petitions for winding up and appointed an Official Liquidator in the respective petitions.

Discussion and Decision

42. I have considered the rival submissions advanced by learned counsels.

43. The Supreme Court in ***Dipak Shubhashchandra Mehta v. Central Bureau of Investigation***, (2012) 4 SCC 134, laid down the factors that a court granting bail should consider. The court observed as follows:

“18. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.”

(Emphasis Supplied)

44. Further, the Supreme Court in ***Central Bureau of Investigation v. V. Vijay Sai Reddy***, (2013) 7 SCC 452, has observed at para-34:

"34. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be

kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt".

45. The nature of accusations in the present case is very serious and grave. The status report filed by the State on 13.07.2016 discloses that a total of 870 complaints in the subject three FIRS have been filed, and total cheated amount has been calculated to the tune of 380 Cr. which is likely to increase.

46. Evidently, the present case appears to be a multi-victim scam. The applicant accused, as it prima facie appears, has duped more than 1500 investors to invest in his alleged project at Manesar and Gurgaon. This has been solely achieved by painting a rosy picture before the investors of them getting lucrative returns on the investments made. The applicant while presenting various schemes, have depicted association with, and sponsorship from nationalized banks, the veracity of which remains questionable. It further raises suspicion on the conduct of the accused/ applicant, as to why they reduced the sale price consideration in the sale agreements executed between the accused company and the investors. The accused deducted TDS on the assured returns promised, but apparently the same has not been deposited with the Income Tax Department, thus, prima facie, raising a possibility of misappropriation. The assured returns have also been stopped after few years. Post dated cheques issued in that regard have been

dishonoured. The construction of the units, which was assured within a time span of 5 years from the date of agreement has, even after a period of more than eight years, not been completed. There are allegations that the applicant/ accused has also deducted service tax from the investors, including during a period when it wasn't required to be deducted under law. The same does not appear to have been deposited with the authorities and may have been misappropriated. Vast amounts collected by the applicant/ accused from the investors appear to have been splurged for personal comforts and pleasures, apparently without any concern for the fact that the people had invested their lifelong savings in the hope of getting their promised properties and returns. Projections were made to the public to invest in the projects without even having the requisite permissions/ clearances. Only partial construction – which too is incomplete, has been done by the accused. Prima facie, there appears to be force in the case of the prosecution that the accused, right from the beginning, had the intention to cheat and defraud the investors and to misappropriate their investments. Moreover, the applicant is accused of cheating in not just the subject FIRs but around 13 other FIRs have been registered against him arising from similar transactions. In light of the above, there can be no doubt that the nature of accusations is serious and weighty in nature.

47. It is to be noted that the applicant is charge-sheeted *inter alia* under Section 409 and Section 467 which provide for maximum punishment to life. If the applicant is convicted under this provision, keeping in mind the economic offence he has committed and the quantum of losses he has

caused, he could be punished for life. Therefore, in such a case, the severest punishment cannot be ruled out.

48. As regards considering evidence at the stage of bail, the Court is conscious of the law that a detailed examination of evidence and elaborate discussion of merits cannot be undertaken, but the Court while exercising its discretion is duty bound to indicate the reasons to conclude why bail is being granted, or refused on prima facie look at the possible evidence and circumstances. The charge-sheet, statements of investors duped, documents seized by the Police, photographs of the projects sites, winding up petitions, prima facie, establish the fraudulent character and dishonest intentions of the accused/ applicant. The Auditors report reproduced by the Police in their charge-sheet discloses the following:

“Alleged company took payment from the investors much before the date of issuance of receipt. Even the terms and condition which has been printed on the back side of the receipt are hardly legible.....

As per the terms and conditions of agreement dated 17/05/2006 between M/s Vigneshwara Developers Pvt. Ltd. and HSIIDC, accused got permission for freedom of leasing and renting the land and building within the campus for the uses permissible as per the industrial policy 2005 and notified for inviting applications which form part of the zoning plan and no other purposes whatsoever was given. However allottee has to obtain permission from HSIIDC on the prescribed format.

In our opinion as per the terms and conditions of the above said agreement the accused was authorized to book the IT units only on or after 17/05/2006 subject to obtain permission from HSIIDC on prescribed format.

On scrutinizing the bank account, we found that they had received the funds from the investors before 17/05/2006 for booking units under the said project..... They had received Rs 9,98,10,952/- from the investors before 17/05/2006. The accused had withdrawn a sum of Rs 5,40,00,000/- (Rs five crore forty lacs only). They had withdrawn material amount from the funds received from the investors it (sic) shows manipulation/misappropriation of funds.

.....
The authorized and paid up capital of the company is Rs 1,00,000/- only, they have received the share application money in such a huge amount without increasing their authorized capital. During the year 2009-2010 company has received share application money of Rs 21,14,70,980/-. The company had shown the share application money lying pending for allotment since long period, and not taken any step for increase in his authorized capital so that he can allot the shares. In normal practice these types of entries are fake and bogus and companies use this type of practice to manipulate funds and convert black money into white.....

It has also been observed that the property was purchased in the name of some other group of companies and the sale consideration was paid and then taken as investment either in Manesar Project or in Aquarius Project. In case of Manesar project, the sale consideration was invested bank in the account of M/s Vigneshwara Developers Pvt. Ltd. and in case of Aquarius Project at Sec. 74, Gurgaon, the sale consideration was invested back in the account of M/s Vigneshwara Developwell Pvt. Ltd. the bank transaction took place through RTGS. It has also been stated by most of the complainant that the sale deed got executed in favour of other Vigneshwara Group of companies for a lesser value than what was agreed upon as total sale consideration. It has also been revealed during the course of investigation what number of properties purchased from the investors/complainant were further sold to third parties, either as a outright sale or as a collateral security

against the finance advanced by various individuals to the alleged company.

.....The Auditor's report has established that huge amount was transferred in the various individual as well as proprietorship firm of the other accused directors. Therefore, it is quite evident that all the three directors acted in collusion and in connivance with each other to achieve the common objective. The meeting of mind and common and shared intent on their part is evident from the records collected during the course of investigation."

49. The applicant accused appears to be a person with deep pockets. If he could manipulate and dupe more than 1000 investors to invest in his projects, he may as well be able to influence these investors, other witnesses and the evidence to save his own skin. The Applicant herein has been accused of economic offences involving cheating and misappropriation of huge amounts of public funds, and such offences – as observed by the Apex Court, have to be viewed seriously. In ***Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation***, (2013) 7 SCC 439, the Court in Para 34 observed:

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

50. Further, in ***State of Gujarat vs. Mohanlal Jitmalji Porwal and Anr.***, (1987) 2 SCC 364, the Court in Para 5 observed:

"5. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon

passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.."

51. Prima facie, the allegations of cheating appear to be made out inasmuch, as, the allegation is that the sale price consideration was modified to a lesser price in the sale barter agreements between VGC and the investors. Even the developments to be undertaken under the project were not done and not a single unit was delivered to any of the investors. A very large body of innocent people of more than 1000 has been taken for a ride by the applicant, and the amount involved is also very large i.e. about 400 crores. It cannot be said the project in question promoted by the accused failed to take off due to commercial reasons. It is, prima facie, unlikely that the PNB and BOI have rated the projects of the Applicant, as claimed by the accused. The complainants have produced a reply to the RTI filed wherein the banks have refused any association with the applicant's company. It appears to this Court that the accused even now displays an uncooperative approach and attitude. The charge-sheet reveals ***"During the course of investigation, it has been learnt that the present accused Sunil Dahiya stayed in Taj Maan Singh Hotel, New Delhi for longer period of time during the last three years The suites were booked n the name of Vigneshwara Group of Companies. As per the information received from the hotel, an amount of more than Rs. 3 crores was spent on his stay, food,***

beverages, laundry and transportation. Needless to point out that this all was done in the name of carrying out company's business. Though this figure is not very relevant but in hind sight it shows absolute lack of sincerity on the part of the present accused in carrying out the task of his company as an agent. ”. Moreover the applicant is already accused in 13 other FIRs.

52. As regards the reliance on the case of **Sanjay Chandra** (supra) I concur with the view as held in **Sunil Grover** (supra). The court observed:

“12. So far as the judgments of the Apex Court in Sanjay Chandra's case and Suresh Kalmadi's case (supra) are concerned, no doubt, these reinforce and revisit the basic principles of law with regard to the grant of bail. The ‘bail is the rule’ and the ‘jail is an exception’ and further that while granting the bail to the accused person, not only the 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 processes of law. He should not have propensity to win over the witnesses or tamper with the evidence. I am also cognizant of the fact that in both these cases cited by the learned counsel for the petitioner, the quantum of money allegedly involved was much higher than the amount of money involved in the instant case, but there is a fundamental difference between these two sets of cases which have been cited by the learned counsel for the petitioner and the present case. In the cases, which have been cited by the learned counsel for the petitioner, no member of the general public was affected directly, rather it was the public ex-chequer which was put to loss by not holding auction of government resources or by over invoicing lenders. This is totally different from the facts of the present case where the petitioner floats advertisements and invites the offers from the members of the public to invest money in their schemes by promising them lucrative returns at regular intervals. He is able to gain their confidence and cheat them

of their hard-earned money which ranges from Rs. 1,00,000/- to Rs. 10,00,000/-. This kind of activity ultimately shows a great deal of deliberation, preparation and operation which can be done only by an intelligent person and this whole exercise has been rightly observed by the learned Sessions Judge to be actuated by a mentality "to get richer overnight" at the instance of the general public or investors. I would say that this is a mentality of a class of persons who have the capacity and the temerity to lead a lavish life and create assets at the miseries of the general public by making them invest their hard earned money with them. It will send a wrong signal in case the bail is granted to such persons. This tendency is to be curbed by denying the benefit of bail to such persons. In addition to this, in the instant case, the repeated attempts on the part of the petitioner to get himself bailed out had not yielded any result, as a consequence of which the petitioner has filed the present bail application in the High Court. The petitioner has even gone to the extent of misleading the Court by showing that he has all the intentions of selling his property erected from this ill-gotten money, so collected, and that he would deposit the sale proceeds received through demand draft, with the Registrar-General of this Court. It was required that he would get an advertisement published in the newspaper and take appropriate steps in this direction. Therefore, the Court had shown the indulgence by granting him interim bail only for the purpose of showing his bonafides in repaying the amount to the investors, as, all along, his claim was that it was not his intention to cheat such a large number of people and that it was a civil transaction. But, unfortunately, despite expiry of a considerable time, the petitioner does not seem to have shown any willingness to do so. His actions have not been matching with the submissions which have been made in Court. Therefore, this was only a ploy to come out on bail. I feel that merely because he has been in custody for 20 months or merely because the bail was granted in Sanjay Chandra (supra) and Suresh Kalmadi's case (supra), it does not ipso facto result in the grant of a bail to a person who is also facing the allegations of cheating. The grant of bail in a

nonbailable offence remains essentially a matter of discretion which is to be exercised by the Court, keeping the judicial principles in mind, namely, gravity of the offence and the implications thereof.

13. In my view, the gravity and the implication of the offence, in the instant case, has a far-reaching effect on a definite number of members of the public, who are around 1500 in number, as on date and more are adding by the day.” (emphasis supplied)

53. The Supreme Court, in ***Neeru Yadav v. State of U.P.***, (2014) 16 SCC 508 – which was also a case of regular bail under Section 439, observed as follows:

*"16. xxx We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, **the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society.** A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore,*

when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law". (emphasis supplied)

54. The nature and gravity of accusations against the accused, in my view, is serious. The grant of regular bail in a case involving cheating, criminal breach of trust by an agent, of such a large magnitude of money, 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 of the criminal justice system that people repose. It would certainly not be safe for the society. In case the applicant accused is granted regular bail, it is also likely that he may tamper with the evidence/witnesses, or even threaten them considering that the stake for the accused is high. It is also very much likely that looking to the high stakes, the nature and extent of his involvement, and his resources, he may flee from justice.

55. For all the aforesaid reasons, the aforesaid regular bail applications are dismissed.

(VIPIN SANGHI)
JUDGE

OCTOBER 18, 2016