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

% ***Judgment delivered on: 18th September, 2017***

\+ BAIL APPLN. 1968/2016

MADHU SINGH ..... Applicant

Through: Mr. M.N. Dudeja, Advocate with Mr. Hemant Gulati and Mr. V.K Gulati with applicant present in person.

versus

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

Through: Mr. Panna Lal Sharma APP for State, with Inspector Ramesh K. Singh, P.S. Mandir Marg for State.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. This is the Second Regular Bail Application moved by the Applicant in this Court under Section 439 read with Section 482 of the Code of Criminal Procedure in the case FIR No. 56/2009 dated 15.04.2009, under Sections 406/409/420/201/120-B/174-A IPC, registered at Police Station- Economic Offences Wing, Mandir Marg, New Delhi.

2. In the instant petition, the applicant is in judicial custody since 16.07.2014 and the charge sheet has been filed in the learned Trial Court on 03.09.2011.

3. The brief facts stated are that the applicant/accused is the Managing Director of M/s. A.J.S. Builders Pvt. Ltd. *(hereinafter referred to as 'accused company')*. The accused company gave an advertisement on 18.03.2006 in the newspaper 'The Hindustan Times' to induce the general public for investment in their Housing Project at Gannaur, Sonepat, Haryana in the name and style of "AJS City". The complainant invested money for booking villa in the said project on the assurance of the applicant/accused and other co-accused persons that the accused company owned 300 acres of land for the said project and that the allotment of the villa would be made within two years from the date of payment. The complainant paid a sum of Rs.1,59,000/- (Rupees One Lakh and Fifty Nine Thousand Only) in the month of October, 2006 for booking a villa and a sum of Rs.2,05,200/- (Rupees Two Lakh Five Thousand and Two Hundred Only) in the month of January, 2007 for booking a plot. Subsequently, the complainant came to know that no land was owned by the said company rather it belonged to the farmers. The Sub-Registrar Office informed the complainant that the accused company did not own any land for the said project. In pursuance of the complaint made by the complainant- Ms. Suman Gupta, an FIR bearing No. 56/2009 dated 15.04.2009 under Sections 406/420/120-B IPC was registered. Apart from the present FIR, <u>there are 17 other FIRs filed by different complainants qua the other projects of the</u>

accused company against the applicant/accused herein and the accused company i.e. M/s. A.J.S. Builders Pvt. Ltd.

4. During the investigation, it was revealed that a total sum of Rs. 50,42,89,799/- (Rupees Fifty Crores Forty Two Lakhs Eighty Nine Thousand Seven Hundred and Ninety Nine Only) was collected by the accused company from the general public. Numerous companies were floated by the applicant/accused and other co-accused for diversion of funds which was collected from the investors on the pretext of booking of plots/villas/flats/farms houses etc.

5. That the present applicant/accused was declared Proclaimed Offender for the first time on 16.10.2010 and was consequently arrested from the erstwhile office of M/s. A.J.S. Builders Pvt. Ltd. located at the first floor, 8, Shaheed Bhagat Singh Marg, Gole Market, New Delhi on 07.06.2011 by the Economic Offence Wing and was sent to judicial custody on 21.06.2011.

6. On 17.11.2011, the applicant/accused moved an application for interim bail, the same was allowed upon the undertaking to deposit Rs. 3 Crores in form of FDRs in addition to the conditions. On 02.12.2011, the applicant/accused deposited initial amount of Rs.3 Crores before the learned ACMM. On 14.12.2011, the applicant/accused was released from judicial custody.

7. Subsequently, the applicant/accused moved an application for regular bail before the learned ACMM. The Court allowed the application subject to the condition that the applicant/accused shall deposit Rs. 10 Crores. However, the applicant/accused only deposited Rs. 9 Crores and was exempted from depositing remaining

Rs. 1 Crore vide order dated 14.03.2012 passed by Hon'ble High Court. Consequently, the applicant/accused was admitted to regular bail on 31.05.2012 by the learned ACMM.

8. Thereafter, the applicant/accused failed to appear in Trial Court and it was observed by the Court that the applicant/accused was deliberately avoiding her appearance in Court and as a consequence Non-Bailable Warrants (NBWs) were issued against the applicant/accused on 11.01.2013 by the learned ACMM. However, the same were stayed by the learned ACMM on 17.01.2013 till 21.02.2013. Despite that, she failed to appear before the said Court and on 21.02.2013, the learned ACMM issued NBWs against the applicant/accused and other co-accused. On 23.08.2013, the Hon'ble Delhi High Court stayed the NBWs issued against the applicant herein on the undertaking of the applicant to appear before the learned ACMM/Trial Court on 31.08.2013. On 24.08.2017 the applicant along with her counsel appeared before the learned Trial Court and pursuant to the orders of Hon'ble Delhi High Court, the NBWs issued against the applicant/ accused were stayed till 31.08.2013. However, due to the non-appearance of the applicant/accused on 31.08.2013, NBWs were again issued against the applicant/accused on 20.09.2013. The NBWs were again stayed till 06.06.2014.

9. On 06.06.2014, the learned ACMM dismissed the exemption application and declared the applicant/accused <u>a Proclaimed Offender for the second time.</u>

10. The applicant/accused was consequently arrested on 08.07.2014 and was sent to judicial custody on 16.07.2014.

11. Thereafter, the applicant/accused preferred bail application before the learned ASJ which went in dismissal on 25.02.2015. Subsequently, the applicant/accused moved her first bail application in this Court which was dismissed on 15.10.2015.

12. On 23.12.2015, the learned ACMM removed the tag of Proclaimed Offender from the applicant/accused.

13. The applicant/accused preferred second bail application before this Court which was dismissed as withdrawn on 19.05.2016.

14. Thereafter, the applicant/accused preferred a bail application before the learned ACMM but the same went in dismissal on 10.06.2016 and then the applicant/accused filed a bail application before the learned ASJ which was dismissed vide order dated 30.07.2016.

Hence the present application.

15. The learned counsel on behalf of the applicant has submitted that the applicant is in judicial custody since 08.07.2014 and FIR No. 56/2009 is registered at P.S. EOW. She is a woman, a widow and has two young children, one is a minor. The applicant herein is suffering from several ailments such as hemoglobin loss, cist in uterus, eye-diffraction, loss in eye vision and massive weight loss. She is an out-door patient of Deen Dayal Upadhyay Hospital.

16. The learned counsel for the applicant has further submitted that when the transaction had taken place she was simply a Director and a

housewife and no specific role was stated in the FIR for booking or taking the money or any signature or dealing with the said State authorities i.e. Haryana Government. He has further submitted that FIR *ipso facto* does not attributes any specific role except for inducement. Counsel for the applicant further submitted that charge sheet has already been filed and applicant is not required for further investigation and 314 witnesses are there and it will take long time to conclude the evidence.

17. The offences as per the FIR are 420/406/409 and Metropolitan Magistrate can punish for three years. Counsel further submitted that during the pendency of the petition, the applicant has settled the matter with the substantial number of investors either in the consumer forum, before the ACMM and before the District Judge also. The only allegation against the applicant is that the present applicant was declared Proclaimed Offender once on 16.10.2010 and thereafter on 06.06.2014. Counsel further submitted that bail application was moved on behalf of the applicant in this Court and this Court vide order dated 20.8.2015 directed to appear before the Court below in Bail Application No. 1443/2015 and the applicant approached to the court below and since then the applicant is in custody and seeks grant of bail.

18. The learned counsel for the applicant has further submitted that even if the trial run at the faster level, it will take long period and till the conclusion of the trial she will remain in the custody. The conduct of the applicant also shows that the applicant during the trial settled the matter with many investors and if at all there is something

beyond her capacity, she is still ready to sell her 16,000 sq. yards plot and is still willing to meet out the demands of the investors. During the period of litigation, she has sold all her movable and immovable properties including her jewellery.

19. The learned counsel for the applicant/accused has submitted that only Rs.5 or 6 Crores is left to be re-paid and rest are settled with the investors in the present F.I.R. and the status report as alleged by the Investigating Officer is not correct and as per the applicant merely 200 investors are yet to be settled in the present case. He further submitted that the continuous detention in jail is too harsh to the applicant and the applicant be released on regular bail, particularly when offence is triable by the Magistrate. In support of his arguments the learned counsel for the applicant has relied upon the following judgments:

i. ***Anand Swaroop Arora vs. State,* 266 (2016) DLT 266.**
ii. ***Vijay Aggarwal v. Union of India,* 2012 (3) JCC 1919.**
iii. ***Dipak Shubhaschandra Mehta v. CBI,* AIR 2012 SC 949.**
iv. ***H.B. Chaturvedi v. CBI,* Bail Appln. 572/2010 and Crl. M. (Bail) 459/2010.**
v. ***C.R. Patil v. State of Gujrat & Others,* 2005 (5) SCALE 588.**

20. Per contra, the learned APP for State has submitted on instructions of Investigating Officer that up till now about Rs.35

Crores is left to be re-paid to the investors. Out of the 736 investors in total, 450 investors are yet to be re-paid.

21. The learned APP has submitted that applicant was the Director at the relevant period when the investors invested and Rs.17.34 Crores amount was siphoned off from Company's account to applicant/Madhu Singh's personal account and certain lands were also transferred i.e. 17 acres to applicant's name and 18 acres of land in applicant's mother's name.

22. The learned APP has further submitted that the applicant's Bail Application has been dismissed on merit on 15.10.2015 by this Court. The learned APP has relied upon order of this Court dated 15.10.2015 in Bail Application No. 669/15.

23. The learned APP has further submitted that after obtaining Regular Bail, the applicant defaulted to appear before Court below. The Court below issued NBWs against the present applicant on 11.01.2013 and declared her Proclaimed Offender on 06.06.2014. He has further submitted that the applicant has been flouting the Court orders and not making herself available before the judicial proceedings after taking the beneficial orders in her favour. He further submitted that after declaring her P.O. on 06.06.2014, she was arrested on 08.07.2014 and since then she is in judicial custody and her bail application has been rejected by this Court vide order dated 15.10.2015 and thereafter she moved Bail Application in Trial Court and this is the second Bail Application in the High Court filed in October, 2016. The learned APP vehemently opposes the present bail

application and submits that the applicant is facing 18 F.I.R.s against her.

24. I have given my thoughtful consideration to the submissions made by learned counsel for both the parties and have also perused the material on record.

25. The applicant/accused is the Managing Director of M/s. A.J.S. Builders Pvt. Ltd. who sought investment from the general public in their residential project at Gannaur, Sonepat, Harayana. As per the Status Report, the total no. of investors are 736. After taking the investment from the general public, the applicant/accused and the accused company neither obtained necessary permissions/approved building plans, nor acquired the project land for the proposed project, but collected investments from large number of investors, running into hundreds of Crores. It is further stated in the Status Report that the applicant and the accused company cheated innocent investors/customers with misrepresentation of facts that the project of Gannaur, District Sonepat, Haryana is a township of 300 acres with 60% of the land dedicated to greenery, whereas till the charge sheet was filed the applicant and the accused company did not own any such land in their possession.

26. The applicant/accused succeeded in getting Bail from the Trial Court after depositing a sum of Rs. 9 Crores. The said Rs.9 Crores has been used to settle the amount with some investors.

27. The applicant/accused jumped over the Bail Bond and did not participate in the Trial proceedings which resulted into the issuance

of NBWs. The first NBW was issued on 11.01.2013 and the NBWs could not be executed, resulting into the delay of proceedings on the part of the applicant/accused. The NBW was issued on 11.01.2013 but the applicant/accused avoided her arrest on different grounds and it was only on 08.07.2014 that the police could arrest the applicant herein.

28. The conduct of the applicant throughout the trial proceedings suggest that the applicant has abused the trust placed in her by the Court. The Court of learned Additional Sessions Judge while dismissing the bail application of the applicant vide order dated 25.02.2015 had made the following observation:

> *"The conduct of the applicant was not found satisfactory even after grant of Bail - She has misused the liberty and did not appear before Court as per the terms of bail order as granted by the court concerned."*
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> *(emphasis supplied)*

29. Moreover, in Bail Application No.669/2015, the co-ordinate bench of this Court on 15.10.2015 had made the following observation with respect to the conduct of present applicant, which is reproduced hereunder:

> *"The conduct of the applicant shows that the applicant is avoiding the court - The applicant was declared proclaimed offender twice which clearly shows that she has been escaping the clutches of the law by fleeing away - There is likelihood of the accused not being available for prosecution, if released on bail - Conduct of*

applicant does not make her entitle for the grant of bail."

30. The total number of the investors as per the Status Report is 736 and around Rs.35 Crores will be required for settling the remaining 450 investors. The aforesaid amount is the honest money of the investors, which has been defrauded by the present applicant/accused and the accused company.

31. The argument of the learned counsel for the applicant/accused that the applicant/accused herein is simply a sleeping Director does not seem to be correct as an amount of Rs.17.34 Crores has been found to be transferred from the accused company's account to the personal account of the present applicant/accused.

32. The Hon'ble Supreme Court while dealing with the case of ***Himanshu Chandravandan Desai & Ors. V. State of Gujrat*** reported in **2006 Cr.L.J. 136** had made the following observation:-

> "*Accused a Director of Bank and others involved in Bank Scam - Siphoned off funds of Bank worth crores by bogus loans and fictitious letters of credit in name of their friends, relatives etc. - Offence is very serious - Evidence showing their prima facie involvement in offence - Having regard to huge amounts involved there is danger of accused absconding, if released on bail, or attempting to tamper with evidence by pressurizing witnesses - Refusal of bail is proper."*

33. If the present applicant/accused is released on Bail, there is every possibility that she may tamper the prosecution evidence and

she may again abscond herself. So far as the delay in trial proceedings is concerned, it was the applicant/accused who has deliberately avoided her appearance/participation in the trial proceedings. Reliance is placed on the judgment of the Apex court in ***Nimmagadda Prasad v. CBI*****, AIR 2013 SC 2821** wherein the Court made the following observation with respect to economic offences:

> *"25.* ***Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail****. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*
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> *(emphasis supplied)*

34. Consequently, I find no merit in the present Bail Application and the same is rejected at this stage. However, it is made clear that nothing stated in this judgment shall be considered as an expression of an opinion on the merits of this case.

I.S.MEHTA, J

SEPTEMBER 18, 2017